

Lund University
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Master of European Affairs

MEA 330
Spring 2005
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Eastern Enlargement of the EU

Unequal memberships despite rhetorical
commitment

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Abstract

The present study sets to investigate the previous Eastern enlargement of the European Union from two angles. The initial decision to expand the EU is viewed as a result of rhetorical action. Candidates and their supporters used arguments based on collective identity, norms and values of the Western community to shame opponents into acquiescing to enlargement. However, rhetorical action theory can not explain why the new member states in the Union are still not able to enjoy the full benefits of their memberships, and why their decision-making powers are still constrained by decisions taken by the Member States composing the Union before the enlargement, the so called EU15.

The analysis suggests that the reasons why the Union currently suffers from inequality among its members and from an unreasonably ineffective decision-making apparatus are due to egoism and short-sighted political self-interests of the EU15. Using rational choice theory when analysing three different empirical cases, the analysis illustrates how the Member States grasped the opportunities offered to them in the Nice negotiations, the negotiations on the European Constitution and recently in the negotiations on the Commission's proposed Services Directive to safe guard their self-interests in a Union containing 25 Member States.

Keywords: Eastern enlargement, Nice Treaty, EU Constitution, Commission's Services Directive, rhetorical action theory, rational choice theory,

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1 Introduction

1.1 Research purpose, questions and plan

Eastern enlargement has arguably been the most consequential political project for the EU in the last decade, and it is one of the most important and difficult challenges facing Europe in the post-cold war period. The way the EU handles the enlargement issue will have profound consequences not only for the newcomers in the Union, but also for the EU itself, as well as its neighbouring ‘non-applicant’ states. The risks involved in the enlargement process are well known to the EU. Not only does enlargement threaten to disturb the internal order of the EU, the new external borders that will follow from the expansion could also create new divisions on the European continent and thus foster instability in Europe at large. Furthermore, enlargement require internal institutional reforms such as the restructuring of major policies (such as common agriculture and structural funds) and decision-making procedures in a Community consisting of 25 to 27 members.¹

Given these risks, why did the European Union not simply choose to remain as it is? And why did not individual Member States, in particular those that expect to pay the highest price for enlargement, use their power to veto this process? Assuming, as most of the literature on international relations does, that actors seek to maximize their own interest, this is what we would expect of the EU.²

The current Eastern enlargement is often said to be the most important political event since the collapse of the Soviet Union. What mainly aroused my curiosity when following this development over the past few years was that Eastern enlargement is a puzzle for the rationalist theories that dominated the study of international institutions and regional integration in IR. While rationalist theory explains the willingness of East European states to join the EU, it does not explain why Member States decided to admit them. Moreover, the process of how Eastern enlargement came about did not seem to correspond to standard sociological accounts of habitualized or internalized rule-driven behaviour, thus the “liberal community hypothesis” derived from sociological institutionalist assumptions could not fill the gap either.

¹ Corsetti et.al, 2004

² See Schimmelfennig, 2001 & 2003; Sedelmeier, 2000; Fierke and Wiener, 1999; Friis, 1998

The best suited theory in my mind to explain the Eastern enlargement of the EU is Frank Schimmelfennig's theory about rhetorical action. Schimmelfennig's approach shows that political processes can be seen to contain something 'more' than considerations of utility and processes of strategic bargaining. Consequently, references to utility, which are at the centre of processes of bargaining, are seen as only one way in which the decision to enlarge might be justified and thus as one reason why the EU decided to enlarge.

Rhetorical action theory can explain the initial decision to enlarge the Union. The theory of rhetorical entrapment shows us how the Member States gave in to the international pressure from the applicant countries and proponents for enlargement within the Union, and started negotiating on Eastern enlargement although the rational choice for some of them would have been to veto enlargement. The reason why they still gave in to enlargement is according to Schimmelfennig's theory that the Member States were rhetorical entrapped. However, although I found Schimmelfennig's rhetorical action theory best suited among existing theories to explain EU enlargement, there is something missing in his reasoning. Schimmelfennig's theory can not explain the element of self-interest and egoism of the EU15 that still constrain the newcomers in the Union today. If the MS were/are rhetorically entrapped, why do they still not truly embrace the newcomers as equal members of the union?

I will in this study argue that the domestic pressure in the EU15 has played a far more important role than given in Schimmelfennig's theory. I will claim that the EU15's self-interests still constrain the newcomers and the profits from their memberships. Moreover, I will argue that this egoism of the EU15 works against the effectiveness of the EU's institutions which is crucial in a Union consisting of 27 Member States and, as a consequence, the Union is worse off both regarding equality among members and ability to work effectively. The aim of this study is to explain why the new Member States in the Union are still not able to enjoy the full benefits of their memberships, and why their decision-making powers are still constrained by decisions taken by the EU15. Using rational choice institutionalism when analysing three different empirical cases, I will show how the Member States needed guarantees that their self-interests would be safe guarded after the enlargement, and how they grasped the opportunities offered to them in the Nice negotiations, the negotiations on the European Constitution and recently in the negotiations on the Commission's proposed Services Directive.

Thus, drawing on the works of Schimmelfennig, I have used problem-driven research with a rationalist approach to show what is missing in his reasoning and to fill in the gaps. Hence, the analysis here fits with what existing research on enlargement has concluded, but takes the analysis a step further. Schimmelfennig's theory explains why the Union decided upon enlargement at all, something that rational choice theory can not do. However, to explain why the new Member States's memberships are still constrained by the self-interests of the EU15, a rational choice approach is needed.

After a short introduction, chapter 2 provides an overview of the two approaches adapted in this analysis on the Eastern enlargement. The two main frameworks that are presented in brief are rhetorical action theory and rational

choice theory. Chapter 3 presents an explanation to the Eastern enlargement as offered by the rhetorical action theory. Chapter 4 offers a comparative analysis of the three different empirical cases in this study, the Nice Treaty, the Constitution and the Services Directive, using rational choice as an analysing tool. Finally, a conclusion will summarise the findings of the study.

1.2 Methodology and sources

This analysis of Eastern enlargement is theoretically embedded in the current debate in International Relations between “rationalism” and “constructivism”. I do not suggest, however, that it makes sense to test “rationalism” against “constructivism” in the study of enlargement. They do not provide us with elaborated and internally consistent competing hypotheses on enlargement that we could rigorously test against each other. I therefore use rationalism and Schimmelfennig’s work drawing on constructivism as partially complementary sources of hypothesis construction for the study of enlargement. They complement each other in the sense that rhetorical action theory is best suited to explain the decision to enlarge the EU, something that rational choice theory is not able to do, but rational choice theory can best explain what has happened after the enlargement.

The thesis is methodologically based on theoretical-qualitative analysis, yet some empirical data is presented requiring no further statistical treatment. As a project, it is mainly an explanatory study of the EU Eastern enlargement, involving a certain degree of reference to the discourse of this phenomenon, without however being itself a work of discourse analysis. No textual structures and patterns are traced; the focus is on the actual arguments and the underlying common assumptions and perceptions. The cases of the Nice Treaty, the Constitution and the Services Directive are studied under the broad ontological framework of rational choice theory.

Epistemologically, the essay is positioned within the paradigm of critical social science, distancing itself from both the absolute objectivism of positivism and the inherent subjectivism of interpretive, post-positivist social science. The definition of social science closer to the perception of the present analysis is that of “a critical process of inquiry that goes beyond surface illusions to uncover the real structures in the material world in order to help people change conditions and build a better world for themselves”³. For critical social science, objectivity does not imply the absence of values. Instead, it argues that there can exist no value-free social science, since values always intermingle with facts and discourse. Rather, objectivity is the absence of distortions that allows for the scientific reproduction of a true picture of reality. In that respect, the essay attempts to be objective, without being value-free.

³ Neumann 2000; 76

The aim of this study is not to elaborate the future of the European Union and the different institutional and economic obstacles and problems that may arouse after the enlargement. In the same manner, the essay does not touch upon the theoretical problems that arise from the notion of an EU enlargement as such. Rather, it seeks to outline the structural objectives of those social forces, whose interests and values are currently dominating the formation of the EU's consensus. In this context, the three examples of EU decision-making practice referred to in Chapter 3 should be regarded not as fully-fledged case studies but rather as illustrations of the main argument, which is not only based upon discourse but also upon concrete decisions and interests. These illustrations serve a theory-confirming purpose; in no way do they represent a hypothesis-generating exercise, although they add to the elaboration of the main argument of the essay.

A number of primary and secondary sources form the bulk of empirical material of the thesis. The three principal texts under consideration are: a) Treaty of Nice amending the Treaty on European Union (European Council, 2001), b) Treaty establishing a Constitution for Europe (European Council, 2004) and c) Proposal for a directive of the European Parliament and the Council on services in the internal market (European Commission, 2004). The works of Schimmelfennig and Moravcsik provides for most of the theoretical framework of rhetorical action and rational choice respectively. Internet resources have also been utilised, including the European Union's homepage.

