

**Double Standards and Backsliding:  
The Double Edged Sword  
of Supermajoritarian Voting in the EU**

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It is prominently argued in the international relations literature that governments join international organizations only when they know they can comply easily with the requirements of membership (Downs et al 1996). Similarly, Jana Von Stein (2005) argues that states compliance with IMF Article VIII is driven by the same unobservable factors that led them to sign in the first place. That is, Von Stein found that being an Article VIII signatory had no independent effect on state behavior. This model is intriguing in that it suggests that incentives that drive prospective member states' decisions to join an international agreement are also what drive them to comply with that agreement. Applying the Von Stein approach to EU expansion, we would expect only those member states that could easily comply with EU demands in the first place to sign Accession Treaties. That is, we would expect expansion only among wealthy, post-industrial democracies of long standing. An EU that expanded along these lines would readily absorb the likes of Austria, Finland and Sweden but would have deterred most of the 10 member states of the 2004 expansion.

There may be reason to believe that the EU would be an exception to this argument. In addition to access to a market of over 400 million consumers, the EU offers enormous selective benefits to its members in the form of subsidies through the Common Agricultural Policy and Cohesion Funds. These benefits are particularly tempting to the relatively poor and agrarian member states that have joined in 2004 and since. However, while the benefits attached to membership are large, so too are the costs. New member states must adopt the *Acquis Communautaire*, the body of laws and regulations already in force in the EU. Furthermore, new member states must also conform to the ideals laid out Article 6(1) of the Treaty and elaborated upon in the Copenhagen Criteria. These

require respect for human rights and stable democratic institutions. Despite the daunting costs of membership, the EU has added 12 new members since 2004 and several other countries have applied for membership as well. All of these recently joined states and the applicant states are poorer and more agrarian than the average EU member state.

If the demands of membership are high and the capacity of the new member states to meet those demands is low, why is the EU expanding so rapidly? Several factors contribute to this observation. This article focuses on the one set of institutional features that lead initially high demands that diminish over time. I argue that because of the varying effects of supermajoritarian voting requirements in combination with different agenda setters the demands of joining are high but that the demands of staying in are lower. Furthermore, as the EU expands the difference between initial demands for joining and long-term demands of membership will not diminish and will probably increase. That is there is a built in double standard with candidate members held to very high standards and existing member states allowed to backslide.

Using a series of simple spatial models, I show that increasing the number of member states will not only increase the size of the core<sup>1</sup> but can also shift it in the direction of the new member states.<sup>2</sup> Furthermore, I model the enforcement mechanism for the human rights standards set forth in Article 6(1) of the Treaty. This enforcement mechanism depends on a unanimous vote in favor of sanctioning a member state. From these models, I derive a number of implications. In particular, I argue that the possibility

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<sup>1</sup> The core is the set of possible policies that cannot be defeated by any alternative policy under a given voting rule.

<sup>2</sup> Tsebelis and Yataganas (2001) already demonstrated that the core will expand as the EU membership increases. They argued that increasing the size of the core would increase the discretion of the Commission and the European Court of Justice (ECJ). However, they did not examine the possibility of the core shifting as well. Furthermore, they did not examine the implications such changes in the core would have for policy implementation within the EU.

of member states to undo reforms they had to implement to join the EU, that is “backslide,” does not decrease and will likely increase with expansion. New member states’ ability to backslide is greatest when there are other members states with similar incentives to undo reforms on that dimension. A new member state’s ability to backslide is at its lowest when the new member state is an outlier relative to the rest of the members. Finally, the possibility for backsliding is greater with regard to Article 6(1) than for the regulatory policies encompassed in the *Aquis*.

## **Current Literature**

### *Europeanization literature*

There is a wide literature on Europeanization, the process by which member states adapt to EU membership and through which their policies converge. Much of this literature examines the changes taking place in single cases (Cole 2001; Cole and Drake 2000; Lavdas, 1997; Montepetit 2000; Paraskevapolous 2001). However, there have been some comparisons of small numbers of cases or cross-national studies examining the entire EU (Börzel, 2001; Cowles et al, 2001; Grabbe, 2006; Knill, 2001; Pedersen, 2006). This literature generally views Europeanization as unidirectional. That is, all member states are moving towards adaptation to the EU’s standards albeit at different rates. The emphasis of most of this literature has been on those domestic characteristics that explain why some member states adapt faster than others. For example, Knill and Lemkuhl (2002) examined the role that different EU level mechanisms influenced the member states. They argue that the degree of *misfit* between the EU and the member state’s institutions involved in a given policy area drive the pace of Europeanization for

that member state. While the interaction between the domestic politics of the members states and the EU is a rich source of insight for EU scholars, this approach has omitted an important possibility. This literature has not considered the possibility that the Europeanization process could be reversed.

*Expansion's effect on EU decisions*

Tsebelis and Yatahanas (2001) examined the impact that the Treaty of Nice and the 2004 expansion would have on the decision-making institutions of the EU. In particular, they demonstrated that policy stability in the Council of Ministers would increase. That is, they showed that the core would expand. The reason for this expansion was the change in the voting rule from roughly 5/7 of the weighted votes in the Council to a more restrictive double majority in which both the weighted votes of the Council and the population represented by the member states would be taken into account. They further argue that as a consequence of the expanding core within the Council, the Commission and Court will have increased discretion with respect the interpretation and implementation of existing legislation. The Council can overrule actions by the Commission and the Court. However, when the increasing size of the core restricts the Council's ability to make decisions is restricted it also restricts the ability to overrule the Commission and the Court.

Similar arguments are put forward in Pahre and Ucaray (2007). They argue that fears about Turkish influence on the EU after it joins are unfounded because it's influence will be limited to cooperating with other member states to block decisions. They argue that Turkey will not be able to drive the agenda and so should not be seen as

a potential source of radical change within the EU. In essence, they are arguing that Turkish admission to the EU will only increase the size of the core and as such can only increase policy stability.

Neither of these works have examined the possibility the core could shift position in the issue space as well as expand. However, König and Bräuninger (2004) argue that the 2004 expansion to the East and South ran a risk of allowing dramatic redistribution of resources within the EU. In their analysis of agricultural policy in the post-expansion EU, they argue that the newest 10 member states have similar preferences to each other and are different as a group from the older 15. They argue that the position of the core can shift. In response, they argue that the EU instituted the triple majority voting to expand the core to such an extent that despite the change in position, the pre-expansion status quo would be stabilized.

