

# Preface

ESO or the Expert Group on Public Finance (Expertgruppen för studier i offentlig ekonomi) is an ad hoc independent government commission attached to the Swedish Ministry of Finance. ESO was established in 1981 and its main objective is to ensure that public resources are used more efficiently and to scrupulously evaluate public expenditure systems as well as economic effects of revenue collected. In recent years ESO has also focused more on international comparisons such as benchmarking and analyses of the consequences of Sweden's joining the European Union for different sectors. This report belongs to the latter category.

Firstly, however, a few words to clarify the status of the ESO Reports. ESO studies are normally carried out by academic researchers, individual civil servants, research institutions, and specialized agencies under contract to ESO. The studies are defined as reports *to* and not by ESO; the views, findings, and suggestions are the exclusive responsibility of the authors.

In this report the agenda setting and the initiating parts of the EU decision-making process are highlighted, especially the role and functions of the several hundreds of Commission's expert committees/groups active in this part of the policy-making process.

This is a topic on which little research has been carried out. Therefore *Torbjörn Larsson*, Ph.D. and associate professor of Political Science at Stockholm University and a former scholar at the European Institute of Public Administration (EIPA) in Maastricht, at the request of ESO has undertaken the study which is presented in this report. As this is a new research field the study is of an explorative character.

In this stage of the EU policy-making process different specialised 'policy interests' or 'issue networks' seem to have a rather free hand together with the Commission in pre-cooking proposals that later on will be submitted to the Council and the Parliament. National civil servants participating in the expert

groups, when they participate, are often seen as a semi-independent expert in relation to its government.

What we find is a fragmented agenda setting and initiation policy development arena. Is this really the best way of organising the initial part of a decision-making process that is constantly increasing in terms of number of Member States? Secondly, are Member States really making optimal use of their scarce resources in terms of co-ordination and strategic decision-making when focusing primarily on decision-making and implementation?

The EU policy-making process like policy-making processes in a national government, can be divided into three different phases – policy development, decision-making and implementation. In all three phases we find hundreds of committees and groups trying to formulate EU politics and to put them into practice. However, it appears most of the Member States have been focusing on the formal decision-making and implementation phases, not on the policy development phase in their efforts regarding co-ordination and strategic thinking. Yet the real decisions are often made in the early stages of the decision-making process.

In order to facilitate the drafting of proposals to the Council and to the Parliament, the Commission sets up a vast number of different types of expert groups (committees). These groups and committees include representatives from Member States, interests groups, NGOs and other stake holders, but contrary to the committees and groups in the Council and the so called comitology committees, very little is known about their work, who participates and what their mission is. For the Council committees and working parties as well as the comitology committees statistics and information are collected and compiled on an annual basis, but not so when it comes to the expert groups since 1999. Here we can get no reliable overview. This problem no doubt needs to be sorted out – especially after the impending enlargement of the European Union. By issuing this report we hope to have made another contribution to the discussion of how the EU functions.

Stockholm in April, 2003.

*Eva Lindström*  
Chairman of ESO

# Acknowledgements

In 1998 when I was working at the European Institute of Public Administration I was invited by professor Günther Schaefer to participate in a research project regarding the importance of different types of EU committees and the consequences for the democracy and legitimacy building in the European Union. However, one part of the 'world of EU committees' was not covered in that study – the Commission's expert groups had been left out. Nevertheless, although it was not possible at that time to do a special study on expert groups my interest in the topic had been raised. Consequently, when I was approached by the Swedish Expert Group on Public Finance (ESO) to do a study on an EU topic of my choosing a few years later I was happy to be able to suggest a study of the role and function of the expert groups (committees) of the Commission. A suggestion which I was glad to say was strongly encouraged especially by ESO's dynamic and energetic secretary Marja Lemne who has strongly supported the project from start to finish and devoted a lot of time and hard work to it.

Very few publications can be found on the subject Commission's expert groups, in fact I have not been able to get my hands on a single one focusing primarily on this matter. One reason for the lack of research in this field could be that the definition of an 'expert group' defies your best efforts. Expert groups can take on so many guises and when you start looking into the jungle of committees, expert groups, working parties, working groups, sub-groups, permanent groups, ad hoc groups, umbrella groups, steering groups, high level groups you can easily lose your bearings. Nevertheless, I hope that this study can contribute to clarifying at least some points of this mysterious world of pre-cooking committees and groups helping the unlikely machinery of the EU to function.

However, committees and groups are not only instrumental in helping governments in their decision-making, they can also help

confused and lost political scientists to stay on the right track. In this case I would like to express my gratitude to and appreciation of the reference group set up by ESO to monitor this project. Professors Morten Egeberg and Günther Schaefer deserves special recognition – they had to travel a long way to attend the meetings.

Günther Schaefer's role in this project has been crucial and therefore I am particularly indebted to him. Not only was he the one who introduced me to the world of EU committees, he has also been a strong supporter of the project throughout and has read and commented on several draft versions of this report.

Members of the ESO board have also contributed with constructive and important comments.

A special thanks to Jan Murk, a Master student at Nijmegen Catholic University, who contributed valuable insights into the expert groups of the DG Enterprise in his Master's paper and helped out with a number of interviews. He also supplied useful comments on draft versions of the report.

Finally, George Cook who finalised the report from a linguistic point of view, transforming it into a readable publication – not only for the experts of the European Union.

Needless to say all the errors and shortcomings that can still be found are entirely my own responsibility.

The data collection for this study was finalised in the early autumn of 2002 thus it has not been possible to consider events, data or documentation of a later date.

Brussels and Stockholm in March, 2003

*Torbjörn Larsson*

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# 1 Formality versus Informality – the Role of Expert Groups. A Summary

## 1.1 Discrepancies between the map and reality

In every political system there exists an in-built tension between how a government is supposed to be organised and operate and how it really functions. The official version of how a government is organised is always complemented and sometimes even contradicted by an informal version. How the informal structure or the shadow world of government is formatted and by whom, is of crucial importance for how power and influence is distributed in a political system. This study has carried out an analysis of one part of the informal structure of the EU and its relationship with the formal structure.

### 1.1.1 Three questions

Thus the focus of the study has been on expert groups and their primary instigator – the Commission. In this framework three questions have been raised.

- Firstly, given the Commission's right to set up expert groups, to what extent is this tool used and what types of expert groups are set up?
- Secondly, by what means does the Commission – in organisational terms – control the work of the expert groups?
- Thirdly, why are expert groups set up and in what way can expert groups be used to model the decision-making structure of the EU?