1.3 Eastern enlargement – a rational choice for the EU?

One would expect the EU to support enlargement as a whole or enlargement to specific states on the basis of expectations of utility, and not to do so if such arguments were hard to find. Utility could be in the form of economic or security gains. There seems to be a general agreement that the increased trade with the applicant states that will result from enlargement will be beneficial to the EU economy. Furthermore, access to primary resources and labour at a low cost in the applicant states might further strengthen the competitiveness of the EU.⁴ However, most studies of enlargement have come to the conclusion that the economic cost of enlargement will outweigh the gains in the short and the medium term for the Member States. The most important argument against a 'utility' hypothesis is perhaps that it would suffice to enlarge the internal market to the applicant states in order to guarantee the economic benefits that might emerge in a long-term perspective.⁵ At the same time this would protect the EU from the costs of including applicants in their agricultural and regional policies.

⁴ Baldwin et al., 1997

⁵ Grabbe and Huges, 1998

However, even though enlargement will be costly to the EU as a whole, it might be beneficial to certain Member States. Overall it is clear that those Member States that will gain the most from enlargement are those that are net contributors to the EU's budget, whereas those countries that are net beneficiaries have little to gain from enlarging the Union.⁶ Those who already have important trade interests in the applicant states must also be considered to be amongst the beneficiaries in an enlargement process.⁷

Utility does not have to take the form of economic gain. Increased security could be considered a gain to the EU as well. However, enlarging does not necessarily mean that the problem of security in central Europe (to the extent that there is one) is solved. It could equally well lead to a security vacuum further east. Consequently, the pressure on the EU to have an efficient security policy would increase. From this perspective, enlargement seems counterproductive. This is even more so because the capacity of the common foreign and security policy to deal with the security agenda might be further reduced as a result of enlargement. Developing a cohesive foreign policy will be far more difficult with 20 or 25 members than 15. Due to their geographic location and different historical experiences, the new Member States in central, eastern and southern Europe will bring new foreign policy perspectives and interests into the EU. Together with different foreign policy interests also come new neighbours and different relations with third states. Rather than strengthen the institutions of foreign policy, enlargement threatens to make agreement even more difficult.

The difficulties and complications that enlargement is expected to entail seem evident also in the security area. If expectation of efficiency had been the most important element in the argument for enlargement, or the only form of argument, one would have expected that the EU would ensure that its own decision-making apparatus would be able to make use of this added value in security. What the EU did instead was to commit itself to enlargement before the decision-making apparatus was reformed.⁸

⁶ Torreblanca, 1997

⁷ Baldwin et al., 1997

⁸ European Council, 2000a

2 The theoretical approach

2.1 Rhetorical action theory

While rationalist theory explains the willingness of East European states to join the EU, it does not convincingly explain why Member States decided to admit them. To elaborate this question further I will use Frank Schimmelfennig's development of a theoretical approach of 'rhetorical action' to explain the initial decision to enlarge the Union. Schimmelfennig argues that the expansion to the East can be understood in terms of liberal democratic community-building, and that the decision to expand was the result of rhetorical action. Candidate countries and their supporters used arguments based on collective identity, norms and values of the Western community to shame opponents to give in to enlargement.

Schimmelfennig uses two main arguments. First, the constitutive liberal rules of the Western international community – rather than the constellations of material, security or economic, interests and power – are the most important explanatory factors in the expansion of the EU. Second, it is through rhetorical action – rather than logic of appropriateness – that these community rules have had an impact on enlargement.⁹

It is the first basic argument that the eastern enlargement can best be explained if the EU is seen as a community representative and community-building agency. The international community that the EU represents is the European community of states, and its collective identity is defined mainly by liberal values and norms. The belief in and adherence to liberal human rights are the fundamental ideas and practices that constitute the community. This liberal identity, based on values and norms of the Western international community, is formally institutionalized in the EU as constitutive organizational rules.¹⁰

The policies of the EU toward non-members are governed by these liberal community rules. The EU seeks to socialize outside states into the liberal order and thereby expand the European liberal international community. If European non-members are successfully socialized, that is, they adopt the collective identity of the liberal international community, share its values, and follow its norms; they are entitled to join the EU as full flexed members. Based on this hypothesis, outlined by Schimmelfennig, we can explain Eastern enlargement

⁹ Schimmelfennig, 2003: 3

¹⁰ Schimmelfennig, 2003: 4

as the admission of former communist countries that have successfully democratized and adopted the constitutive rules of the EU. Those CEECs that had preceded the most on the path of democratic consolidation were invited by the EU to become members.¹¹

It is the second basic argument of Schimmelfennig's approach that the process by which eastern enlargement came about was characterized by rhetorical action. Rhetorical action is the strategic use and exchange of arguments to persuade other actors to act according to one's preferences. In the enlargement process, neither Member States nor candidate states acted appropriately, that is, on the basis of rule-based enlargement routines or internalized membership norms. They did not take the membership rules of the EU as moral commands. In other words, the enlargement is not fully to be explained in terms of liberal values and norms. Rather, enlargement preferences reflected material environmental conditions and egoistic interests of the negotiators. Additionally, whereas individual Member States, above all Germany, supported enlargement as an instrument to control the effects of negative interdependence and to increase their gains from positive interdependence with their neighbouring region, neither they nor the CEECs possessed the bargaining power to impose enlargement on the reluctant majority of Member States.¹²

In order to overcome this reluctance, the CEE governments and their supporters in the EU turned to rhetorical action. They based their arguments for enlargement on the collective identity and the constitutive liberal values and norms to which the members of the EU had consented. They exposed the inconsistency between the EU's unwillingness to enlarge, on the one hand, and the membership rules, past rhetorical commitments to a pan-European democratic community and past treatment of outsider states, on the other. The goal of this campaign was to shame the hesitant Member States into complying with the community rules and honouring past commitments. As a result, the opponents of Eastern enlargement among the EU15 found themselves rhetorically entrapped. It was clear that they, if they openly opposed or threatened to veto enlargement, would face publicly renegeing on prior commitments and damaging their credibility as community members in good standing.¹³

If inconsistency and partiality are publicly exposed and the rhetorical actor is caught using the community rules arbitrarily and cynically, his credibility diminishes. As a result, his future rhetorical actions will be less effective and his ability to manipulate the standard of legitimacy and further his interests will be reduced. The "shadow of the future" in a community environment is indefinitely long in principle, and so is the "shadow of the past": community members that were caught arguing faithlessly and egoistically have a difficult time re-establishing trust in and respect for their arguments so that they will be taken seriously by their audience. Thus, rhetorical actors are likely to be forced to

¹¹ Schimmelfennig, 2003: 4

¹² Schimmelfennig, 2003: 5

¹³ Schimmelfennig, 2003: 5

stick to prior argumentative commitments and to act according to claims that run counter to their current self-interest.

Schimmelfennig stresses that his approach draws from standard sociological institutionalist work but deviates from it in that it rejects the claim that collective identities and rules constitute the issue-specific interests of state actors and that state actors follow a norm-guided “logic of appropriateness”. On the contrary, Schimmelfennig argues that egoistic interests and instrumental action still dominates the enlargement preferences and politics.¹⁴

In sum, the concept of rhetorical action provides a mechanism for causally linking egoistic individual preferences and rule-based collective outcomes. In an institutional community environment, rational actors must justify their goals, preferences and behaviour on the basis of the community’s standard of legitimacy. Community members whose egoistic preferences are in line with the basic community rules can add legitimacy to their preferences and mobilize social pressure on their opponents. They do this through rhetorical action, which is the strategic use of arguments based on the community’s standard of legitimacy.

2.2 Rational choice institutionalism

2.2.1 Rationalist premises

Although the actual enlargement could largely be understood in terms of liberal values and norms and of rhetorical action, there are still some essential patterns of egoistic interests in the final outcome of the enlargement negotiations. To elaborate these patterns further I will use a theoretical approach of rationalist institutionalism.

Rationalist approaches to the study of European enlargement share the premises of individualism, state-centrism, materialism, egoism and instrumentalism.

Individualism: Rationalist theories treat the individual actor (and not social structures) as the crucial source of social patterns. The actors’ identities, interests, and preferences are taken as given and as fairly stable over time.