However, none of these works examines the effects that an expanding and shifting core would have on prospective and current member states. I build on their research by beginning with an analysis of the decision-making rules in the Council of Ministers. In particular, I concentrate on the supermajoritarian voting requirements. I will examine the effect additional member states can have on both the size and position of the core and discuss the consequences of these effects on the ability of member states to back away from some of the changes they undertook to join the EU in the first place.

## **Article 6 and the Copenhagen Criteria**

Title I, Article 6 of the Treaty establishes the EU as a democratic organization and requires the member states to adhere to basic standards of democracy, human rights and the rule of law.

Article 6 (1) The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States. (Consolidated Versions of the Treaty on European Union and the Treaty Establishing the European Community: 12)

This article establishes the minimum standards of democracy that the member states will be expected to meet. Failure to meet these standards places a member state in danger of having their membership suspended under the terms of Article 7 discussed below. Leaving aside the voting rules involved in impose suspension under Article 7, the standards imposed by Article 6 are both broad and basic. Essentially, member states are required to be generally democratic.

At the European Council Meeting in Copenhagen in 1993, the member states established a series of criteria by which prospective member states would be judged as they applied for membership. The Copenhagen Criteria for accession reinforce article 6 with regard to enlargement. Indeed, the Copenhagen Criteria are a higher bar than Article 6. The Copenhagen Criteria include political, economic and legal aspects. Prospective member states must guarantee democracy, the rule of law and respect for minorities. Prospective member states must have functioning market economies. Finally, prospective member states must adopt the *Acquis Communautaire*, the body of law already in force in the EU. The inclusion of the *Acquis Communautaire* goes well beyond the basic standards of democracy and human rights established in Article 6. The

requirements established by the Copenhagen Criteria are more specific and require more government action to comply with than those in Article 6.

The difference between these two standards may reflect the different supermajoritarian voting requirements for internal matters versus accession. Features of EU law designed to be binding on the existing member states require a qualified majority vote in the case of individual laws and a unanimous vote in the case of treaties. Subject to additional variables such as log rolls and the lobbying influence of interest groups and national parliaments (König and Slapin 2004), text in the treaty must receive the approval of the member state government that is most skeptical about deepening integration. In contrast, the accession criteria that are imposed on prospective member states reflect the preferences of the most demanding member state. The result is that the demands placed on prospective member states are more specific and difficult to meet than the demands placed on existing member states. This double standard is built into the institutional structures of the EU. The supermajoritarian voting rules that protect existing member states from onerous burdens simultaneously imposes high demands on prospective members. The next section of this paper explores those supermajoritarian voting requirements in detail.

### **Supermajoritarian voting rules in the EU**

#### *Accession*

When member states are candidate states, any existing member state government can veto their accession to the EU according to Article 49. Because of this unanimity requirement, candidate state governments must satisfy the most demanding existing



member state. It is important to note that the candidate state may actually surpass some member states in meeting EU mandates and still not win unanimous support for admission. This has led to the argument that the accession process places great pressure on the prospective member states through “conditionality” (Grabbe 2002, 2006; Brücker et al 2004; Hughes et al 2004; Barnes and Randerson 2006). Indeed, the accession of a number of current member states was delayed at some point during the process in order to encourage more progress on democratic reforms. Spain, Bulgaria and Romania all saw their accession delayed by years. Slovakia was threatened with such a delay. These delays are evidence in support of the concept of conditionality.

However, the research on the efficacy of conditionality has produced mixed results. Conditionality does not seem to hold firm across policy areas or across time. Barnes and Randerson (2006) argued that conditionality has failed in some cases where member states rolled back reforms. The current literature on conditionality sees these delays and reversals in the context of bargaining between the EU (especially the Commission) and the prospective member states (Brücker et al 2004; Barnes and Randerson 2006). Such an explanation does not directly address the consequences of the decision-making rules that constrain such bargaining. I contend that the explanation for this observed potential to reverse reforms lies in the supermajoritarian voting rules involved in enforcing EU policy standards on the full fledged member states. These supermajoritarian requirements apply both to the ability of the member states to constrain the Commission and ECJ’s efforts to ensure consistent implementation of EU law and the enforcement of Article 6.

*The Commission the ECJ and the implementation of policy*

The EU passes enormous amounts of regulation and legislation. The *acquis communautaire* is the sum of all those laws. While the EU's institutions can produce these laws they cannot enforce them themselves. The EU depends instead on the member state governments to implement these laws. The Commission can initiate cases which are ultimately ruled upon by the ECJ. However, this is not to say that the Commission and the ECJ have unrestricted ability to interpret and enforce EU law. The Council of Ministers can overrule the rulings of the ECJ through legislation (Garret et al 1998; Kilroy 1999). The council's own supermajoritarian voting requirements constrain its ability to reverse ECJ rulings.<sup>3</sup>

When the Commission and ECJ establish one interpretation of how EU law should be implemented, the Council can overrule that interpretation. However, the Commission and ECJ's position can be defended by a blocking minority of the member states on the Council. Tsebelis and Yataganas (2001) pointed out that the Treaty of Nice changed the voting rules by imposing the complicated triple majority. The triple majority requires that a winning qualified majority represent 255 of the 345 votes available as well as representing 62% of the population of the EU. This change makes achieving a blocking minority easier in terms of the percentage of the total votes cast. That is the core expands. Figure 1 shows this effect on a single dimension. Prior to the Treaty of Nice the qualified majority voting requirement was set at approximately 5/7 of the total votes on the Council. Tsebelis and Yataganas (2001) argue that the effect of expanding this core will be to increase the autonomy of the Commission and the ECJ with regard to the interpretation and enforcement of EU policy. However, this does not take into account

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<sup>3</sup> The European Parliament also plays a role in legislation under the codecision procedure. In this paper I focus on the Council's voting rules as the primary limiting factor. For a more detailed examination of the role of the European Parliament in legislation see Tsebelis 1994; Tsebelis et al 2001.

the position of the new core relative to the old core and the preferences of the Commission and the ECJ.