Our knowledge of how committees and groups are organised and operate inside the EU is limited since very little research has been done in this field and expert groups especially have hardly been studied at all. This study, therefore, largely investigates new territory that has never been covered before. Consequently, this study has an explorative character, focusing on looking at the phenomenon of expert groups from different perspectives and discussing their role and function.

### **1.1.2 Defining expert groups**

Conquering new territory is never going to be easy and in this case the problems started at the very first stage, i.e. identifying the research object, because to define an expert group is far from easy and it can be done in different ways. To complicate things further, different names are often used for more or less the same entities, like working groups, working parties, committees, steering groups, high level groups, umbrella groups and so on. Consequently in this report an expert group is defined as a committee or group set up by and terminated by the Commission of its own accord or a committee/group that is regarded to be the Commission's expert group although not financed, chaired or set up by the Commission. In other words, expert groups are entities, consisting of participants external to the Commission but the Commission does not have to listen to them or take into account the advice given, in contrast to the attention needing to be paid, for example, to the comitology committees set up by the Council and the Parliament.

## **1.2 Number and types of expert groups**

To begin with, the Commission seems to have exercised its prerogative to set up expert groups extensively, judging by the statistics presented by the General Secretariat of the Commission. In 2000 official figures showed that anywhere between 800 and well over 1 000 expert groups were in operation. However, it is very difficult to determine exactly how many groups are currently active. Those most likely to have an overview in this matter would seem to be the units in the DGs but that overview is only segmented. Nobody, it would appear, has conclusive information on the present status of individual expert groups. Furthermore, the

estimated number of committees/groups given is not always factually based, indeed sometimes it is pure fiction. The same set of people can appear in different configurations, often pretending to be a new group when in reality an old group has simply been given a new name. The numbers and percentages must therefore be treated with great care. To the insiders, lobbyists, stakeholders, national civil servants and the civil servants of the Commission, the status of specific expert groups is quite clear but not to the outsiders. In fact, there is no official list of who participates in what expert group, what time perspective a group has, or what kind of budget it has been allocated. We also find expert groups which are not officially set up by the Commission, i.e. they are not financed under a budget line but are nevertheless closely connected to the Commission, sometimes operating in almost the same way as any other official expert group, and this makes the estimated number even more uncertain.

### **1.2.1 An increasing number of expert groups**

Taking into account these uncertainties, the number of expert groups still seems to be gradually increasing over time in spite of Commission efforts in trying to keep the numbers down. One reason why estimating the number of expert groups is basically impossible is because expert groups quite often set up sub-groups which are often more or less on an equal footing with the original expert group. The sub-groups are even more likely to meet regularly than the main groups and to carry out most of the important ground work. Around 20% of all expert groups have sub-groups, sometimes several of them, which means that besides the 851 expert groups that we found in this study some 501 sub-groups were also listed.

According to the Commission's own classification, about half of the expert groups are permanent and the rest are ad hoc – a stable figure it appears, even over time. This observation allows us to draw the conclusion that many expert groups are not set up to solve just one specific issue but can exist for a long time and may be involved in different topics. As a matter of fact, in many cases they can be seen as bodies for giving general policy advice to the DGs and their units.

### **1.2.2 Active and passive groups**

The statistics produced by the Commission does not really, however, tell us the full story about the difference between permanent groups and ad hoc groups. Many ad hoc groups have been operating for a long time whereas quite a number of permanent groups have not been operative in recent years. Interestingly enough, the General Secretariat of the Commission also lists non-active (passive) expert groups which still formally exist, in contrast to the abolished groups – for the period 1999/2000 almost 200 groups were passive. Furthermore, 128 of the ‘active’ expert groups did not meet during this period.

The meeting frequency for the different types of expert groups varies. Some of the groups basically do not meet at all while others meet every second week or even more often. On average, however, a group will have three meetings a year, with ad hoc groups meeting somewhat more often than the permanent ones.

There are also significant differences between the DGs in regard to what extent they set up expert groups. Six DGs – Enterprise, Employment, EAC, Environment, Research and InfoSo<sup>1</sup> – account for 58% of all groups, including sub-groups. A significant difference in average meeting frequency can also be found when breaking the statistics down under the different DGs and here we find that DG Research stands out in comparison to the others, its expert groups having on average almost 50% more meetings than the rest.

### **1.2.3 Shapes and sizes**

A closer look at how individual expert groups are organised shows that other ways of classifying them than by the statistics produced by the General Secretariat of the Commission are possible. An expert group can be organised in a number of different ways especially if the number of participants and the type of knowledge and/or interests they may represent are taken into account.

In the typical expert group we find some highly specialised people often scientists or academics, meeting with the explicit purpose of solving or at least discussing a very specific topic – representing only themselves, their legitimacy being based on the accumulated knowledge in the field. At the other end of the

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<sup>1</sup> See List of Abbreviations.

spectrum we find expert groups with representatives from a number of interest groups and stakeholders in a certain policy area, negotiating conflicting issues and solutions. Thirdly, we have expert groups where representatives from the Member States are included. Here we often find civil servants who are supposed to play the dual roles of expert, i.e. knowledgeable in a certain field, and semi-independent representative for their respective government. The three categories, scientific experts, interest groups and stakeholders representatives, and Member States' civil servants can also be mixed into one and the same expert group.

Furthermore, an expert group can be inclusive or exclusive, which means that in some expert groups all the relevant experts, interest groups and Member States' representatives are invited to participate, while in other cases just a few of them are given the privilege.

Expert groups can also be classified according to the status given to them by the participants' good name and prestige. This type of group may e.g. include persons who previously held very high positions in society like prime ministers, ministers, general directors, business leader and trade union leaders, or currently active civil servants on a high level. This type of group is typically called a *high level group*, sometimes a steering group or an umbrella group and it is usually given the responsibility of coordinating or scrutinising proposals and ideas from other groups or directly from the Commission. A high level group, especially a steering group, may set up many sub-groups but normally members of the high level group or the steering group do not participate in the work carried out by the sub-groups, in contrast to the expert groups' sub-groups who often include members from the main expert group.

In other words, behind the label of 'expert groups' we find very different things, which raises the question of how and to what extent the Commission can control and influence the work of its expert groups.

### **1.3 How the Commission controls the expert groups**

Theoretically there are many ways for the Commission to control and influence its expert groups.