State-centrism: International Relations rationalist theories regard the state, a corporate actor, and not the individual, as the central actor in international politics. In a rationalist framework, however, this is not problematic as long as the corporate actor (the state) has a unitary will, a unitary behaviour, and a certain

¹⁴ Schimmelfennig, 2003: 6

degree of autonomy. Since the state is assumed to be a unitary actor by IR rationalist theories, these conditions are all covered.¹⁵

Materialism: Rationalist institutionalism regards the international environment as anarchical and technical, free from hierarchical authority structures and characterized by the predominance of material structures like the distribution of power and wealth. These material conditions are the most decisive explanatory factors for the process and outcomes in international relations. This does not, however, exclude that social norms or rules too effectively constrain states, but such intersubjective structures (or institutions) are not constitutive for the international environment of the state actors. Ideas and institutions provide constraints and incentive, not reasons, for action; they alter cost-benefit calculations, not identities and interests. Thus, the establishment of normative institutions is explained as a result of material interest and rational action, and the effectiveness and stability of the normative institutions depend on their utility for the actors.

Egoism: Rationalist institutionalism in IR assumes that actors act egoistically. The preferences of actors are, according to this theory, based on their estimation of their own welfare, not that of others.

Instrumentalism: Finally, Rationalist institutionalism assumes that, in pursuing their self-interest, the actors behave instrumentally. In order to maximize their own welfare, they choose the behavioural option best suited for this purpose under the given circumstances. However, objective rationality is usually not regarded as a realistic assumption since no actor could possibly possess full information about the possible courses of action and their consequences or the capacity to process this information. Furthermore, actors do not have to be strict utility maximizers, why most authors settle for some form of “bounded” or “subject rationality” instead.¹⁶

These five premises provide the theoretical foundation for the rationalist analysis of international organizations and their enlargement. Rationalists regard international organizations, such as the EU, as instrumental associations designed to help states pursue their own goals more efficiently. International organizations are attractive to states because they reduce transactions costs through centralization and independence. They make collective action more efficient by providing stable negotiating forum for pooling activities, elaborating norms and acting as a neutral information provider and arbiter. States delegate authority to international organizations in order to “constrain and control one another”¹⁷. International organizations remove the interpretation, implementation and enforcement of agreements from the reach of domestic oppositions and from the unilateral control of state governments, and thereby they raise the visibility and the costs of non-compliance.¹⁸

¹⁵ Moravcsik, 1998: 34

¹⁶ Schimmelfennig, 2003: 18f, Schimmelfennig & Sedelmeier, 2002: 520ff

¹⁷ Moravcsik, 1998: 9

¹⁸ Moravcsik 1998: 73-74

However, rationalist IR theories do not regard international organizations as autonomous actors in international politics. The state actors' concern for autonomy is too strong to allow international organizations to represent anything but the instruments of states. The power of international bureaucracy is relatively limited, and international organizations are regarded as clubs, that is, voluntary groups where members would not join or stay in the club unless a net gain resulted from membership. Rationalist IR theories assume that in an anarchical environment such as the international system, any cooperative institution must be self-enforcing on the basis of individual state interests.¹⁹ This club-theoretical assumption is further by the decision-making procedures of international organizations which generally require a consensus on the admission of new members.

2.2.2 Club Theory

A club is defined as a voluntary group deriving mutual benefit from sharing an impure public good (which means that the goods are excludable as well as partially divisible and rival). This definition is held to fit most international organizations, and in the EU, tariff barriers and other legal boundaries are used to exclude states from the benefits of free trade and other economic freedoms.²⁰ Moreover, EU market regulations as well as distributive and redistributive policies (such as the Common Agricultural Policy and the regional and structural policies) create divisible and rival benefits. Thus, enlargement not only expands the internal market but also creates crowding costs and partial rivalry among the members because new members demand their share of the subsidies, and the utility that a member receives from its consumption depends upon the number of other members with whom he must share its benefits.²¹ Therefore, the size of membership is a major issue for the organization, and restrictions of membership size must be placed on clubs like the EU.

The cost and benefit balance determines whether the club will enlarge its membership or not. For an international organization to expand, each Member State must expect positive net benefits from enlargement in order to let new members in and enlarge the club, and each state applying for membership must expect positive net benefits from joining the organization.²²

Transaction costs in a club organization consist of the decision-making and management costs that come with the establishment and the work of such organizations. These costs naturally rise with the enlargement of an organization. First, the administrative workload of the organization increases, thus more personnel is needed which means higher personnel costs. These factors raise the budgetary costs of the organization. Second, communication and information ex-

¹⁹ Martin & Simmons, 1998: 739

²⁰ Moravcsik, 1998: 56f

²¹ Padoan, 1997: 119f

²² Buchanan, 1965: 3ff

change become more costly with more members. Efficient, direct face-to-face communication is increasingly replaced by more unwieldy, formalized procedures, and these formalized procedures become more time consuming with each new member that makes use of its right to speak or to table official documents.²³

Furthermore, all documents and speeches must be translated from and into the languages of the additional members. This is very much the case in the EU where administrative costs rise disproportionately when additional official languages have to be interpreted and translated from and into all other official languages. Thus, the costs of communication and information in the EU can be assumed to increase disproportionately with the expansion of membership.²⁴

In a homogenous club, all club members have identical preferences. In reality, however, heterogeneous or mixed clubs are the rule. This is also the case in the EU. Any enlargement increases the heterogeneity of the membership because new national attitudes, traditions, institutions, and special interests affect the policy-making of the Union.²⁵ This is particularly true for Eastern enlargement as the CEECs bring with them the peculiar historical, political, economic, and social heritage and problems of their region. They all have a low level of socioeconomic development, compared to the western European countries, and little experience with the capitalist market economy; they struggle with the problems of both economic and political transformation from a communist society; and they possess political traditions of authoritarianism and foreign domination. These characteristics all distinguish them from the core of the old members and most of the newcomers of previous enlargement rounds.²⁶

Heterogeneity increases decision-making costs because, according to decision theory, the costs of centralized decisions are likely to rise where more actors of differing preferences participate. Under the unanimity rule which still applies to many important EU policies and all treaty revisions, enlargement will reduce the Member States' capacity to reach decisions as increased heterogeneity will reduce the likelihood of consensus. Even qualified majorities are more difficult to build in an enlarged organization because the number of potential blocking coalitions rises disproportionately.²⁷ In addition, majority voting reduces the degree of control for each Member State in an expanded EU, in particular that of the larger Member States.²⁸

In sum, a more realistic analysis of enlargement will not only have to take into account the characteristics of the goods provided by the organization and the balance between the crowding effects and the resource contributions of an expanded membership. It will also have to take into account increasing transaction or management costs, the heterogeneity of preferences, their effects on the bargaining processes and outcomes among members.

²³ Moravscik, 1998: 71ff

²⁴ Schimmelfennig, 2003: 23f

²⁵ Moravscik, 1998: 68f

²⁶ Huelshoff, 1999: 63

²⁷ Wilming, 1995: 97

²⁸ Kerremans, 1998: 93

3 The decision to enlarge the EU

Schimmelfennig argues that the EU has committed itself ideologically and institutionally to the integration of all European liberal societies since its establishment and the Union has continually confirmed this commitment in its rhetoric. This rhetorical commitment has created the condition for effective shaming during the enlargement process. Actors with self-interest in enlargement have strategically used normative arguments to shame the rest of the EU into accepting it. These arguments effectively silenced any open opposition to Eastern enlargement, allowed the “drivers” among the Member States as well as the associated CEE states to make incremental progress with the preparation of Eastern enlargement, and ensured that enlargement policy has remained on track in spite of difficult practical problems and major distributional conflicts. When rhetorical commitment was put to the test by rhetorical arguments, it led to rhetorical entrapment.

The constant issues of ‘what is Europe’ and ‘who can the EU legitimately claim to represent’ certainly arise with enlargement. It entails decisions of who the Europeans are and what kinds of values characterize Europe. In order to resolve issues such as who should be part of the EU and where should the borders of the EU be, the EU could choose a solution that seems appropriate given a particular identity or role, or a solution that appears ‘right’, or fair according to standards that are not dependent on a particular cultural identity. The EU claims that the rules that govern the enlargement process are not just ‘specially preferred’, but rely on universally valid principles.²⁹

3.1 Rhetorical commitment

When looking more closely at the EU’s statements about relations with Eastern Europe, what emerges as a main pattern is the description of east and west in Europe as two parts of the same entity. The aim of policies towards Eastern Europe is to ‘overcome the division’ and to fulfil ‘the aspiration of the peoples of central and eastern Europe to ‘rejoin Europe’³⁰. In a series of speeches to applicant states in central and eastern Europe – Estonia, Lithuania, Bulgaria, Romania and Czech Republic – van den Broek makes this same point: ‘You are a profoundly European nation...’³¹. In the Commission profile of Poland as a candidate

²⁹ European Council, 1993

³⁰ Andriessen, 1991

³¹ van den Broek 1997a, b, c, d, e

for membership, it is argued that ‘for centuries Polish culture has been an integral part of European culture’³². This is a constant factor not only in policy documents and speeches on enlargement after 1989 but also in western policies towards Eastern Europe during the cold war. The argument is that Eastern Europe is a part of ‘us’ that now must be returned:

We in Western Europe must not disappoint the great hopes which the peoples of Eastern Europe have of receiving our aid in their current emancipation process. Our credibility depends on how consistently we set our course towards integration to achieve a new European identity.³³

Reference to this sense of a shared destiny and a duty to enlarge is a regular feature in the arguments by the proponents for enlargement to central and Eastern Europe. According to Commission President Santer, ‘the collapse of the Iron Curtain ended the Cold War and presented us with a unique opportunity to unite Europe... We have a historical and moral duty to seize this opportunity’³⁴. According to former French Prime Minister Alain Juppé, the west Europeans have ‘a duty to solidarity’ with the central and east Europeans³⁵.