Figure 1 represents an expanding EU with a Commission and ECJ that prefer deeper integration and stricter enforcement of EU policy than any single member state government. For this figure, I use points A through N to represent the ideal points of member states. Points A through G represent the pre-expansion EU. Points H through N represent the member states that joined during the expansion. The number of members does not correspond to the 27 member states currently in the EU. The number reflects the voting rules I will discuss which are approximated as  $5/7$ , following Tsebelis and Yatahanas (2001). I model the pre-expansion EU as a 7 member Union and the post expansion EU as a 14 member Union.

I make two assumptions about the positions of the ideal points. First, I make the standard assumption that the Commission and ECJ have similar preferences to each other and that their ideal point represents greater integration and stricter enforcement than any member state. This assumption probably also holds on other policy dimensions. Past research has shown that EU policies tend to increase the level of regulatory enforcement beyond that in any member state, including the most heavily regulated. Research on EU legislation has identified the agenda control Commission and the European Parliament (EP) as the sources of this increase (Tsebelis and Kalandrakis 1999; Tsebelis et al 2001). Research has shown that the ECJ is an engine for increasing the scope of EU policy and the strictness with which it is enforced, especially when the Council is less capable of overriding its rulings (Garret et al 1998; Kilroy 1999; Stone-Sweet and Brunell 1998;

Tsebelis and Garrett 2001). I believe it is justified to place the Commission and ECJ at the far left end of the dimension in the figure.

**INSERT TABLE 1 HERE**

Second, I assume that the expansion member states (H through N) have ideal points that are all outside the range of the previous membership and are all on the same side of that range. That is expansion pulls the range of the membership to the right on the dimension depicted in the figure. There are several reasons to believe that the newest member states will be outside the range of the old membership. Table 1 shows a selection of indicators that show that the 12 Central and Eastern European members are poorer and more agrarian than the 15 pre-expansion member states. Furthermore, the newest members have much more recent transitions to democracy, have less stable party systems, and may rely on their less expensive labor and lower production costs to compete in the European and global market place.

**INSERT FIGURE 1 HERE**

To identify the core in this figure, I first identify the voting rule. In the case of the 5/7 voting rule, I counted 5 member states in from far left (member state A) and five member states in from the far right (member state G pre-expansion, member state N post-expansion). The zone between those two points contains the policies that cannot be overruled by a 5/7 vote of those member states. Figure 1 shows that even when the voting rule is changed from 5/7 to 6/7, expanding the EU can expand the core without changing the Commission's ability to establish the interpretation of EU law through the infringement process.

In the case of the 5/7 core prior to expansion, the Commission will establish the standards for implementation of EU policy at point C. C is the point within the core that is closest to the Commission's and ECJ's ideal point. However, if the voting rule is changed from 5/7 to 6/7 the core dramatically expands. This much is shown in Tsebelis and Yatahanas (2001). However, by reasonably assuming that the newer member states are outside the range of the older membership, the effect of that expanding core can be shown. After expansion, and with a higher voting threshold approximated at 6/7, the Commission and ECJ still establish the standards for implementation of EU law at point C. C is still the point closest to the Commission's and ECJ's most preferred point that is still within the core. Notice that despite the fact that the core has expanded, it has not changed the policy position that the Commission and ECJ will establish. This is the primary argument put forward by König and Bräuninger (2004).

The situation becomes even more interesting when examining what happens if the voting rule does not change. If the EU expands and the voting rule remains at 5/7, the core expands. Prior to expansion, the core spans points C through E. After expansion, the core spans points E through J. However, not only has the core expanded in size, it has shifted dramatically to the right. Under this new situation, the Commission and ECJ will establish the standards for implementation at point E. Even though the Commission and ECJ have greater flexibility as indicated by the expanded core, the position of their ideal points relative to the new location of that core can actually decrease their influence over EU policy. The triple majority requirement imposed by the Treaty of Nice is not likely to be as great as the change from 5/7 to 6/7. Neither will it represent no change at all. The reality will likely be in between these two models. Nevertheless, it is possible

that the point that the Commission and the ECJ are able to establish as the standard for implementing EU policy will shift away from their ideal point.

**Implication 1a:** *As the EU expands, the Commission and the ECJ will not be more aggressive and may be less aggressive in pushing a pro-integration agenda.*

A further implication of this analysis is that some member states that had been subjected to infringement proceedings for attempting to implement policies at their own ideal points will be immune to such proceedings after expansion. Without changing their policies, a member state government may see the range of permissible policies expand to include its ideal point. On figure 1, that range of permissible policies would be the points on the line between the core and the Commission and ECJ's ideal point. Member state governments can reap the benefits of this newfound flexibility without actually engaging in backsliding per se. In short, member states may be able to see their infringement burden reduced without having to make any substantive policy changes one way or the other.

**Implication 1b:** *As the EU expands, existing member states that had had difficulty with frequent infringements may see those difficulties decrease without having to make any substantive changes to their policies.*

Furthermore, older member states may be able to take advantage of the expansion to reverse some of the policy changes they made to comply with past ECJ rulings.

Expansion may allow long-standing member states to backslide. Of course, this analysis does not take into account the domestic political situation. Domestic interests may resist the attempt to backslide and defend the old EU standard. Conflicting domestic interests may increase the costs of domestic changes to the point where backsliding is impossible. However, when the costs of maintaining the old EU standard are very high, the incentive to backslide may win out. Similarly, when the domestic costs of change are low (for example in a country with a single party government), the incentives to backslide may win out. It is reasonable to expect that in situations where the political costs of maintaining the old EU standard are high and/or where the number of domestic veto players is low, backsliding will be possible.

**Implication 1c:** *As the EU expands, member states for which the political costs of maintaining the old EU standard are high and/or the domestic costs of policy change are low, may reverse or scale back some EU mandated reforms.*

Poland may provide an early example. Prior to joining the EU, Poland opened up their largely state owned banking sector to competition from foreign banks as well as purchase of some Polish Banks by larger banks from EU member states. The liberalization of the Polish banking sector was part of the over all transition to a market economy that was required as part of Poland's accession process. Pre-accession Polish governments approved sales of state own Polish banks to Italian and German banks. In particular, the Polish government approved the sale of the Polish Pekao to Italian UniCredit in 1999. Since accession however, the Polish government has begun to reassert

a protectionist position with regard to banking liberalization. When UniCredit announced a merger with the German Bayrische Hypo- und Vereinsbank, the Polish government intervened. The German bank also owned branches in Poland and the newly elected Polish government, led by the populist and euro-skeptical Law and Justice Party, argued that the merger violated the non-competition clause in the original UniCredit purchase of Pekao in 1999. Many observers also pointed out that new merger would have made the newly combined Polish subsidiaries larger than the still state owned PKO Bank Polski. The Polish government ordered UniCredit to sell off its shares of Pekao before the merger took place.