#### **1.3.1 Setting up and abolishing groups**

For a start, influence can be exercised by the very creation or termination of a group. The Commission may, for instance, set up an expert group to find out whether the Member States and the interest groups are interested in trying to formulate a common policy. But should the Commission discover – after one or two meetings – that the support for a common approach is rather weak or that it seems to go in an unwanted direction, it can put the group on hold, waiting for the right moment to re-activate it. By using the stop and go technique the timing of the policy making process can be managed almost to perfection.

The right to appoint the chairman gives the Commission a powerful instrument, allowing it to decide just how closely it wants to associate itself with the work of a group – the scale ranges from very intimately to keeping it at arms length. Most of the time, however, the Commission keeps a close watch on what is going on in a group either through the chairman or by providing the secretariat.

#### **1.3.2 Participants**

How the participants are selected is very important. The Commission can choose between letting the Member States participate in the discussions with the experts, the interest groups and other stakeholders or keeping them on the outside, holding separate discussion with one Member State at a time instead. Inclusiveness or exclusiveness are other important instruments for Commission control; allowing just a few experts, interest groups or Member States' representatives to be part of a group or involved in the preparations for the setting up an expert group is a strategic decision that may affect the result and the functioning of an expert group profoundly.

In addition the Commission may choose to set up, or delegate to, several expert groups to work with the same issue. Steering groups or high level groups are often supported by sub-groups or other types of expert groups. Consequently what sub-group(s) are set up and what the relationship is between the different groups (who is reporting to whom) also affects the final outcome of the preparation process.

The Commission can therefore, by means of its prerogative to set up committees and groups, couple and decouple the policy-making process and the participants (actors with different sets of interests) in several ways. The Commission can, for example, closely connect the implementation process to the decision-making process by allowing the same committee/group to be the provider of proposals to the different arenas.

### **1.3.3 Techniques of control**

It is also worth pointing out that not all expert groups are strictly controlled by the Commission, and this is particularly noticeable when the issues or topics deliberated are outside the first pillar or when the group has been set up at the request of the Council and/or when the expert group is not primarily financed by the Commission. In these cases it is not uncommon to find that the Commission plays a more subtle role, sometimes being described as the role of the sixteenth member, exerting influence in a more discrete way, for example by having the final say on the agenda before each meeting.

Nevertheless, with the exception of the cases when the Council requests the Commission to set up an expert group, in the end it is left entirely to the Commission to decide on the agenda setting up of an expert group, how it should be organised and what internal procedures should be applied. Few official rules govern this part of the EU decision-making process even if there are some practical restrictions, e.g. the Commission is expected to work through the Permanent Representations when recruiting representatives from the Member States to expert groups and the final reports (green papers) from the expert groups are often published on the Commission's web site. To summarise, the Commission has been given quite a free hand in setting up expert groups and in most cases the work of the groups can be tightly controlled. But why are

expert groups set up in the first place and how do they affect the wider policy processes and the policy-making process of the EU?

#### **1.4 Why expert groups are set up and the effect on the decision-making process of the EU**

It is often argued that the Commission, due to its small administration and limited competence in many areas, needs Member States' assistance as well as the assistance of other experts and interest groups' representatives when drafting its proposals for new EU legislation. However, as this study shows, expert groups are set up for a number of reasons, besides providing the Commission with the expertise it needs in order to prepare new legislation. For example, even in the area of agriculture where the Commission has an extensive internal organisation and resources.

Expert groups are also used throughout the policy-making process – from the preparation (initiation) phase, through the decision-making phase and even extensively in the implementation phase. Furthermore, a number of the Commission's duties do not concern law-making and implementation – representing the EU in international organisations, negotiations with third countries, supervising the internal market, running the administration of EU programmes also fall on the Commission, which uses expert groups for all these functions.

##### **1.4.1 Three arenas**

The visibility of the expert groups reaches its highest level during the policy-making process, as does the ability to influence. The policy-making process and its three phases can be regarded as three different arenas for policy making where what is achieved in one arena has consequences for what will happen in the others. Much of the work is carried out by different groups and committees and the report – like in a relay race – is transferred from one committee/group to another, until the final results are put into practice. In the preparation phase, the expert groups assist the Commission in formulating the draft legislation and in the decision-making phase the working parties, COREPER and other Council committees, together with the standing Parliamentary committees help to formulate the final decision for the two law-

making institutions, and finally, comitology committees are instrumental in implementing all the decisions.

### 1.4.2 Why expert groups are set up

This study shows there are four main reasons as to why expert groups are set up:

- \* agenda setting
- \* preparing initiative
- \* mobilising support and building consensus
- \* fig-leaf.

#### *Agenda setting*

An important part of any policy process is the initiation or agenda setting phase. It is often highlighted in classical decision-making theory how crucial is the role of those who are in charge of setting the agenda – how to formulate the issues on which decisions are going to be taken. In other words what happens up-stream is very important for what takes place down-stream in the policy process. In this part of the process expert groups are used in order to put an issue on the European agenda, i.e. to reach an agreement that a certain problem needs a common response from the Member States even if it is outside the EU Treaties. An attempt to enlarge the competences of the EU is another way of expressing it. Brain storming or very informal discussions are typical features in this type of expert group. But issues falling under the EU Treaties are also affected by the agenda setting phase, not least because decisions as regards which article an issue is to be handled under determine what decision-making procedures should be used, with a varying degree of influence of the EU institutions. A proposal can be challenged later on in the policy-making process. There are cases where the Commission has switched its own agenda completely and accepted the one proposed by the Parliament, but the original proposal usually has the supreme advantage of already being on the table. Insisting on an alternative definition of a topic often means restarting the entire policy process – with further delays.

### *Preparing initiative*

The setting up of an expert group is also a signal that an official policy-making process has been started by the Commission – an initiative has been taken. During this part of the process the issue has normally already been put on the agenda, or the Commission has a pretty good idea of what it wants to achieve, but now the best arguments and the necessary means to achieve what has been set out have to be found. Experts and other knowledgeable persons are called in to help the Commission to find the right arguments and counter arguments, given a specific solution. A well known technique is to ‘de-politicise’ the policy making process by transforming the political issues into legal or technical (scientific) problems as far as possible. “Salami tactics” is the technique often used, i.e. slicing the policy areas into smaller and smaller units, every cut producing a new sub-committee or sub-group, often separating politically controversial issues from less controversial ones at the same time. In the end this often leads to solutions so technically advanced or complex that other actors in the decision-making and implementation phases of the process will find it difficult to challenge them.