The founding myth of European integration starts already with the European situation after World War II. When the European Economic Community was founded in 1958, the founding states declared themselves “determined to lay the foundations of an ever closer union among the peoples of Europe,” called “upon the other peoples of Europe who share their ideal to join in their efforts,” and accorded “any European state” the right to apply for membership³⁶. This pan-European vocation was upheld all through the Cold War, which was a cheap opportunity for the EC and its Member States to reaffirm their devotion to the community ideology. At the same time, however, this reaffirmation created a public verbal commitment. At the end of Cold War and of communist rule in Central Eastern Europe the heads of state and government of the EC declared at their Strasbourg Summit of December 1989:

The current changes and the prospects for development in Europe demonstrate the attraction which the political and economic model of Community Europe holds for many countries. The Community must live up to this expectation and these demands: its path lies not in withdrawal but in openness and cooperation, particularly with other European states... The objective remains... that of overcoming the divisions of Europe.³⁷

³² Commission, 2000b

³³ European Parliament 1991

³⁴ Commission President Santer, 1998, in Wendt, A E. 1999.

³⁵ Juppé, 1993

³⁶ Article 237 EEC Treaty

³⁷ European Council (1989). See the Conclusions of the Rhodes Summit (June 1988) and the Dublin Summit (June 1990) for similar statements.

3.2 Rhetorical argumentation

The Community's pan-European ideology ceased to be a low-cost legitimacy-enhancing device because the new CEE governments demanded massive support for their transition to liberal democracy, and a realization of the promise of membership. The CEE governments based their claims to membership on the standard of legitimacy of the European Community: European identity and unity, liberal democracy, and multilateralism. They took the pan-European liberal commitment at face value and tried to demonstrate that these values and norms obliged the EU to admit them and that failing to do so would be an act of disloyalty to the ideational foundations of Community. They exposed inconsistencies between the constitutive values and the past rhetoric and practice of the EC, on the one hand, and its current behaviour toward the CEECs, on the other.

Some typical examples for these rhetorical strategies follow. The Hungarian Foreign Minister Geza Jeszenszky justified his country's official request for EU membership as the "return to this Community to which it has always belonged."³⁸ The Romanian ambassador to the EU, Constantin Ene, also stressed that "Romania has always been part of West European traditions"³⁹. The Polish chief negotiator in the association negotiations with the EC, Olechowski, stated "that 'the technocratic approach' is not enough in these negotiations, which have a historical goal: give Europe back to Poland, and Poland back to Europe."⁴⁰

The crucial element in the shaming strategy of the CEECs has been the argument that the EU failed to honour past commitments and to treat outside countries consistently. CEE state actors and drivers within the community have repeatedly pointed to the mismatch between political declarations such as the Strasbourg declarations and actual behaviour, such as protectionism and delaying tactics concerning enlargement. Moreover, CEE governments demanded equal treatment as former applicant countries had enjoyed in earlier rounds of enlargement. According to Peter van Ham, the Spanish and Portuguese models have been major trump cards which could be played by the Central Europeans. Already in 1990, Hungarian Foreign Minister Kodolanyi argued that the Iberian enlargement "had been the result of a political settlement" (pushing economic problems into the background) and "that the Community would do the right thing now to take a similar decision"⁴¹.

Members of both the Commission and the EP (institutions that are "drivers" for eastern enlargement) invoked the standard of legitimacy against the egoistic preferences of some Member States. First, they emphasized collective

³⁸ Schimmelfennig, 2003: 271

³⁹ Ene, 1997

⁴⁰ Schimmelfennig, 2003: 270

⁴¹ Ham 1993: 196

identity and, second, on various occasions, Commission President Jacques Delors publicly exposed the inconsistency between the Community's rhetoric and its practical behaviour toward the CEECs. "It's no good making fine speeches with a sob in your voice on Sunday and then on Monday opposing the trade concessions enabling those countries to sell their goods and improve their standards of living".⁴² Furthermore, the "drivers" for eastern enlargement have repeatedly addressed the credibility issue directly in order to put pressure on the "breakmen".⁴³ Commissioner Sir Leon Brittan stressed that the blockage of association negotiations by some Member States "could affect the Community's credibility."⁴⁴

These rhetorical strategies and arguments were echoed by the "drivers" among the Member States. In his 1990 Bruges speech, German President Richard von Weizsäcker first recalled the founding myth of European integration and then called upon the Member States' governments to follow their example under the present conditions. However, the German government sought to deemphasize its self-interest in enlargement and claimed that "we don't concern ourselves with these countries out of national interest. We feel we should take the opportunity to create a complete Europe."⁴⁵ British Prime Minister Margaret Thatcher proposed in her 1990 Aspen speech that the Community should accept the CEECs as members and based this claim on both identity and consistency: "We can't say in one breath that they are part of Europe, and in the next our European Community Club is so exclusive that we won't admit them."⁴⁶

3.3 Rhetorical entrapment

Evidence suggests that the rhetorical action of the supporters for eastern enlargement did not genuinely change the preferences of the opponents but effectively prevented them from openly opposing the enlargement process. In other words, the opponents became rhetorically entrapped. It was difficult for them to attack the pro-enlargement arguments on legitimate grounds. On various occasions, the "drivers" confronted the "breakmen" with the choice of either publicly give in to or openly opposing a step toward Eastern enlargement. These steps along the way were usually small or involved no immediate costs or obligations, making them more difficult to reject. However, with each small public commitment, the credibility costs of non-enlargement rose.⁴⁷

⁴² Jaques Delors, 21 August 1991, cited in Ham (1993: 198)

⁴³ Sjursen in JCMS 3 Sept 2002

⁴⁴ Schimmelfennig, 2003: 272.

⁴⁵ German Foreign Minister Kinkel in *Business Week*, 3 Feb 1997, 18.

⁴⁶ Margaret Thatcher, 6 August 1990, in Wendt, A E. 1992.

⁴⁷ Schimmelfennig 2003: 273f

The rhetorical entrapment of the Community was furthered by some of its formal institutional features. One was the Commission's proposal power. In developing the major documents defining the EU's policy toward Central and Eastern Europe, the Commission was able to outline the intergovernmental debate, to put the Member States under pressure to make decisions, and to accelerate the process. In so doing the Commission could confront the reluctant Member States with a rationale for enlargement based on constitutive community rules which brutally limited their range of legitimate objections.

Another important institutional feature was the rotating European Council presidency which gives the country holding the presidency some agenda power in the choice of, and the emphasis on, policy issues. In this perspective, it is small wonder that the most important initial steps toward enlargement were taken at the Copenhagen Council of 1993, the Essen Council of 1994 and the Gothenburg Council of 2001 when the presidency was held by Denmark, Germany and Sweden respectively, all declared supporters of a firm commitment to Eastern enlargement.⁴⁸

Once the decision to enlarge was made, each further step toward preparing for the opening of accession negotiations was presented as a logical follow-up to this decision and tricky to oppose. This paved the way for a situation where the "brakemen" could only turn to the accompanying negotiations on treaty and policy reform in order to protect their interests and retrieve some of their expected losses. Alan Mayhew's observation at various European Council summits that "while there was little discussion or dispute on the common objective of accession, the minor trade concessions proved very difficult to negotiate" reflects this striking character of the enlargement decision-making process. I will further evaluate this situation in the following chapter.⁴⁹

⁴⁸ Sedelmeier & Wallace, 1996: 440, 443

⁴⁹ Mayhew 1998: 164, Torreblanca 2001: 316

4 Unequal members despite rhetorical commitment

The analysis above shows us that rhetorical action forced the EU15 to embrace the CEECs into the European Union, although this was not the rational thing to do. I will now argue that this is not the whole story. The EU15 did not fully embrace the newcomers as equal members. Instead, they managed to induce several restrictions towards the new members in order to constrain them and their possibilities to enjoy the full advantages of their membership. The EU15 used the opportunity that the Treaty of Nice and the new Constitution offered to protect their self-interests in an enlarged Community. They also continuously use their power at the domestic level to constrain the basic four freedoms in order to protect their interests, and as a consequence, the newcomers can not enjoy the same benefits from their membership as the “old” Member States do.