The Polish government's blocking of the merger occurred despite approval by the Commission acting in their capacity as the primary anti-trust regulator for cross-border mergers. The Commission argued that the Polish government had no authority to interfere with the merger and initiated two infringement proceedings against Poland for this action (IP 06 276; IP 06 277). The infringements argued that Poland was violating Articles 43 and 56 of the Treaty and Article 21 of the EC Merger Regulation (IP 06 276; IP 06 277). Article 43 prohibits using cooperative agreements between members to restrict trade within the community. Article 56 prohibits restrictions on the movement of capital between the member states. Article 21 of the EC Merger Regulation gives the Commission exclusive authority to regulate cross border mergers and prohibits member states from applying national anti-trust laws to cross border mergers.

In April of 2006, the Polish government approved a compromise with UniCredit under which UniCredit would agree to sell over 40% of the affected branches and pledge not to lay off any employees of either Polish subsidiary for a period of two years



(International Herald Tribune 4/6/07). The Commission has not withdrawn the infringement cases. The nature of the rulings, should the Commission refer the cases to the ECJ, will establish a new implementation position for banking, capital mobility and anti-trust regulation in the EU.

*Article 7, democracy and human rights*

ECJ rulings and the infringement procedure are the primary methods by which the EU imposes policy standards on the member state governments. However, the penalties imposed on the member states are often quite low. At the same time, infringement case rulings often have limited scope. The result is that member states may be willing to incur repeated infringement case losses rather than pay the domestic political costs involved in complying with the EU standards from the start. Nevertheless, there is a theoretical limit to the ability of EU member states to flout the law. In cases where a member state has committed a gross violation of the treaty, most especially in the areas outlined in Article 6 above, the Council may suspend the membership rights of that country. Article 7 provides for the suspension of membership rights and lays out the procedure and voting rules that must be undertaken. This is the only mechanism available in the EU that approaches the level of sanction that can be imposed on a candidate member state.

However, Article 7 requires a series of votes before the Council can suspend a member state's rights of membership. The first stage in the process resembles an indictment. In this stage a third of the member state governments, the EP or the Commission may issue a reasoned proposal identifying the transgression to be subjected to an Article 7 ruling by the Council. This proposal must state that "there is a clear risk

of a serious breach by a Member State of principles mentioned in Article 6(1), and address appropriate recommendations to that State” (Consolidated Versions of the Treaty on European Union and the Treaty Establishing the European Community: 12). Because one third of the Council and the EP are both collective actors in which disagreements about the clarity of the risk or the severity of the breach may prevent initiation, such a proposal is most likely to come from the Commission. The next step of the process requires the Council hear a defense by the member state in question. Following that process, the Council must vote by a 4/5 qualified majority of the member state governments (not weighted votes) and obtain the assent of the EP. This vote establishes that there is indeed serious risk of a breach of Article 6(1).

Once the risk of a breach has been identified, the Council votes on whether such a breach has actually occurred. This vote is a unanimous vote of the governments (not including the government being judged). The final vote requires qualified majority in support of punishing the wayward member state. The most difficult vote to achieve in this series of votes is the unanimous vote determining that a breach has occurred. The result is that if a member state has committed acts that the Commission, a majority of the EP or a third of the other member state governments considers a violation of Article 6(1), it may still avoid suspension of membership rights if only one other member state government is willing to defend their position.

### **INSERT FIGURE 2 HERE**

Figure 2 shows the core under Article 7 for the pre-expansion and post-expansion Council. The core is defined by the member state that is most tolerate of deviations from the principles set down in Article 6(1) other than the one subject to the judgment of

Article 7. That member state will be pivotal in any discussion of whether to impose a suspension of membership rights. In Figure 2, the core spans the range from member B through member F before expansion and from member B through member M after expansion. In this situation, expanding the membership dramatically expands the core. However, because of the unanimity requirement embedded in Article 7, the core does not shift to the right.

The implications of this core expansion, however, differ from the implications with regard to the infringement procedure and ECJ rulings. In the situation discussed above, the Commission and ECJ are the institutions that select the point within the core that will be the established EU standard for implementation. By using that agenda setting power, they can minimize the amount of backsliding allowed even by a shifting core. However, with regard to the procedures outlined in Article 7, the wayward member state effectively picks the position within the core that will establish the EU standard.

Despite this change in the agenda-setting role with regard to Article 7, courts may still have the ability to exercise their autonomy when making rulings. That is, while the Council cannot impose sanctions on member states, the ECJ can make rulings. The ECJ also has the ability to rule on matters of concern under Article 6(1) to the extent that violation of Article 6(1) is a violation of the Treaties. However, the rulings of the ECJ are subject to the conditions discussed above. The Council can overrule the ECJ by QMV.

Because of this difference between what the ECJ can establish as a ruling and what the Council can impose through Article 7, the ECJ can play a role by ruling against certain of the member states repeatedly. However, only the ECJ will act against them.

These member states could develop long lists of rulings against them for failure to meet EU standards on human rights, the rule of law etc. However, their membership rights will be protected by the voting rules in Article 7. In effect, a new class of scofflaw member states could emerge. There are member states that incur more than their shares of the infringement cases, without any sign that their implementation records will improve. This situation could allow a similar problem to emerge with regard to the principles of Article 6(1).

**Implication 2a:** *Member states can suffer numerous rulings against them in areas related to Article 6(1) without risking suspension of membership rights.*

When the member states have similar preferences to each other with regard to the principals outlined in Article 6(1), the agenda setting power of the most wayward member state does not have a great impact on the EU. However, as the EU expands the likelihood that the range of preferences with regard to Article 6(1) will increase also expands. It is certain that adding each new member state will not decrease the size of the core and may increase it (Tsebelis 1994).