### *Mobilising support and building consensus*

Furthermore, setting up an expert group can be used as a means of building consensus and mobilising support for a specific topic or a solution to a certain problem. By inviting the relevant interests early in the policy process on the pretext of being an expert group but in reality conducting (pre-)negotiations, much can be solved thus transforming the other phases of the policy process into an exercise of formality. In some cases it may not even be necessary to invite all the interests to participate, if an agreement is reached between the dominating interest groups it will be enough to preclude the discussions and negotiations during the formal decision-making phase and the implementation phase.

### *Fig-leaf*

Finally, expert groups can be used as an instrument to canalise pressure from the outside. It is a well known fact that many of the official initiatives taken by the Commission do not originate from within its own organisations but is a response to outside pressure. In some cases this kind of pressure is welcomed and even encouraged by the Commission but sometimes it is not. However, strong demands can be made on the Commission to become active in areas where it believes it has no competences or where success looks improbable. Setting up an expert group may therefore be the answer to this kind of pressure because at least it gives the impression that action is being taken.

#### **1.4.3 The influence of expert groups**

The Commission does not only use expert groups as a tool to generate support at a later stage in the policy making process. Issues are often interrelated but treated separately by the different parts of the Commission, which can generate a degree of tension, even conflicts, between the DGs and in this struggle expert groups can be used to mobilise external support.

But expert groups may also influence the formal decision-making and the implementation phases more directly by what has happened in the policy development phase. Basically this can be done in four different ways.

1. A group is set up which is not only consulted during the preparatory and initiating phases but also during the decision-making and implementation phases.
2. Separate expert groups are set up to assist other committees or groups active in the formal policy-making and implementation phases.
3. An expert group is set up in order to allow the participants to take part at an early stage in the policy making process, in the hope of trying to generate consensus and support thereby, so that later on this could influence the other stages of the policy process, when more or less the same people will meet again. Bringing people together so that they can get acquainted

has always been an important tool in finding solutions to difficult problems and setting up expert groups is a very good way of doing just that.

4. Sometimes the Commission uses groups that are officially set up for other purposes, such as comitology committees or working parties in the Council, as expert groups.

To summarise: expert groups can be used for any number of reasons and most expert groups are not set up for just one reason. In essence they are the lubricant of the policy-making and administrative machinery of the EU, where formal and informal structures are constantly shifting with the help of these groups. This technique is well known from national governments but it has perhaps been used even more extensively in the EU where the character of the system makes consensual solutions necessary and where power is diffused among many actors.

## **1.5 Implications for Member States and their civil servants**

One of the consequences of the large amount of committees and groups is a fragmented policy-making process which in turn puts a heavy demand on the Member States' capacity for overview and co-ordination in order to optimise their influence. Presently, most Member States seem to focus their efforts and attentions in terms of co-ordination and control on committees involved in decision-making and implementation, leaving the expert groups in the policy development phase substantial leeway to develop their own agendas. From the perspective of, especially medium-sized and small Member States, this may look as a somewhat strange priority since it is in the policy development phase where the small and medium-sized Member States have their best possibilities to influence future EU policies.

In the policy development phase influence is more the result of knowledge and experience in specific fields, less dependent on the size of the Member State and its number of votes in the Council.

Furthermore, with an increasing number of Member States the pressure on pre-cooking arrangements will grow even more risking to split the policy-making process into even smaller bits and pieces as more groups and sub-groups are being set up, responding to the

demands created by ten new national agenda setting arenas being coupled to the EU policy-making process. On the other hand many of the new Member States are small, and since small Member States tend to support the Commission in the policy-making development phase this could enhance the influence of the Commission and in fact facilitate handling the EU issues in the future.

National civil servants are also under pressure to adapt to new roles and behaviour compared to the traditional ones. Usually a civil servant is trained to obey one master and play only one role at a time. However, the committee system of the EU often puts conflicting demands on national civil servants, fulfilling the wishes of two masters at a time – EU and his/hers own government – and performing different types of roles. In the policy development phase civil servants are expected to be experts with a semi-independent position relative its government. On the decision-making arena skills as a negotiator are essential as well as following instructions from their respective government, but in reality it is often also a question of being the link between his/her government and the EU institutions. Thirdly, the implementation arena civil servants are expected to be knowledgeable about the consequences of how detailed decisions by the EU affect on their administrations. Dual loyalties and shifting roles might well be the unavoidable in the future for national civil servants.



## 2 A World of Committees

### 2.1 Introduction

Anyone with the ambition of understanding how the European Union functions will be confronted with the discussion of supranationalism vs. governmentalism, i.e. which is the most powerful institution: the Council, the Court, the Commission or the Parliament, or the problems with the democratic deficit. A lot of effort has been put into analysing the role and the position of the EU institutions and their relationship with the Member States' governments or comparing the EU system of decision-making with that of contemporary democratic governments. These analyses are often based on a constitutional (formal) or a legalistic concept of how the EU operates, stressing how each institution tries to enhance its influence and to control the others. However, those working within the EU system often have another picture of how the decision-making process really functions in practice – reflecting a less conflicting and more pragmatic picture than the official one. In this report the ambition has been to focus on this down-to-earth perspective, highlighting the sub-structure of the EU institutions – the structures that actually make the EU system work. In short, what we are talking about are all those hundreds of committees, groups or networks where the real work is being done, behind the official facade of 'the Commission, the Council and the Parliament'.

Thus, "Welcome to the world of committees" is perhaps the most accurate, although not the most common way of describing the European Union to a newcomer.

## 2.2 Informal and formal structures

There is nothing new, certainly, in pointing out that most of the real decisions in a political system are taken by committees or within informal, rather than official, structures. Any person with a basic knowledge of how governments are organised knows for example that most decisions in a democratic society are prepared and deliberated by different types of committees before becoming law and being implemented by government. And it is a well-known fact that the constitution of most democracies is very seldom the whole truth in these matters. One way of explaining this discrepancy – often highlighted by political scientists – is the importance of informal structures when it comes to decision making. The need for informal structures partly emanates from the rigidity of the formal rules and regulations and the fact that trying to change them is rather time consuming, but it also arises from the necessity of bridging the gaps between different interests and different institutions. One way of doing this is to establish a committee, which can then also serve the purpose of providing a forum for the planning and co-ordinating of public activities.