In the following, I will evaluate these restrictions and, using realist institutionalism as an analysing tool, demonstrate that the Member States’ struggle for protecting their interests still constrain the newcomers’ advantages of their membership. Moreover, I will demonstrate that these restrictions run counter to the Union’s possibilities to work effectively in its new enlarged form.

4.1 The need for “emergency brakes”

When analyzing to what extent the Eastern enlargement is compatible with the personal-interest view of the EU15, it is essential to on the one hand identify the main strategic difficulties of the enlargement process and on the other hand to identify the main decisive players of EU15 countries and the main personal disadvantages they fear from enlargement.

4.1.1 Strategic difficulties of the enlargement process

The candidate countries are inferior to the countries already members of the Community. There is an obvious divergence between the pre-entry and the post-entry power of a new member country. A candidate has no impact on the *acquis communautaire* in the pre-entry stage of the process. The country has a single choice: to join the community with the current constitution defined by EU15, the ‘old’ Member States, or to stay outside the Community. But when a country once has become member in the Community, in the post-entry stage, the same country

takes part in the decision-making process both in regard to day-to-day policy and to constitutional decisions with the same rights as the old member countries⁵⁰.

This means that the post-entry influence can be used for the “national” benefit, especially when it comes to redirecting EU budgetary spending towards objectives benefiting the new members, and history shows us that is also has. When the UK became member of the Community in 1973, the country was successful in promoting structural spending for national benefits, and when Portugal and Spain became members they were successful in redefining spending priorities of the Common Agricultural Policies for their benefit⁵¹.

Thus, there is a risk that the candidates in the post-entry would not adhere to respect what has already been achieved in the Community by the old Member States. In order for the old Member States to gain from an enlargement, it is important that the new Member States respect the established interests of the old members⁵². As Brücker, Schröder and Weise put it; the candidate countries are gatecrashers in the sense that they would prefer to enter the club without paying the full admission fee or without complying with all the rules which are obligatory for the members of the club, and the EU15 are doorkeepers in the sense that they intend to admit only those members who honestly adopt all rules of the club⁵³.

In order to make sure that the candidates would ‘fit in the club’, the incumbent EU members clarified the conditions successful applicants would have to fulfil. In more general terms, this was done by the heads of state and government at the European Council of Copenhagen in June 1993. Applicants would, according to the “Copenhagen criteria” need to accept the basic aims of a political and a monetary union. They would need to have a stable and democratic political system, a functioning market economy capable of withstanding competition pressure in the internal market and the willingness and ability to implement the *acquis communautaire* (the EU laws and regulations)⁵⁴. However, the problem remained that there is no credible commitment for future respect of the *acquis communautaire*, because after obtaining membership, the candidate has an incentive not to follow through with his announcement⁵⁵. Therefore, the strategic challenge for the Union was to create commitment devices that guarantee the EU15 that enlargement is beneficial for them.

⁵⁰ Heinemann, 2002; 18

⁵¹ Baldwin et.al. 1997

⁵² Spero & Hart, 2002; 375

⁵³ Brücker et.al. 2004; 5, Frieden & Lake, 2000; 392, Stubbs & Underhill, 2000; 271

⁵⁴ Brücker et.al. 2004; 14, Stubbs & Underhill, 2000; 269, Spero & Hart, 2002; 375

⁵⁵ Heinemann, 2002, 20

4.2 The decisive players and their interests

4.2.1 The Council of Ministers

Opinion polls show that enlargement is not very popular among citizens of the EU15⁵⁶. The main reason for the western public for being negative to eastern enlargement is that the Central and Eastern European Countries (CEEC) are said to gain more, in economic and welfare terms, from a fully liberalized trade than the western countries would⁵⁷. There are also strong lobby groups that bear a large share of enlargement's costs, such as farmers, trade unions and beneficiaries of regional spending. EU farmers of the West fear that their subsidies from the CAP will reduce as a consequence of the accession of countries with large and low-productive agricultural sectors⁵⁸. Recipients of structural spending in the West fear redefined spending priorities in favour of the new Member States. Trade unions fear the effects of trade liberalisation and labour mobility on real wages and losses of jobs. Theory suggests that unrestricted international migration leads to poor countries having the highest emigration rates and rich countries having the highest immigration rates⁵⁹.

Since national governments represented in the Council all act under a re-election constraint this is obviously crucial in respect to their choice to support enlargement or not. According to rational choice theory, individuals representing the governments can not be expected to support enlargement if this would seriously undermine their chances of being re-elected in national elections. However, after being rhetorically entrapped and therefore forced to give in to the demands on enlargement, the reasonable thing for the EU15 Council to do is to try to constrain the negative effects of the enlargement.

4.2.2 The European Parliament

The members of the Parliament also act under the constraints of re-election. In addition, the Treaty of Amsterdam limits the size of the Parliament at 700 seats (presently 626)⁶⁰. Thus, since the eastern enlargement requires seats for more than

⁵⁶ European Commission 2001

⁵⁷ Brücker et.al. 2004; 4

⁵⁸ Gács, 2003; 275

⁵⁹ Frieden & Lake, 2000; 412

⁶⁰ European Parliament, 1999

74 MPs from new Member States, this reduces EU15 seats and so reduces the chances of sitting MPs to retain their seats. This means that personal interests of the EU15's MPs are at stake. Allocating more seats increases re-election probabilities and the power of EU15 MPs in likely future West-East spending disputes. Transitory provisions are sufficient to protect EU15 MPs, since a reduction of seats per country only will affect a MP personally if this reduction takes place within the expected active political life of that individual. The earliest possible year for the reduction of seats in the Parliament is after the European election in 2004, which means that delaying the adjustment until 2009, when a majority of the current MPs would be too old for re-election, would protect a majority of the MPs of the pre-enlargement Parliament⁶¹.

The Treaty of Nice and the Constitution were negotiated by the European Council and not by the Parliament, but there are reasons to expect the Parliament's preferences to have an effect anyway. More seats for the EU15 MPs means better opportunities for the Council to limit the power of new candidates.⁶²

4.3 The outcome of the Nice negotiations

The official objective of the Treaty of Nice was to change the institutions and decision making mechanisms of the European Union to safeguard their function and effectiveness in an enlarged Union⁶³. Given this objective, the outcome of the Nice European Council could be regarded as a failure. Many objectives identified as essential for an EU comprising 27 countries were not realized. An example of such failures concerns the condescension to extend qualified majority voting to policy fields of political substance. The extension of the Parliament seats above the 700 ceiling of the Amsterdam Treaty is another failure. These failures are, together with others, crucial to the effectiveness of the Union. The central thing here is to show the consistency between the Treaty of Nice and the personal interests of decisive players, and that this consistency also is counterproductive in terms of the official objective of the Treaty.

4.3.1 Council voting

The results in the Treaty regarding the voting weights and procedures in the Council were as follows: voting weights in EU-27 range from 29 for the big four countries to 3 for Malta. The sum of votes is 345 and 91 votes form a blocking minority. This means that 255 votes are necessary to reach a qualified majority, and these should be cast by at least a majority of member countries. In addition to

⁶¹ Heinemann, 2002; 22

⁶² Heinemann, 2002; 23

⁶³ Treaty of Nice 2001

this, population weighting has also been introduced. The qualified majority needs to represent at least 62 per cent of the total population of the Union, if a Council member so requests⁶⁴.

In the pre-Nice constitution a qualified majority is reached at 71 per cent (95 votes out of 134), and there are no additional requirements for QMV in regard to the number of countries or of population shares⁶⁵. A simple maintenance of the pre-Nice system would have given EU15 countries 64.9 per cent of Council votes⁶⁶. In the post-Nice constitution, however, EU15 countries command 68.7 per cent of Council votes⁶⁷, which means that the post-Nice situation is clearly more beneficial for the EU15 as a whole. The gains in power for the large EU15 countries more than compensate for the losses for small EU15 countries, who have most probably accepted their loss of power to other western MSs in the belief that they have more common interests with these countries than with the CEECs.

Regarding the capability of the Council to act after the enlargement, Coleman's decision probability, which is defined as the number of winning coalitions in relation to the total number of possible coalitions, is useful. The fact that the results of Nice are clearly worse with regard to capability to act than what the results would have been with a simple maintenance of the pre-Nice system strengthens the assumption that the Nice Treaty was a failure as it did not improve the effectiveness and functioning of the Union. Coleman's decision probability is at 2.9 per cent in a scenario where the pre-Nice system has been maintained in the EU27 Council, while it is at 2 per cent in the Nice constitution⁶⁸. Thus, these results contradict the official objective of the Treaty of Nice.