One might be inclined to believe that the principles set down in Article 6(1) are so basic that any member state government's leaders would readily agree to them and have a similar practical definition in mind when doing so. However, there are at least two reasons to believe that the expanding range of preferences will alter the practical definition of the principals set down in Article 6(1). First, most of the states that have joined the EU since 2004 have only recently democratized and made the transition to

market economies. Article 6(1) requires adherence to the “rule of law.” The newest member states may be less able to follow that principle as strictly as may the 15 “Western” members. Table 1 shows that level of corruption, as reported by Transparency International, among the members that joined since 2004 is far greater than is the case among the pre-expansion member states. Transparency International’s average corruption index for the 15 “Western” member states is 7.7. The average for the 12 newest member states is 4.8. A higher number indicates less perceived corruption and a lower number indicates more corruption. The highest value observed among EU member states is 9.6 (Finland) and the lowest value observed among EU member states is 3 (Romania). Among the member states that joined since 2004, not one has an index value higher than 7 and only Estonia, Malta and Slovenia have values over 6.

Second, the treatment of ethnic minorities is a major issue in several of the new member states. Estonia, Latvia and Lithuania have significant Russian minorities whose treatment has been a matter of concern to the EU since before accession. There are significant Hungarian minorities in Romania and Slovakia. Bulgaria has sizable Turkish and Roma minorities both of which have been subjected to official discrimination in the past. Cyprus remains divided between its Greek and Turkish sides. The government representing the Greek population has joined the EU despite the lack of a permanent resolution to the division of the island. Table 1 shows the size of the largest ethnic group as a percentage of the population in each country. It is interesting to note that even in countries with comparably homogeneous populations to Western member states, there is a history of ethnic conflict and official discrimination (Romania and Slovakia for example).

Third, the newer member states may be more socially conservative than many of the older member states. This is most certainly the case when one compares Poland to the Netherlands, or the Scandinavian members. The Polish government's position on issues such as the death penalty and abortion lie outside the range of the other member states or at an extreme end of that range.

**Implication 2b:** *As range of permissible interpretations of Article 6(1) increases, member states may engage in policies that would have been considered violations of the principals outlined in Article 6(1) in the past.*

The analysis so far has concentrated on models that show several member states with differing opinions joining at once. The next model I will examine depicts a situation where first one outlying member joins and then a second. This situation might depict what would occur if Croatia and Turkey were to join at roughly the same time. Alternatively, it may be used to represent how the admission of Turkey would change the constraints currently being imposed on Poland's nationalist/populist and Euro-skeptical government.

### **INSERT FIGURE 3 HERE**

Figure 3 shows how even in a situation where the pre-expansion and some of the post-expansion member states have very similar ideal points, adding member states that are outside the original range of states can cause the minimum standard to shift in a less strict direction. Suppose the positions A through L represent the EU. Member states D through L have identical ideal points with regard to the implementation of Article 6(1).

The core spans from member states B's position to that of members D – L. In this situation member state K is the pivotal member that establishes the right most boundary of the core. When member state M joins, the pivotal member is L instead of K but because members D through L have the same ideal point in this model, adding M does not expand the core. Even though member state M might have significantly divergent preferences with regard to the implementation of Article 6(1), the positions of the other member states continue to enforce the same position as before M joined. However, adding yet another member state, N, to the Union will dramatically increase the core. In this situation, the pivotal member state changes from L to M. Member state M can now implement its own ideal point without fear of sanction under Article 7. Member state N can also implement a policy that approximates M's ideal point. If sanctions were to come up for a vote under Article 7, members M and N would cover for each other and prevent those sanctions from being imposed.

**Implication 3:** *The addition of a single member state with dramatically different preferences for the interpretation of Article 6(1) can allow previously admitted member states to backslide.*

Again, Poland may provide an example in the making. The Polish President, Lech Kaczynski, has called for the member states to reexamine the death penalty. Currently abolition of the death penalty is a condition for membership. Indeed, Turkish membership talks were publicly linked to the Turkish ban on the death penalty. Furthermore, the abolition of the death penalty is framed as a human rights issue falling

under the scope of Article 6(1). If Turkey joins the EU, it is not unreasonable to imagine that populist governments would be in power in both Poland and Turkey at the same time. Should such an event take place, they might take advantage of the situation to reinstate the death penalty. The worst thing the Commission could do to such wayward governments would be to initiate a proceeding under Article 7 of the Treaty. However, with two governments supporting an interpretation of Article 6(1) that allows for the use of capital punishment, no suspension of voting rights could be imposed.

#### *Implications for prospective and existing member states*

A major implication of this analysis is that candidate member states and existing member states both must consider the possibility of undoing reforms that were required in the accession treaty. For the most demanding member state this amounts to a problem of reduced ex post oversight which could increase the costs and decrease the benefits of allowing the new member to join. For the candidate member the situation implies that some of the most onerous and politically costly changes imposed by the accession process can be undone at a later time – thus reducing the medium and long term costs of joining the EU.

The problem of ex post oversight is a serious one in the EU. There is a sizable literature on policy implementation in the EU that focuses on the problems of oversight (c.f. Blom-Hansen 2005; Börzel 2000, 2001; Falkner et al 2005; Mastenbroek 2003; Sverdrup 2004; Talberg 2002; Treib 2007). A common theme of this literature is that the member states have an enormous amount of autonomy from the EU with regard to implementing EU law. The voting rules discussed above are a major source of this



autonomy. The result is that the EU as a supranational institution has limited ex post oversight capacity over the actions of the member states.

Research on the implications of limited ex post oversight suggests that when ex post oversight is poor, the incentives to impose ex ante oversight increase (Huber and Shipan 2002). In the context of the models discussed above, the greater the potential for backsliding by a new member, the greater will be the emphasis on ex ante oversight in the accession treaty. This follows from the observation that while the demands for membership are set by the most demanding member state, the standards for membership and implementation after accession are set at a significantly lower level. At the same time, the models discussed above have shown that different circumstances involve varying risks of backsliding. When a new member state's preferences are within the existing range of the EU membership, there is little risk of backsliding. Similarly, when a new member state joins alone and is the only outlier, there is little risk of backsliding. However, when a new member state joins as a block of similarly outlying members or when the new member can form a bloc with an existing outlying member, the risk of backsliding is high.