### 2.2.1 Committees and their uses

This is one of the reasons why a vast number of committees, expert groups, networks and similar entities can be found in most democracies, greatly varying in status, influence and constitutional legitimacy. As long as almost 50 years ago the British political scientist K. C. Wheare published a book on the British system with the title «Government by Committee»<sup>2</sup>, where he shows how the British committee system hampered, and sometimes even surpassed, the power of the government and of parliament. However, we find that it is not only the British-style parliamentary system that is greatly influenced by the work of committees. In Germany and in the US committees also play an essential role in bridging the gap between the federal level and the state level.<sup>3</sup>

Furthermore, we find an abundance of committees not only in the executives, e.g. cabinet committees, but also in the decision-

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<sup>2</sup> K. C. Wheare, 1955.

<sup>3</sup> Christiansen and Kricher, 2000, p. 12.

making bodies, e.g. parliamentary committees, and in some countries (not just Sweden) certain types of committees are used as tools in the pre-cooking (preparatory phase) of governmental and parliamentary decision making as a way of bringing in outside interests in the preparation of government bills. Committees can also be charged with the task of monitoring and/or implementing governmental or parliamentary decisions. In other words, one of the main functions of committees is to lubricate the wheels of the democratic system, to make up for imperfections in the constitution and to reconcile the parties when there is a conflict of interests.

The committee structure in a democratic government can be extremely complex since a committee may set up sub-committees or working groups, and we often find that a system of committees links the different institutions in order to facilitate the decision-making process. In a two-chamber parliament, for example, disagreements are often solved with the help of a joint committee and in a multiparty system the political opposition may be invited to participate in a governmental committee in order to make way for a majority decision in parliament later on. The setting up of committees may also be a way of increasing knowledge through specialisation. The Congress of the United States, where much of the real deliberation on different topics is handled by the numerous sub-committees of the standing committees, is often cited as illustrating this phenomenon.

### **2.2.2 Committees at the highest level**

However, the setting up of committees and groups or the creation of networks is not just about effectiveness, efficiency, co-ordination, planning and specialisation – it is also about how power is distributed inside the government. The cabinet committees in the British government are a good example of how the setting up of committees is used as a power instrument. Discussions of policy issues in the British cabinet takes place – in reality – in the many cabinet committees, rarely in the cabinet as a whole, and by deciding who is going to sit on which committee the Prime Minister is in reality allocating influence to the cabinet members in varying degrees, where eventually the Prime Minister is the only one with a complete overview and knowledge of all government policy of any importance. The inner cabinet, an often used

technique, not only in Britain, is another variation on the same theme – some ministers will receive more information and thus stand a better chance of influencing policy than others. However, the setting up of too many committees, which is also illustrated by the British case, may lead to fragmentation of the policy process, finally leaving no one in control of the overall policy of the government.<sup>4</sup> Another well-known problem with this strategy is the lack of openness and transparency, because when all the important deliberations and all the real decisions have been moved to committee rooms, the official institutions like parliament are left with little more than a stage on which well rehearsed games are played before the public.

### **2.2.3 Committees come in all shapes and sizes**

Committees or other similar entities are far from easy to analyse, not only because there are so many of them but also because they can appear in so many different guises. To begin with, they differ in size, tenure and the extent to which they are ‘officially recognized’ and in how formalised their decision-making procedures are. In national government, committees can range from huge, very formalized committees sitting for ages to small, short-lived committees working very informally. Some committees have a broad mandate to take decisions and cover a large area, while others have to make do with an advisory capacity on a small topic. Wherever we look we will also find ‘committees’ which are not really committees because they have not been set up to perform specific tasks, instead they are simply a group of people meeting to exchange information and to discuss issues of common interest – so called networks.

In this respect the EU is no different from other systems and, as was mentioned earlier, within the EU we find a vast number of committees, groups and networks or similar entities working like busy bees in order to make the complex EU system function. All the institutions – the Council, the Commission, the Court, etc. – have a vast array of committees working for them but a number of separate entities with institutional status also use the label committee – the Committee of the Regions, the Economic and Social Committee, etc. We also find committees linking the

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<sup>4</sup>Thiébaud 1993, p. 78-97, Burch 1993, p. 133-115, Eriksen 1993, p. 287-288, Dunleavy 1995, p. 298-321, Seldon 1995, p. 138-141, Thomas 1998, p. 211-217, Kvanagh/Seldon 2000, p. 321.

institutions and the Member States – COREPER, the implementing committees (so called comitology committees), the conciliation committee (reconciling the European Parliament and the Council), etc.

In other words, it is easy to find examples of committees or groups in the EU as well as in national governments that are essential for the functioning and efficiency of the political system. What is more difficult is to differentiate between what is a formal or official structure and what is an unofficial or informal structure. A committee may be set up by the government, in that way being formally recognised, but if the government should wish to keep the committee's existence secret it can officially deny all knowledge of it. It was not long ago, for example, that the total number and the names of the cabinet committees in the British government were regarded as state secrets on the highest level. The degree of informality may also vary. For example, the Swedish government meets on a weekly basis for lunch deliberations where politically important matters are discussed and not infrequently solved. These lunch meetings have been going on since the 1930s and everybody knows about their existence and importance, yet no formal decision has ever been taken to create this structure. Another problem, related to this discussion, is when a formal structure fulfils another, informal function of more import, perhaps, than the official one. In a study which sets out to highlight the differences between the formal and official picture of the EU structures with the informal and unofficial one, it is important to remember that it is not always easy to differentiate clearly between the object and its shadow.

### **2.3 Purpose and previous research**

This overview has shown that very considerable numbers of different types of entities can be found within the framework of the institutions of the European Union, all performing important roles in the functioning of the Union. Generally speaking though, this phenomenon has not attracted researchers or research projects in any large numbers, either regarding the working parties of the Council, or the parliamentary committees. The expert groups of the Commission certainly remain obscure and basically unclassified, though this can hardly be attributed to some kind of exclusivity, given the fact that a rough estimation puts their

number in the range of 800 to 900.<sup>5</sup> And the limited attempts so far at mapping out the roles and tasks of these expert groups have produced a greatly varying pattern. As always there are exceptions to the rule and in 'Europe in Change, Committee Governance in the European Union', a few interesting examples are given of how committees and groups are working and their effect on the policy-making in some areas. Comparatively speaking, the 'comitology committees' have received the most attention but even in this area research still needs to be done.<sup>6</sup>

To some extent the situation has improved as a result of a research project completed in 2002.<sup>7</sup> The research project was supported by the Commission and several universities, and was headed by Professor Günther Schaefer (European Institute of Public Administration in Maastricht). The aim of the project was to study the working groups of the Council, the parliamentary committees and the implementation committees, their respective roles, functions and relations. The project involved researchers from five European countries and was divided into four sub-projects – one for the working groups of the Council, one for the parliamentary committees, one for the implementation committees, and a fourth dealing with «Legitimacy, Democracy and the EU Committee System».