The outcome of the Nice treaty also shows us a reluctance to move from unanimity to majority voting in such fields as taxation, social policy, immigration or structural spending. In order to make the decision making more effective and to further the Union's capability to act it would have been very helpful to extend areas of QMV, but the EU15 chose to protect their own interests in making sure that the candidates would not be able to force them to changes that are damaging to their own interests⁶⁹.

4.3.2 Parliament seats

The Nice results regarding the Parliament can also be compared with a fictitious pre-Nice situation based on an extrapolation of the former EU15 constitution. The pre-Nice seat allocation of EU-27 comprise a 700 seats limit, as stated in the

⁶⁴ Treaty of Nice, 2001; 20 - 21

⁶⁵ TEC; art. 205

⁶⁶ CONFER, 2000a

⁶⁷ Treaty of Nice, 2001

⁶⁸ Heinemann, 2002; 26

⁶⁹ Treaty of Nice, 2001; 35, 172

Amsterdam Treaty and obtained through a proportionate seat reduction ⁷⁰. The post-Nice seat allocation looked slightly different, and the reforms were to the advantage of EU15 countries in the enlarged Union in comparison to the extrapolated status quo. The outcome of the Nice negotiations showed a share of EU15 seats that was slightly extended, from 71.6 per cent to 73.1 per cent, and this is not to be explained through desire to make the representation more proportionate to population. On the contrary, while population ranking is Czech Republic (10.3 million inhabitants) – Belgium (10.2 mill.) – Hungary (10.1 mill.) and Portugal (9.9 mill.), seat allocation is 20 – 22 – 20 – 22⁷¹. This ranking indicates that restricting the power of the newcomers was important during the Nice negotiations.

During the pre-negotiations of the Nice Treaty, it was widely regarded that increasing the number of seats above the Amsterdam ceiling of 700 would negatively effect the efficiency of parliamentary work ⁷². Nevertheless, the outcome of the Nice negotiations showed an increased number of seats above the Amsterdam ceiling to 732, which further indicates the relevance of political-economic driving forces. In a fictionate extrapolated pre-Nice constitution with the 700 ceiling, the EU15 would have had 71.6 per cent of the seats (see above) or 503 seats out of 700⁷³. In the post-Nice constitution, with 535 EU15 seats out of totally 732 (or 73.1 per cent), is more beneficial for the “old” Member States⁷⁴.

The risk of personal losses for the current MPs are also eliminated in the Treaty of Nice, more specifically through the “Protocol on the Enlargement of the European Union”, which is included into the Treaty⁷⁵. The new seat allocation takes effect on 1 January 2004. However, the Treaty states that if all 12 accession treaties are not signed at this date (which they are not), a transitory provision will come into force. Since all the 12 countries’ accession treaties had not been signed by the beginning of 2004 (which was almost certain at the time of the Nice negotiations), this means that the 535 seat restriction for the EU15 will not be fully applied before 2009. Due to the age of a majority of the present MPs, this transitory provision makes sure that they will not suffer from personal adverse consequences of enlargement⁷⁶. This is not consistent with the official objectives of the Nice negotiations. On the contrary, to augment the Parliament’s seats above the Amsterdam ceiling and to allow a transitory period is counterproductive for the capability to act effectively.

Having analyzed the outcome of the Nice Intergovernmental negotiations the only proper conclusion in my mind is that it cannot be understood by merely looking at the official objectives. It seems clear to me that the EU15 used the opportunity that the Nice negotiations offered to safeguard their own interests

⁷⁰ CONFER, 2000b

⁷¹ Treaty of Nice, 2001

⁷² Heinemann, 2002; 28

⁷³ CONFER, 2000b

⁷⁴ Treaty of Nice, 2001

⁷⁵ Treaty of Nice, 2001; 91-92

⁷⁶ Heinemann, 2002;28

in an eastern enlargement, and they did this through appropriate constitutional adjustments. The new Council voting and the augmentation of seats in the Parliament have actually decreased the capability to act, and thus run counter to the official objectives.

4.4 The EU Constitution

The Constitutional Treaty (Constitution) drafted by the Convention on the Future of Europe in June-July 2003, amended by the Intergovernmental Conference (IGC) between October 2003 and June 2004 and finally adopted by the European Council on 18 June 2004 can easily be criticised as having “failed to match the internal and external challenges faced by the Union”, meaning that it has only ‘codified’ those laws and rules already in existence for a long time.⁷⁷ Most of this constitution is not new.⁷⁸ The actual contribution constitution-building may bring about to European integration is consequently reduced to the creation of a symbol and some institutional adaptations in preparing for the upcoming round of EU enlargement (regarding the membership of Bulgaria and Rumania).⁷⁹

The origins of the IGC lie in the unfinished business of the treaty of Nice that settled the simple mechanics of enlargement, but did not focus on how a Union of 25 or more states could then function effectively.⁸⁰ So, at the Laeken summit two years ago, EU Heads of State and Government agreed to establish a Convention on the Future of Europe with a view both to improved institutions and a single constitutional treaty.⁸¹

I will in the following focus on institutional changes, in particular the Council of Ministers and the Parliament, to see how much of the regulations laid down in the Treaty of Nice that has been changed in the draft Constitution and how much of the regulations that have remained unaffected.

4.4.1 Changes of the Council voting system

The reform of the Council was at the centre of the debates of the Convention and the IGC. The Constitutional Treaty introduces significant changes affecting this institution.

The voting system: In its draft, the Convention proposed a completely new system of qualified majority voting known as “double majority”: the

⁷⁷ European Policy Centre, 2003; 51

⁷⁸ Centre for European Reform, 2003; 4

⁷⁹ Su in *European Integration*, Dec 2004; Vol. 26, No. 4; 353-378

⁸⁰ Olsen, 2002.

⁸¹ Posner in *Credit Management*, Dec 2003; ABI/INFORM Global; 26

majority of Member States and the majority of the population of the Union.⁸² The new system introduced by the Constitutional Treaty (Article I-25) can be considered a real revolution in Council decision-making⁸³. With the new rules laid down in the Constitution, the system has been made much simpler and more effective. The weighing of votes, once subject to long and difficult negotiations between Member States in Nice, will be repealed. Instead of the three criteria required until now for a qualified majority (threshold of weighted votes, majority of Member States and 62 per cent of the population of the Union)⁸⁴, only two criteria will apply: a majority of the Member States and of the population of the Union. This means that the equality of Member States is respected as each one has one vote, whilst their different population sizes are also taken into account.⁸⁵

A qualified majority is now achieved only if a decision is supported by 55 per cent of Member States, including at least fifteen of them, representing at the same time at least 65 per cent of the Union's population. Council decision-making is facilitated as a greater number of combinations of Member States can constitute a qualified majority than under the system created by the Treaty of Nice. In an enlarged Union, this is essential for the Union's smooth operation and ability to act. Moreover, this new system will avoid, during subsequent enlargements, long negotiations on the allocation of votes to Member States and the definition of the qualified majority threshold.

Since the CEECs are many but often small countries it is easier for them to (together with a few West European countries) form a qualified majority, than if the threshold of weighted votes would still have been one of the criteria for a qualified majority. This might be a result of the more powerful position that membership gave the CEECs during the negotiations forming the new Constitution, compared to the relative weak negotiation positions they had as 'outsiders' when the Nice Treaty was negotiated. It might also be a result of the heavy pressure put on the MSs to create a somewhat more efficient system in an enlarged Union. Since the official objective of the Constitution is to clear up the unfinished business of the Treaty of Nice (regarding the efficiency of the Union) it is difficult for the MS to once again fail to adhere to their official promises. They are rhetorically trapped. However, it is still easier for the EU15 to form a qualified majority because of their number (15) and total population (78 per cent), and this situation will be evident even in a Union containing 27 Member States.⁸⁶

Moreover, the Constitution established the date for this new system to take effect on the 1 November 2009, the date when the new Commission will be inaugurated following the 2009 European elections. Between 2004 and 2009, the current system provided for in the Nice Treaty will be applied. The Constitutional Treaty includes these provisions in the "Protocol on the transitional provisions relating to the institutions and bodies of the Union" annexed to the Consti-

⁸² European Commission, 2003. and European Convention, 2003.

⁸³ Constitution Treaty, 2004.

⁸⁴ EC Treaty, Article 205.

⁸⁵ Olsen, 2002.

⁸⁶ Heinemann, 2002: 25.

tution. This delay for the new system to come into force means that the effects of it will not be evident in another five years or more. To post-pone these important changes that clearly need to be done as soon as possible is clearly due to short-sighted political self-interests.