**Implication 4:** *When the risk of backsliding by a new member state is high, the accession process and treaty will include stricter ex ante provisions and impose additional ex post mechanisms*

When the risk of backsliding is high, the most demanding member state and the Commission will have an incentive to include aggressive ex ante oversight mechanisms

in the accession treaty. There is superficial support for this implication already with regard to the 2004 and 2007 expansions. Grabbe (2006) argues that the 2004 expansion placed higher requirements on the candidate member states than had been imposed on any previous candidates. The accession treaties for Bulgaria and Romania are even stricter. For these two member states, the Commission has set up a “mechanism for verification of cooperation and progress” with particular emphasis on issues relating to the rule of law. Part Four, Title IV of the Protocol Concerning the Conditions and Arrangements for Admission of the Republic of Bulgaria and Romania to the European Union enacts a series of measures that dramatically change the ability of the Commission to act against Bulgaria and Romania in particular (Protocol Concerning the Conditions and Arrangements for Admission of the Republic of Bulgaria and Romania to the European Union).

Previous enlargements have allowed for a great deal of backsliding because of the position and size of the core. However, the Protocol for Bulgaria and Romania identifies a number of circumstances under which the Commission can intervene directly in Bulgarian or Romania policies using a procedure that preserves the power of the highest demanding member state that was present during the accession process. This passage of Article 38 is representative:

...the Commission may, until the end of a period of up to three years after accession, upon the motivated request of a Member State or on its own initiative and after consulting the Member States adopt European regulations or decisions establishing appropriate measures and specify the conditions and modalities under these measures are put into effect (Protocol Concerning the Conditions and Arrangements for Admission of the Republic of Bulgaria and Romania to the European Union: 41).

This provision imposes an unprecedented ex post oversight constraint on Bulgaria and Romania for a three-year transition period. This passage gives the Commission authority to make regulations directed at specific problems in Bulgaria and Romania without the approval of even a majority of the Council. In effect, the Commission can impose regulations under the same circumstances that it could delay accession. This unprecedented step is likely a response to the increased potential for backsliding that the 2004 expansion has brought. Furthermore, Bulgaria and Romania have similar problems to each other (i.e. poverty, sizable ethnic minorities with histories of being discriminated against, large share of the economy in agriculture, recently democratized, corruption etc). They are likely to fit the scenarios in which more than one outlier candidate state joins at the same time, enabling them to cover for each other with regard to Article 7. For the period of the transition, the Commission can act without being constrained by the size of the core.

## **Conclusions**

This article began with the question of whether Europeanization could be reversed. That is, do member states have the option of reversing some of the reforms they have undertaken to become EU members. The analysis started by demonstrating that because of the unanimous vote required for admission to the EU, the initial standards to which entering member states are held are always high and if anything tend to increase. However, after membership the standards are established through a series of super majoritarian voting procedures. In the case of infringements the supermajoritarian voting tends to maintain stricter standards than would simple majority voting. However, in the

case of human rights and the rule of law as set forth in Article 6(1) of the Treaty, the super majoritarian voting procedures in Article 7 allow a member state to undo EU mandated reforms to a great degree. That is, member states can backslide with regard to Article 6(1).

When all the member states have similar preferences about how to interpret Article 6(1), the backsliding risk may not be great. However, as the EU expands to include member states that are outliers on a wide range of dimensions including recent human rights records and issues relating to the rule of law, the risk increases. Furthermore, the ability to backslide is not limited to the newest member states. As new member states join and the core expands and shifts away from the preferences of the strictest members, even member states of long standing may take advantage of the situation to undo some of the costlier obligations of membership.

The result of all of this is that there is a growing double standard between the standards that entering member states must meet and the standards that existing members must maintain. This double standard is embedded in the institutions that form the foundation of the European Union. Throughout its history, the EU has been based on consensus and the protection of minority interests. This has been enforced by the super majoritarian voting procedures that are now the source of institutionalized double standards. This double standard may complicate the decisions that candidate states make. On the one hand, they must convince reluctant constituencies that they will be treated fairly as members when there is evidence that they are not treated fairly as candidates. On the other hand, while the double standard may make joining more difficult, the prospect of being able to undo some of the reforms should make joining easier.

The member states' governments may benefit from this situation. The ability to back away from some of the costlier obligations of membership without opting out makes membership more palatable to their constituents. However, from the perspective of the EU's supranational institutions and the more ardently pro-integration governments, the backsliding problem undermines the foundations of the Union itself.

It is unlikely that the EU will resolve this problem. The solution to the shifting core problem outlined above requires the imposition of even stricter supermajority requirements. However, while this would certainly enable the Commission and the ECJ to impose ever stricter standards for implementation, it would introduce at least two other problems. First, the imposition of stricter supermajorities might compensate for a shifting core but it would exacerbate the problems of associated with an expanding core as outlined in Tsebelis and Yatahanas (2001) and König and Bräuninger (2004). In particular, the ability to pass new legislation would decrease dramatically and the autonomy of the Commission and ECJ would dramatically increase. Second, such an empowerment of the Commission and ECJ would encourage cries of a worsening democratic deficit. Neither of these institutions is elected and freeing them from constraint by elected governments would be problematic.

The solution to the potential for backsliding with regard to Article 6(1) is more straightforward if also unlikely. If the voting rule in Article 7 were changed from unanimity to a simple majority, the risk of backsliding would be greatly reduced. However, such a move would require that the member states abandon the consensus approach that has been the foundation of EU voting from the beginning. Furthermore, such a change would require a unanimous vote to implement and it is unlikely that those

member state governments that stand to benefit from the unanimous voting rule in Article 7 would willingly give up that advantage.

In conclusion, this situation may indicate the limits of the EU's expansion may be a function of its own institutional structure rather than questions of identity and what it is to be European. That is, even states that would be widely acceptable under a set of strictly cultural criteria – Belorussia, Croatia, Serbia or Ukraine for instance – might be entirely unworkable from the institutional standpoint. That is, their admission, particularly as a group, could destabilize the regulatory convergence that has already taken place within the EU. Because admission is a unanimous decision, it would only take a single member state government to balk at the prospect to prevent accession. At the same time because the standards for accession are high and likely to increase, such a candidate country might see the benefits of joining as not worth the trouble and withdraw their application or not apply at all. These institutional features are likely a major component of the troubles plaguing Turkish application for admission. Much of the popular debate about Turkish admission revolves around the fact that Turkey is Muslim however; the institutional impediments to a deal between the EU and Turkey are emerging already in the Bulgarian and Romanian accessions – both Christian societies.