However, no special study of the Commission's expert groups was undertaken within this project, but as one of the members of the research team, the author hopes with this study to be able to remedy this, at least to an extent. In other words, this study is linked to and builds on the results of the larger study but it is also a research project in its own right. But since it focuses on a wide open research field and bearing in mind the limited resources available for this type of study, an explorative approach had to be chosen. Starting with rather basic issues such as comparing the formal and official versions of the role and functions of expert groups with empirical findings, it progressed to painting a more complex picture of how the expert groups are used and how they function.

Thus, the basic question for this study asked at the outset could be expressed as follows. Given that one of the instruments at the disposal of the Commission for influencing the European decision-

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<sup>5</sup> Schaefer 2000.

<sup>6</sup> Christiansen and Kirchner 2000 and Andenas/Türk 2000.

<sup>7</sup> For results of the research project see Schaefer ed. 2002 *Governance by Committee the Role of Committees in European Policy-Making and Policy Implementation*.

making process and coping with its responsibility to initiate policy is the right to set up expert groups, how are these used? How many expert groups are operative and what types of expert groups do we find? By what means does the Commission control the setting up of an expert group? Why are expert groups set up and how are they related to other parts of the decision-making process and other committees?

The aim of this report has been to study the so called expert groups of the Commission but since expert groups are often closely linked to other parts of the committee/group system of the European Union the focus cannot be exclusively on expert groups – other parts must also be included in the analysis. Consequently, as indicated by the questions, a "systemic" approach has been used, i.e. the expert groups are analysed in relation to their environment. Thus, focusing primarily on the Commission's expert groups, the study endeavours to put the expert groups into a larger perspective, trying to find out whether the official (formal) map of the EU's institutional structure is consistent with reality when more informal structures such as expert groups are added to the picture. Therefore, chapter 3 begins with a presentation of the 'official' or formal picture of how the EU policy process and its institutions are structured, and in the subsequent chapters the informal or unofficial version is outlined in some detail.



# Part 1. The Formal Structure

## 3 The Formal Institutional Structure and the Formal Decision-Making Process of the European Union

### 3.1 The EU institutions

The EU, just like national governments, consists of a number of institutions (organisations) that are supposed to perform certain functions that are related to each other in specific ways in order to form an authoritative decision-making system. In a democratic system three different functions are considered to be of special importance – law-making, application of the laws and the execution of them – all three of them being allocated to different institutions – parliament, the courts of law and the government. Generally speaking there are two ways in which the functions can be attributed; either each one of the institutions has a sovereign right to perform one of the functions without the interference of the other two, or the responsibility for each function is divided among the three institutions. The first principle, where the functions are separated according to the principle one function one institution, is usually applied in parliamentary governments. The other principle, where functions and responsibilities are overlapping is usually applied in power sharing (presidential) governments.

The EU has more in common with a power sharing system than a parliamentary one<sup>8</sup>, although the functions shared are not quite the same ones and the principles of sharing differ somewhat from what we usually find in power sharing systems. The four main institutions of the European Union are: the Council, with law-making powers and implementation powers; the Parliament which in some areas shares the law-making powers with the Council but also controls the budget of the EU; the European Court of Justice

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<sup>8</sup> Larsson 2002.

has predominately law application powers, and finally; the Commission which under the first pillar has unique initiating powers and, in most areas, shares the executive powers with the Council. In reality all four institutions are more or less involved in all the functions in the EU system.

### **3.1.1 The Commission**

Each institution is, however, believed to have other functions as well, not just the ones mentioned in the EU Treaty. With the Commission, seven functions are normally highlighted – besides the policy initiating and the executive functions – legislative, legal guardian, external representative and negotiator, mediator and broker and mobiliser. Some of these functions are explicitly mentioned in the EU Treaty – executive, legal guardian and policy initiator – while others are the result of how the system operates. The Commission's influence on the legislation process is, for example, partly due to the fact that it is responsible for drafting new legislative proposals to be decided by the Council and the Parliament. The external representative and negotiating function result from the need for international trade negotiations and other types of bilateral and multilateral agreements between the EU and other states or international organisations. A power sharing system, where many of the central institutions have overlapping responsibilities, also needs someone to take on the role of mediator and broker. In most cases this function is best carried out by the Commission since it is supposed to act for the Community as a whole and it is the only institution participating in all the stages of the decision-making process, from initiation to evaluation of policy. Furthermore, in a Union with so many different facets – ranging from Member States to interest groups, the ability to mobilise vast support is important in order to be able to put proposals through the scrutinizing process before becoming official EU policy.<sup>9</sup>

The different functions the Commission has to perform are in many ways related to each other but there is also tension between them. A classical conflict is trying to be both a promoter of integration, i.e. policy change and innovation, and an executor (administrator) of existing policy at the same time – a conflict that not only the Commission has to try to solve but one which most

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<sup>9</sup> Nugent 2001, p. 10-14.

governments are faced with today. Secondly, there is tension between the mediator and mobiliser roles – it can be difficult to appear neutral if the Commission at an earlier stage in the decision-making process was the initiator of a specific proposal.<sup>10</sup> In other words, the decision-making process of the EU and its different phases requires a lot of the Commission and the setting up of committees/groups is one of the instruments at its disposal for handling the overlapping and sometimes conflicting demands it faces. This becomes even more evident when one takes a closer look at the character of the EU decision-making process.

### **3.2 The decision-making process of the EU and the role of committees and expert groups**

The committee/group system thus plays a very important role for the integration process and it is common to find the policy process in the EU described as a circular movement or chain, where the links are provided by different committees.