Extension of qualified majority voting: The extension of qualified majority voting is a central part of the institutional reform of the European Union associated with enlargement. Provided for in the founding treaties and extended to include new provisions at each reform of the treaties, extending qualified majority voting is vitally important in an enlarged Union where unanimity will become ever more difficult to attain.

The QMV within the Council is extended to twenty-seven areas in the Constitution (Article I-24).⁸⁷ Especially worth mentioning is the move to qualified majority voting in the fields of structural spending and immigration (Art III-223 and Art III-267).⁸⁸ Both these articles were maintained under unanimity voting in the Nice Treaty.⁸⁹ However, a certain reluctance to switch to QMV is still apparent. Art III-223 concerning Structural Funds will switch to QMV from 1 Jan 2007. This means that the next programming period, from 2007 to 2013, will again be adopted by unanimity. In other words, the national ministers of today will most probably not be personally punished and exposed to the rage of the western regions that will lose their structural aid to the eastern newcomers. By the year of 2013, most of the politicians working today at the top-level will have other mandates and will not be under constraints of re-election anymore, and to post-pone the switch to QMV in this field is due to national short-sighted political interests. Art III-267 concerning immigration will be switched to QMV with one exception: Member States will keep their right of veto for setting the number of third country nationals entering their territory to search for employment. This last clause efficiently diminishes the risk for the national governments of being criticized by the trade unions if they fear a loss of jobs to the immigrants.

Moreover, in three specific cases, the Constitutional Treaty provides for a qualified majority, but includes an “emergency brake” clause: the field of free movement of workers and two fields associated with the area of freedom, security and justice.⁹⁰ This clause provides a Member State which considers that the fundamental principles of its social security or legal system are under threat with the possibility of appealing to the European Council, in which case the legislative procedure is suspended. To let go of their veto power in the field of free movement of workers and allow a truly free market in regards to workers would put the Western governments in great difficulties at the national level, as further analysed below.

Certain Articles will remain subject to unanimity in whole or in part, as they are particularly important for the Union and its Member States. The fields

⁸⁷ Constitution Treaty, 2004.

⁸⁸ Constitution Treaty, 2004.

⁸⁹ Nice Treaty, 2001.

⁹⁰ Article III-136, -270, -271; Constitution Treaty, 2004.

of taxation and harmonisation in the field of social security and social protection will thus remain subject to unanimity.⁹¹ In order to make the decision making more effective and to further the Union's capability to act it would have been very helpful to extend areas of QMV, but the EU15 chose to protect their own interests in making sure that the candidates would not be able to force them to changes that are damaging to their own interests.⁹²

4.4.2 A further increase of Parliament seats

The reforms introduced by the Constitution concerning the European Parliament largely focuses on the creation of a new system of distributing seats between the Member States.⁹³ Most striking in my view is the fact that the Constitutional Treaty lays down the maximum number of seats to 750, thus increasing the current number laid down in the Treaty of Nice (732 seats).⁹⁴ The Amsterdam ceiling is thus broken for the second time, although serious criticism has pointed out the importance of diminishing the huge and hardly workable body of the European Parliament. This means that the national interests of the MS obviously are more important than the need to make sure that the Parliament will be able to function efficiently in a Union containing 27 Member States. The minimum number of seats per Member States is to be six, in order to make sure that, even in the least populous Member States, all the major shades of political opinion will have a chance of being represented in the European Parliament.

For the 2004-2009 legislatures, the distribution of seats established in line with the rules approved at Nice and set down in the Treaty of Accession concluded with the ten new Member States has been kept in the Protocol on the transitional provisions relating to the institutions and bodies of the Union. This means that there are no major progresses concerning the efficiency of the Parliament in the new Constitution compared to the provisions laid down in the Nice Treaty. Moreover, the allocation rule which states that representation of citizens is degressively proportional will be in force not earlier than 2009, which means that the MPs of today (considering their high average age) will suffer no personal losses in the next European Parliament election since most of them will be retired by that time anyway.⁹⁵

⁹¹ Constitution Treaty, 2004.

⁹² Treaty of Nice, 2001; 35, 172

⁹³ SCADPlus, 2005.

⁹⁴ Article I-20 Constitution Treaty, 2004, and Treaty of Nice, 2001.

⁹⁵ Heinemann, F. 2002: 28.

4.5 The Commission's Services Directive

On the 2 February this year, the European Commission announced that, working with the European Parliament, it would revise the proposal on the EU Services Directive to address fears that have been expressed since it was adopted in January 2004. The Commission published its draft directive over a year ago, and it was rapidly seen as a frontal attack on social rights truly won by the unions in some of the western Member States who feared it would give a green light for widespread privatisation. The publication of the services directive has attracted an unusual amount of controversy because of its potential to affect Member States' control of health and social services, responsibilities that are currently largely outside EU competence.⁹⁶ At the heart of the draft directive is a set of prohibitions or limitations on governmental rules and regulations that the Commission argue Member States frequently use to hinder the right of private firms to establish where they choose (one of the fundamental economic freedoms on which the Union is based). The prohibitions apply to all services that are deemed to be economic activities rather than purely public services.⁹⁷ As a consequence of the protests uttered by the trade unions, some of the Western European States have demanded a revision of the Commission's draft directive.

These Member States reluctance to accept the draft directive (although it has already been adopted by them) when exposed of the pressure from the domestic trade unions is an illustrative example of short-sighted political self-interest and an unwillingness to accept the newcomers as equal members with equal rights to enjoy the four freedoms upon which the Union is based. This egoism of some of the old Member States also works against the Union's ability to work effectively. In the following, I will further evaluate the Services directive and the obstacles faced by the Union.

4.5.1 Domestic pressure and political self-interest

Services represent an ever growing proportion of Europe's gross domestic product, currently accounting for around three-quarters of economic activity in the EU. However, the growth has been slower than it might otherwise have been because of the numerous barriers and obstacles preventing service employers and workers from offering their skills in countries other than their own. The European Commission has argued that "economic growth and job creation afforded by the ser-

⁹⁶ Rowland, Price and Pollock in *The Lancet* 2/10 2004; 1200

⁹⁷ European Commission COM 2004.

vice sector” has been hampered by overly burdensome regulation, the Commission’s only rationale for which can be trade protectionism, it conjectures.⁹⁸ An independent study for the Commission has concluded that the liberalisation of services could create up to 600,000 new jobs and generate new economic activity worth euro33 a year. If Europe wants to become the most competitive area in the world, services need to move more freely, some argue.⁹⁹

Instead of trying to remove these barriers by a series of sectional interventions, the European Commission proposed a general directive covering all services apart from transport, e-commerce and financial services. Its aim is to endorse the free movement across borders of all other services, with some limited exceptions and laying down rules for the provision of information. When finalised, it will have to be transposed into national law.¹⁰⁰

One of the most serious criticisms levelled at the EU services directive – dubbed ‘the [Frits] Bolkestein directive’ after the internal market commissioner under whose mandate it was penned – is that it will lead to ‘social dumping’, or the gradual attrition of Europe’s widely recognized social model. Fingers point from all sides to ‘the country of origin principle’ – whereby a person providing a service in another member state only has to comply with his/her national law – as the main threat to Europe’s well-being. The ‘country of origin’ principle derives from the famous Cassis de Dijon ruling by the European Court of Justice, in 1979, that any product legally manufactured and marketed in one member state may be sold in another. It formed the basis of the EU’s 1992 programme, which effectively removed most national barriers to trade in goods.¹⁰¹

Trade unionists claim that the application of the country of origin principle to services will see companies gathering to establish themselves in Member States with the lowest levels of social protection. At the same time, the workers that those companies export might have poorer health and safety standards, which will lead to a further decline in consumer protection and social welfare. The fear that the directive would lead to an influx of cheap labour and a decline in social standards as companies took advantage of workers from poorer Member States is significant, despite the Commission’s insistence that workers would have to comply with employment rules, including minimum wages, in the country where they work.¹⁰² In other words, ‘posted workers’ would have to obey local social and labour legislation, wherever they are working.¹⁰³

Opponents on the directive further claim that the country of origin principle, by fully opening up competition in the service sector, might lead to an overall drop in the quality of social services and healthcare, sectors that are both included in the directive’s scope. Social non-governmental organisations are wor-

⁹⁸ European Commission COM (2004) 2 final/3 2004/0001 (COD), European Commission COM (2002) 441 final

⁹⁹ *The Economist* Mar 12 2005; 43, *Sydsvenskan* Opinion Fri 8/4 2004

¹⁰⁰ European Commission COM (2004) 2 final/3 2004/0001 (COD)

¹⁰¹ Leonard in *European Voice* 3-9 Feb; 17

¹⁰² McLaughlin in *European Voice* 3-9 Feb; 16

¹⁰³ *The Economist* Mar 12 2005; 44

ried that authorities or companies in financial difficulties could be tempted to overlook national standards when presented with cheap offers for social service provisions from other Member States with lower standards of social care. Such a problem would be difficult to regulate at that level as there are no EU-wide social service standards. Under the primary legislation of the EU, the EC Treaty – the organisation and delivery of health services and medical care – is a responsibility of Member States, but there is no constitutional guarantee for the level of protection individual states have elected to pursue.¹⁰⁴ This is the reason why the national governments began to panic that their healthcare spending would spiral out of control when they had to foot the bill for EU citizens crawling across their borders in order to seek routine medical treatment.