## References

- Barnes, I., & Randerson, C. (2006). EU enlargement and the effectiveness of conditionality: Keeping to the deal? *Managerial Law*, 48(4), 351-365.
- Blom-Hansen, J. (2005). Principals, agents, and the implementation of EU cohesion policy. *Journal of European Public Policy*, 12(4), 624-648.
- Borzel, T. A. (2001). Non-compliance in the european union: Pathology or statistical artefact? *Journal of European Public Policy*, 8(5), 803-824.
- Borzel, T. A. (2000). Why there is no 'southern problem'. on environmental leaders and laggards in the European Union. *Journal of European Public Policy*, 7(1), 141-162.
- BRÜCKER, H., SCHRÖDER, P. J. H., & WEISE, C. (2004). Doorkeepers and gatecrashers: EU enlargement and negotiation strategies. *Journal of European Integration*, 26(1), 3-23.
- Cole, A. (2001). National and partisan contexts of europeanization: The case of the french socialists. *Journal of Common Market Studies*, 39(1), 15-36.
- Cole, A., & Drake, H. (2000). The europeanization of the french polity: Continuity, change and adaptation. *Journal of European Public Policy*, 7(1), 26-43.
- Consolidated Versions of the Treaty on European Union and the Treaty Establishing the European Community. (2006). *Official Journal of the European Communities, Series C*: 321E.
- Cowles, M. G., Caporaso, J. A., & Risse, T. (2001). *Transforming europe: Europeanization and domestic change* Cornell Univ Pr.
- Downs, G. W., Rocke, D. M., & Barsoom, P. N. (1996). Is the good news about compliance good news about cooperation? *International Organization*, 50(3), 379-406.
- Falkner, G., Treib, O., Hartlapp, M., & Leiber, S. (2005). *Complying with europe: EU harmonization and soft law in the member states*. New York, NY: Cambridge University Press.
- Garrett, G., Keleman, R. D., & Schulz, H. (1998). The european court of justice, national governments, and legal integration in the european union. *International Organizaiton*, 52(1), 149-176.
- Grabbe, H. (2002). European union conditionality and the *acquis communautaire*. *International Political Science Review/ Revue internationale de science politique*, 23(3), 249.

- Grabbe, H. (2006). *The EU's transformative power: Europeanization through conditionality in central and eastern europe*. New York, NY: Palgrave.
- Huber, John D., Charles R. Shipan. (2000). The costs of control: Legislators, agencies, and transaction costs. *Legislative Studies Quarterly*, XXV(1), 25-52.
- Hughes, J., Sasse, G., & Gordon, C. (2004). Conditionality and compliance in the EU's eastward enlargement: Regional policy and the reform of sub-national government. *Journal of Common Market Studies*, 42(3), 523-551.
- IP 2006 276. (2006). European Commission Press Release
- IP 2006 277. (2006) European Commission Press Release
- Kilroy, B. (1999). *Integration through the law: ECJ and governments in the EU*. (Dissertation, UCLA).
- Knill, C., Dirk Lehmkuhl. (2002). Private actors and the state: Internationalization and changing patterns of governance. *Governance*, 15(1), 41-63.
- Knill, C. (2001). *The europeanization of national administrations: Patterns of institutional change and persistence*. New York, NY: Cambridge University Press.
- Koenig, T., & Slapin, J. (2004). Bringing parliaments back in: The sources of power in the european treaty negotiations. *Journal of Theoretical Politics*,
- Konig, T., & Brauninger, T. (2004). Accession and reform of the european union: A game-theoretical analysis of eastern enlargement and the constitutional reform. *European Union Politics*, 5(4), 419.
- Lavdas, K. A. (1997). *The europeanization of greece: Interest politics and the crisis of integration*. New York, NY: St. Martin's Press.
- Mastenbroek, E. (2003). Surviving the deadline: The transposition of EU directives in the netherlands. *European Union Politics*, 4(4), 371.
- Montpetit, E. (2000). Europeanization and domestic politics: Europe and the development of a french environmental policy for the agricultural sector. *Journal of European Public Policy*, 7(4), 576-592.
- Pahre, R., & Ucaray, B. (2007). *Myths of turkish influence in the european union*. University of Illinois Working Paper,
- Paraskevopoulos, C. J. (2001). *Interpreting convergence in the european union: Patterns of collective action, social learning and europeanization*. New York, NY: Palgrave.



PEDERSEN, L. (2006). "Transfer and transformation in processes of Europeanization." *European Journal of Political Research*, 45, 985-1021.

Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union. (2005). *Official Journal of the European Union Series L*: 157: 29-45.

Stein, J. V. (2005). Do Treaties Constrain or Screen? Selection Bias and Treaty Compliance. *American Political Science Review* v99 (4): 611-622.

Stone Sweet, A., & Brunell, T. L. (1998). Constructing a supranational constitution: Dispute resolution and governance in the European community. *American Political Science Review*, 92(1), 63-81.

Sverdrup, U. (2004). Compliance and conflict management in the European union: Nordic Exceptionalism. *Scandinavian Political Studies*, 27(1), 23-43.

Tallberg, J. (2003). Paths to compliance: Enforcement, management, and the european union. *International Organization*, 56(03), 609-643.

Tsebelis, G., & Garrett, G. (2003). The institutional foundations of intergovernmentalism and supranationalism in the European Union. *International Organization*, 55(02), 357-390.

TSEBELIS, G., JENSEN, C. B., KALANDRAKIS, A., & KREPPEL, A. (2001). Legislative procedures in the European Union: An empirical analysis. *British Journal of Political Science*, 31(04), 573-599.

Tsebelis, G., & Kalandrakis, A. (1999). The European Parliament and environmental legislation: The case of chemicals. *European Journal of Political Research*, 36(1), 119-154.

Tsebelis, G., & Yataganas, X. (2002). Veto players and decision-making in the EU after nice: Policy stability and Bureaucratic/Judicial discretion. *Journal of Common Market Studies*, 40(2), 283-307.