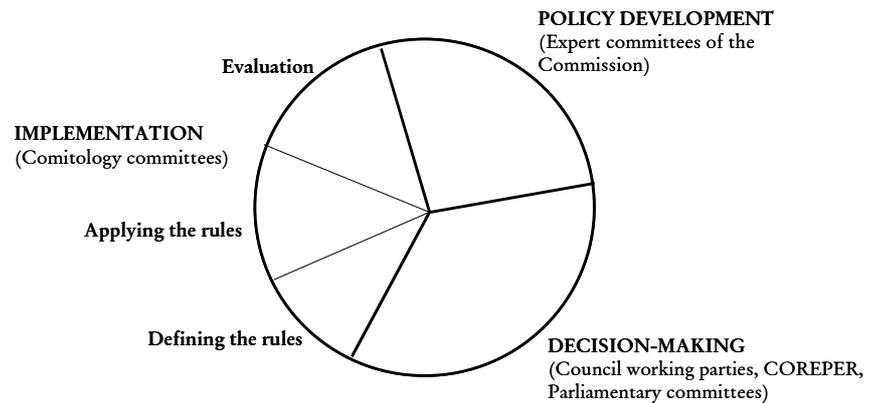
This policy process is generally said to contain three phases – like most policy making processes in democratic states – *the policy development phase*, *the policy decision phase* and *the policy implementation phase*. The development phase is all about setting the agenda, initiating and preparing proposals that will be decided on later in the process, the decision phase consists of deliberations and making the formal decisions, and the implementation phase deals with interpretation and execution of the decisions taken. The third and last phase can also be divided into three sub-phases – defining the rules of implementation, applying the rules of policy implementation and evaluating the policy.<sup>11</sup>

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<sup>10</sup> Ibid, p. 15.

<sup>11</sup> Schaefer 1996, p. 3-23.

Figure 3.1. The policy process of the EU



### 3.3 The policy development phase

During the first phase, policy development, the Commission plays a crucial role in matters regarding the internal market, due to the fact that it has exclusive right to take initiative. However, it is important to remember that although the Commission formally has this exclusive right and that no legal acts can be adopted by the Council and Parliament if the Commission has not initiated the proceeding, both the Council and the Parliament may ask the Commission to take an initiative – a prerogative rarely used by the Parliament but more frequently by the Council.

#### 3.3.1 Expert groups

When the Commission has decided to raise an issue in order to present the Council with a proposition, the Commission will often set up an expert group (committee) to help with the drafting of the text. The Commission sets up expert groups for a number of reasons, one of which being the Commission's limited resources in terms of staff and knowledge of the issue, another that the Commission needs strategic information regarding the situation in

different areas in the Member States.<sup>12</sup> A third reason is that the Council has taken a decision demanding that an expert group be set up.

Setting up an expert group/committee is no formal requirement, even if it is sometimes perceived in this way, and there are alternative methods for acquiring relevant information for the future decision-making process. The Commission may for example start a research project, or call on different consultancy firms, invite people to seminars and conferences or just have informal discussions on a bilateral basis with knowledgeable people and Member States' representatives to collect the same type of information as it is getting from an expert group. In reality it is therefore left to the Commission and its DGs to decide how to organise the work when dealing with new issues and new policy processes.<sup>13</sup> But there are exceptions. If a scientific committee has been set up in a certain area by a ruling of the European Court of Justice it has been established that the Commission must consult the committee before it takes a decision.

### 3.4 The decision-making phase

In the second phase, i.e. during deliberations and formal decision-making, the decisive role is played by the Council, the Parliament and their respective committees. The relationship between these two institutions may be likened to a tennis game where the ball is passed back and forth over a net in which a proposal risks getting stuck if one of the players does not deliver a good shot (a constructive opinion). However, the tennis metaphor does not fully apply since a third party – the Commission – is doing the serving. Furthermore, the game is played under four different types of rules – *the consultation procedure*, *the cooperation procedure*, *the co-decision procedure* and *the assent procedure*. The formal power of the Parliament differs radically between the four different procedures. The co-decision and the assent procedure are the ones most favourable to the Parliament. Today, the consultation and co-decision procedures are the most frequently used. From the perspective of the importance of committees and groups, the co-decision procedure seems to be the most interesting one, because if the European Parliament and the Council cannot reach an

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<sup>12</sup> Hix 1999, p. 201-202.

<sup>13</sup> Schaefer 2000.

agreement under this procedure, the conciliating committee consisting of an equal number of MEPs and Council representatives will be called in. Should this committee fail to reconcile the parties and no agreement is reached, the Commission proposal will be dropped.

But all four procedures only apply to matters under the first pillar, in the case of the second and third pillar the Parliament plays a less important role, sometimes even negligible.

Thus, the decision-making phase is very much the phase where the Council and the Parliament come in. With the Council, this basically means COREPER I and II and the working groups and for the Parliament the Standing Parliamentary Committees.

The Commission also plays an important role in defending its original proposals and by reacting to the changes suggested by the Council and the Parliament. It is almost always present in all of the different types of committees and groups that scrutinize its proposals.

### **3.4.1 Committees in the Council**

Like the other EU institutions the Council has several hierarchically organised committees and groups. At the very top of the organisational structure we find the different formations of the Council of Ministers and the European Council. However, below this decision-making structure a number of committees and groups are constantly active, preparing all the meetings of ministers and heads of state. Probably the best known committees are COREPER I and II where the ambassadors and deputy ambassadors of the permanent representations meet in order to sort out various issues and reach agreements between the Member States before the ministers start doing battle. It is also the task of COREPER to decide on the agenda for the council meetings. Almost as important as the COREPER are the 'Economic and Financial Committee, the Employment Committee, the Article 133 Committee, the Political and Security Committee, the Article 36 Committee and the Social Protection Committee – all established by the EU Treaties. In addition to this, there is the Special Committee on Agriculture that was established by a decision of the Agriculture Council of the Member States 1960, i.e. by an intergovernmental decision, to prepare the issues for the Agriculture Council. Furthermore we find committees established by a

council act: the Military Committee (EUMC), the Committee for Civilian Aspects of Crisis Management, the Economic Policy Committee, the Financial Services Committee and the Security Committee.<sup>14</sup>

### 3.4.2 COREPER

In other words, special committees have been set up in some areas but generally speaking the formal responsibility for preparing the Council issues rests with the COREPER I and II. It is worth pointing out that in principle all issues to be decided by or discussed in a Council meeting, including those initially handled by special committees, have to go through COREPER, since COREPER sets the agenda for the Council meetings. However, in most cases when a special committee has done the preparatory work, the deliberation in COREPER is purely for formal reasons. Therefore, in some areas we can talk about a four level system – Council of Ministers, COREPER, special committees and attaché meetings/working groups – but a three level system is more commonly being applied.