The powerful trade unions have a great impact on their national governments' standpoints in EU negotiations since they are important domestic interests groups, and their reactions to different political questions impose a severe constraint on their national government's freedom of manoeuvre. As argued above, since national governments represented in the Council all act under a re-election constraint this is obviously crucial in respect to their preferences and actions. The services directive represents a further step towards a truly free internal market, and a removal of legal and administrative trade-barriers could lead to greater competitiveness, a pressure of the costs and also unemployment in the former protected western service sector. Politicians interested in re-election will most likely respond to the demands for protectionist legislation from such interest groups. The result is low incentives for the governments to accept the services directive and create an ever deepening union within the newly widened union.¹⁰⁵

For socialist governments, these fears, if they are realistic or not, obviously represents a great problem. The rational thing to do here for most of the EU15 in order to keep their power is obviously to put as much constraints as possibly on the free movement of labour and services from and to the newcomers. Regardless if the services directive would actually erode the standards and harm the social entitlements or not, some of the western European Member States have vetoed the Commissions draft of services directive. As a consequence, the CEECs will not have full admission to the desirable western markets in the years to come.

In sum, the EU15 could not avoid the Eastern enlargement because of rhetorical action and entrapment. However, this is still not the end of the story. The directive analyzed above is an illustrative example of how the EU15 have let the CEECs into the Union, but still not truly embraced them. When the struggle for an exclusive western European "club" is inevitable lost it is time to reach for the opportunities that the veto-power offers. The failure of the services directive is probably just one of several indications of protectionism in the years to come. The Constitutional Treaty includes an "emergency brake" clause in the field of free movement of workers which in practice means that a Member State can veto a decision in this field if the MS considers that the fundamental principles of its

¹⁰⁴ EC Treaty, Art 152.

¹⁰⁵ Frieden & Lake (eds.) 2000; 312

social security or legal system are under threat. This effectively guarantees the EU15 that their national self-interests are safe, even in future similar situations.

5 Conclusion

The aim of this study has been to explain why the new Member States in the Union are still not able to enjoy the full benefits of their memberships, and why they are still constrained by decisions taken by the EU15. I have shown, using rational choice theory when analysing three different empirical cases, how the Member States needed guarantees that their self-interests would be safe guarded even after the enlargement, and how they grasped the opportunities offered to them in the Nice negotiations, the negotiations on the European Constitution and recently in the negotiations on the Commission's proposed Services Directive.

Frank Schimmelfennig's rhetorical action theory has been used to explain the initial decision to enlarge the European Union. A pure rational explanation obviously does not succeed in clearing up why the Member States of the Union took the unanimous decision for enlargement; the EU15 do not gain considerably from admitting the CEECs as full members in the EU. A more reasonable solution for the EU15 would have been to establish bilateral agreements with their eastern neighbours, thus gaining from new promising trading markets but not allowing the CEEC access to the Union's structural funds and labour markets. Rhetorical action theory is helpful to illustrate how candidates and their supporters used arguments based on collective identity, norms and values of the Western community to shame opponents into acquiescing to enlargement. Through a process of rhetorical action, the interest- and power-based initial outcome of the CEECs' association to the EU was turned into the rule-based outcome of membership.

The analysis above shows that, in a community environment, community members can be induced to behave in a rule-conforming way when they are confronted with arguments that call upon their prior commitments, accuse them of acting inconsistently, call into question their reputation and credibility and thereby shame them to take note of to their obligations as community members. The pro-enlargement coalition – consisting of the CEECs, a group of those EU member governments that were most likely to benefit from enlargement and policy entrepreneurs in the Commission – strategically used arguments based on the identity, ideology, values, norms and past practice of the EU to shame the anti-enlargement coalition of Member States, which expected individual net losses from Eastern enlargement and was in a position of superior bargaining power, into accepting accession negotiations with CEEC aspirants. The point here has been that in order to trigger a decision to enlarge, something more than instrumental calculations and something less than a selfless concern for “the kidnapped east” has been at play.

However, Schimmelfennig's rhetorical action theory still can not explain the inequality among the current Member States of the Union. The new-

comers are hindered to utilize the full benefits of their memberships. Using rational choice theory as an analysing tool I have shown that the EU15 have tried to constrain the power of the newcomers in the EU institutions in every possible way. Furthermore, the new Member States are hindered to make use of their rights to at least one of the four freedoms upon which the Union is based, the free movement of services between Member States. As a consequence, the necessary preparation for a Union consisting of up to 27 Member States has been hindered and delayed, and the ability of the Union's institutions to work effectively has been undermined. I have used rhetorical action theory and rational choice theory as complementary theories to explain the enlargement and the current situation of unequal memberships and an inefficient Union. Hence, the analysis here fits with what existing research on enlargement has concluded, but takes the analysis a step further.

The three cases that I have chosen to analyze in this essay; the Nice Treaty, the Treaty establishing a Constitution for Europe and the Commission's draft Services Directive, are all illustrative examples of this phenomenon;

The Treaty of Nice is successful in the sense that it has helped to solve a commitment problem; pre-entry promises of candidate countries to respect old members' interests are not credible. Nice created credible guarantees from the perspectives of the EU15 members through institutional reforms that would restrict the newcomers' post-entry power. But the Nice Treaty is not successful in regards to the official objectives; to change the institutions and decision making mechanisms of the European Union in order to safeguard their function and effectiveness in an enlarged Union. These objectives have actually been widely ignored in favour of the personal interests of the 'old' Member States. Capability to act has not been improved; quite on the contrary, the new constitutional structures have decreased the effectiveness of the Union. In that sense, the Treaty of Nice is a failure.

The Treaty establishing a Constitution for Europe shows that the newcomers have gained a certain impact in the decision-making procedures as members of the EU. The Constitution is in many ways a step towards a more efficient Union, thus fulfilling the official objectives of the Constitution to change the institutions and decision making mechanisms of the EU to safeguard their function and effectiveness in an enlarged Union¹⁰⁶. These objectives were the official ones of the Nice Treaty as well, and the Constitution served the purpose to take care of the unfinished business of the Nice Treaty. However, the Constitution is a failure in regards to the European Parliament, which still is an enormous and painstakingly working body. The aim to reduce the Parliament seats below the Amsterdam ceiling of 700 seats was not succeeded. This means that there are no major progresses concerning the efficiency of the Parliament in the new Constitution compared to the provisions laid down in the Nice Treaty, and the national interests of the MS are obviously more important than the need to make

¹⁰⁶ Treaty of Nice 2001

sure that the Parliament will be able to function efficiently in a Union containing 27 Member States.

Moreover, the Constitution established the date for the new voting system in the Council to take effect on the 1 November 2009, and between 2004 and 2009 the current system provided for in the Nice Treaty will be applied. To post-pone these important changes that clearly need to be done as soon as possible is an obvious example of short-sighted political self-interests. Furthermore, even though the QMV within the Council is extended to twenty-seven areas in the Constitution certain reluctance to switch to QMV is still apparent. In order to make the decision making more effective and to further the Union's capability to act it would have been very helpful to extend areas of QMV even more, but the EU15 chose to protect their own interests in making sure that the candidates would not be able to force them to changes that are damaging to their own interests.

The failure to adopt the Commission's Services Directive finally shows us that some of the western Member States are far from accepting the newcomers as fully equal members in the Community, or to let them into and gain from the Western European market. The dream of a truly open market with free movement of labour and services is still far from coming true, even though it provides the base upon which the Union is grounded. When the struggle for an exclusive western European "club" is inevitable lost it is time to reach for the opportunities that the veto-power offers. The failure of the services directive is probably just one of several expressions of protectionism in the years to come. The Nice Treaty, the Constitution and the resistance of approving legislations that would affect the national interests in a way not wished for are examples of pure short-sighted political self-interest of the EU15. As a consequence the EU is currently a Union with unequal memberships, forming two different "leagues" of Member States with uneven odds and different degree of strength. Moreover, the decision-making procedures in the Union's institutions are far more unwieldy and inefficient than needed to be.

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