**TABLE 1: Indicative Statistics for Recently Joined EU Member States**

Country	PPP Per Capita GDP (as % of EU average)	Unemployment	% in Ag	Largest Ethnic Group's % of Total Population	Corruption Index
<b>EU</b>	<b>\$29400 (100%)</b>	<b>8.5%</b>	<b>4.3%</b>	<b>NA</b>	<b>7.7***</b>
Austria	\$35500 (121%)	4.9%	3%	91.1%	8.7
Finland	\$32800 (112%)	7%	4.4%*	93.4%	9.6
Sweden	\$31600 (107%)	5.6%	2%	NA (87% Lutheran)	9.2
Bulgaria	\$10400 (35%)	9.6%	8.5%	83.9%	4
Czech	\$21600 (73%)	8.4%	4.1%	90.4%	4.3
Cyprus (Greek)	\$20300 (69%)	5.5%	7.4%	NA**	5.7
Estonia	\$19600 (67%)	4.5%	11%	67.9%	6.4
Hungary	\$17300 (59%)	7.4%	5.5%	92.3%	5
Latvia	\$15400 (52%)	6.5%	13%	57.7%	4.2
Lithuania	\$15100 (51%)	3.7%	15.8%	83.4%	4.8
Malta	\$20300 (69%)	6.8%	3%	100%	6.6
Poland	\$14100 (48%)	14.9%	16.1%	96.7%	3.4
Romania	\$8800 (30%)	6.1%	31.6%	89.5%	3
Slovakia	\$17700 (60%)	10.2%	5.8%	85.8%	4.3
Slovenia	\$23400 (80%)	9.6%	4.8%	83.1%	6.1
Cyprus (Turkish)	\$7,135 (24%)	5.6%	14.5%	NA**	5.7
Croatia	\$13200 (45%)	17.2%	2.7%	89.6%	3.4
Turkey	\$8,900 (30%)	10.2%	35.9%	80%	3.5

\* includes forestry

\*\* Cyprus is divided along ethnic lines.

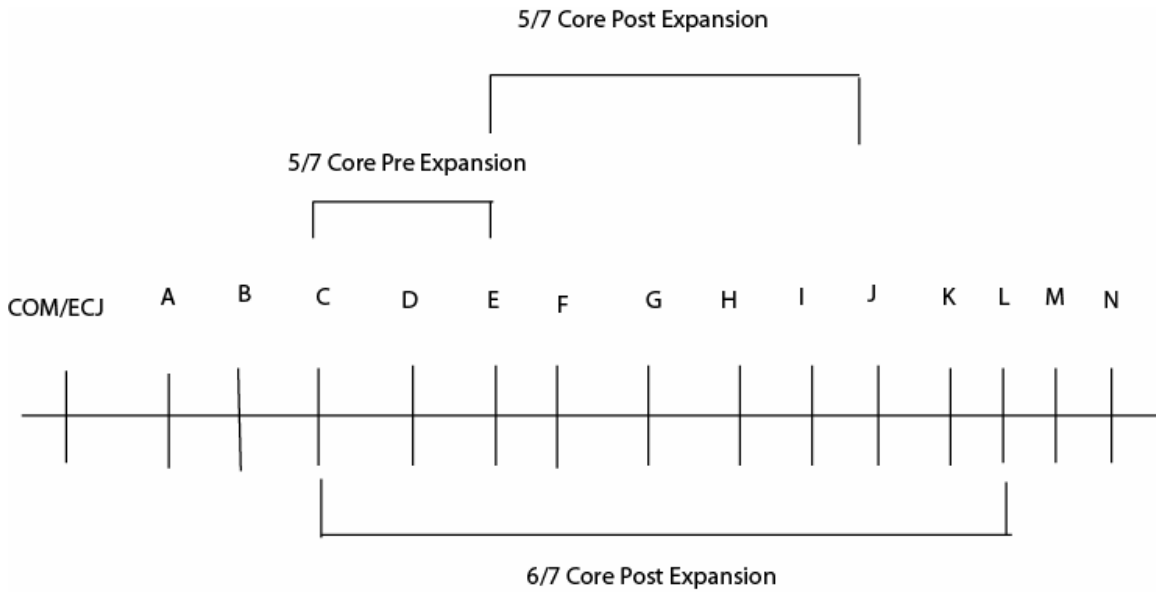
\*\*\* Average of the 15 “Western” member states

(Source: Economic and ethnic data are from CIA World Fact Book

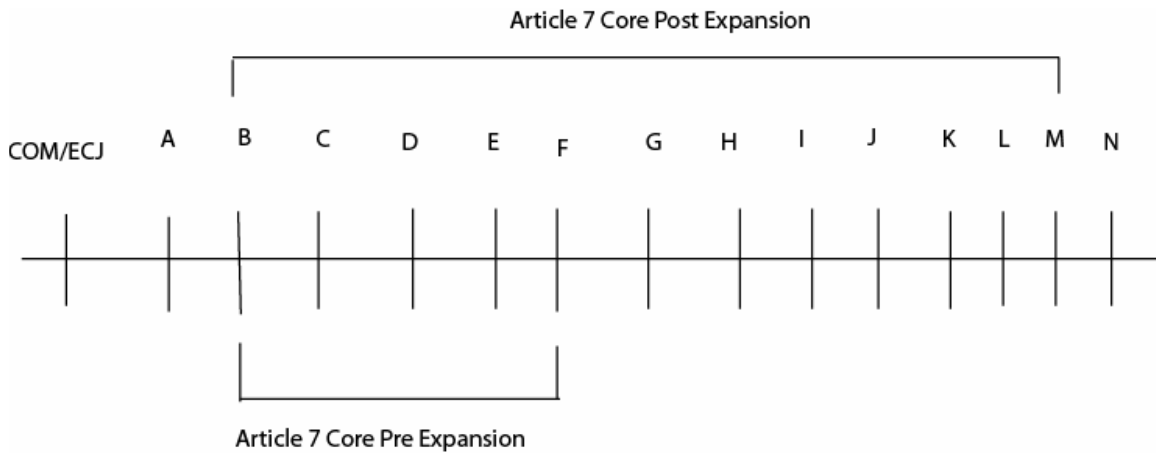
<https://www.cia.gov/cia/publications/factbook/index.html>; Corruption index is from Transparency International

[http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2005](http://www.transparency.org/policy_research/surveys_indices/cpi/2005))

**FIGURE 1: Expanding And Shifting Core for Implementation and Infringements**



**FIGURE 2: Expansion's Effect on the Article 7 core**



**FIGURE 3: The Effect of the accession of successive outliers to the Article 7 core**