COREPER I and II and the special committees consist of the heads of the permanent representations or their deputies, and the members of the other committees are often counsellors or attachés in the permanent representations or, as in the case of the Special Committee on Agriculture (SCA), high civil servants from the agriculture ministries of the Member States.

More or less on the same level as special committees are groups like the ‘Antici Group’, the ‘Mertens Group’ and ‘Friends of the Presidency Group’, all officially referred to as groups closely associated with COREPER. The main function of the Antici and the Mertens groups is to prepare the agenda for the COREPER meetings and the ‘Friends of the Presidency’ is a special group, not used on a regular basis, which can be activated by the Presidency in order to deal with a complicated issue or to solve a specific conflict. Furthermore, we find that the Counsellors’/Attachés’ meetings are more informal than the other ones. Finally, below this level, a large number of so called working parties can be found, each subject area having anything from a very small to a large number of working parties, which in turn sometimes have sub-committees or their own

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<sup>14</sup> Council of the European Union: List of Council preparatory bodies. 7003/03/.

expert groups. COREPER, together with the Presidency, decides that a committee or a working party shall be created.

### **3.4.3 Attaché meetings and working parties**

The basic principle is that work with an issue starts in the working group and problems which cannot be solved by a working group or an attaché meeting are handed over to COREPER, where the matter is decided/transferred to the relevant Council for finalising and solving the last outstanding issues.<sup>15</sup>

There is an interesting difference between the attaché meetings and the working parties. Generally speaking, attaché meetings are more informal than the meetings of working parties. In an attaché meeting only counsellors or attachés participate, i.e. only persons working at the permanent representation of each Member State, the number of participants is limited and no interpretation takes place. There are counsellors or attachés covering almost every policy area but attaché meetings do not cover all policy areas – even if they are quite frequent in some areas and of enormous importance. When things go wrong or there is a conflict the issue can be dealt with in an attaché group – in some areas the practice is to let the attaché groups handle all matters of political importance and to leave the technical issues to the working parties. Therefore, the attaché groups are clearly a level between the working parties and COREPER in some areas while they are of little or no importance in other areas. There are also differences between the working parties as to what extent counsellors and attachés participate in the meetings.

Normally, a working party meeting takes place in one of the special rooms provided with equipment for interpretation. Often at least one civil servant from the ministry responsible for the matter in every Member State (several civil servants can participate if many ministries or other administrative authorities are affected) travels to Brussels to participate in the meeting. He or she has often been involved in the discussions at home, sometimes he/she has been holding the pen when the government's position was decided and participated in formulating the instructions to be followed during the negotiations in Brussels. The attachés or the counsellors participate regularly in group meetings in some areas, in others they join only if the issue looks ready to be, or needs to be lifted to

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<sup>15</sup> Sherrington 2000, Ch. 2.

a higher level. In areas where the attaché meetings play an important role as policy-makers, transferring the matter to attachés means ‘cutting the links with the capitals’, as one civil servant put it. This means that when attachés meet no civil servants from the ministries are present – ministerial civil servants are often believed to have a stronger commitment to their government’s instructions, consequently being less flexible and less prepared to compromise than the counsellors and attachés who live in Brussels and who meet frequently in order to solve matters of common concern.

#### **3.4.4 Why attachés meet**

However, conflict solving and policy-making is not the only reason why the attachés may be called in – convenience also plays an important role. It is much easier and quicker to arrange a meeting with the attachés or the counsellors than to assemble civil servants from the ministries in the Member States, and there is often a certain urgency in matters dealt with by the Council. The shortage of suitable meeting rooms is another factor limiting the usefulness of working parties, since only a few rooms are fitted for interpretation. In fact, there is always quite a bit of haggling between representatives from different policy areas over the use of available rooms.

Another matter of some importance is who is going to be elected spokesperson for each Member State if more than one civil servant is present at a working party meeting and here the practice differs from one Member State to another. In some Member States it will be the civil servant from the ministry, in other Member States it is always the attaché or the counsellor and in yet other countries it varies from one issue to another.

### 3.4.5 The shape and number of working parties

All of the working parties that are set up by COREPER/Presidency belong to different areas.

**Table 3.1. The number of working parties in different areas, in 2000 and 2001**

Area	2000	2001
General Affairs (Horizontal Issues)	16	14
General Affairs (External Relations)	41	40
Development	3	3
Budget	3	3
ECOFIN	8	9
Justice and Home Affairs	26	26
Agriculture	37	37
Fisheries	3	3
Industry	4	4
Internal Market	13	13
Telecommunications	2	2
Information Society	1	1
Energy	2	2
Research	3	3
Employment and Social Policy	2	2
Transport	4	4
Environment	5	2
Health and Consumer Affairs	2	2
Education, Culture and Youth	4	4
<i>Total</i>	<i>179</i>	<i>174</i>

*Source:* Own estimates based on Council documents: List of Council preparatory bodies 2000 and 2001. No. 10279/1/01, 9872/00.

In 2000 and 2001, as shown in Table 3.1, the number of active working parties was a staggering 179 and 174 respectively. In the area of agriculture for example the group ‘Codex Alimentarius Working Party’ officially takes on as many as 21 different shapes depending on the issues at stake. What we find, in other words, is a heavily specialised sub-structure of groups with a varying degree of formality. Three areas stand out in particular: External relations, Agriculture, Justice and Home Affairs followed by Horizontal Issues and Internal Market. In the case of External Relations and Justice and Home Affairs the numbers can perhaps be explained by

the fact that these areas (belonging to the second and the third pillar) formally speaking are outside the EC Treaty. Consequently, the preparatory work leading up to Council meetings rests with the Council to a much greater extent. However, the same explanation cannot be applied to Agriculture and Internal Market.

In almost every area we find unique constructions. In the fisheries policy area for example we have three working parties – ‘Directors-General of Fisheries Department’, ‘Working Party on Internal Fisheries Policy’ and ‘Working Party on External Fisheries Policy’. ‘Directors-General of Fisheries Department’ meet about twice every year, once during every Presidency and the Member State holding the Presidency decides what is going to be on the agenda. The topics may, in other words, differ sharply from one year to another. What makes this group particularly interesting is that it exists within the framework of the Council. It is quite common for directors-general to have regular meetings in areas where there are European implications to consider. However, these meetings, at least when they concern first pillar areas, are normally handled by the Commission, not the Council.

#### **3.4.6 Participants and chairing**

A committee or a working party in the Council is always chaired by someone from the state holding the Presidency. It is generally believed that COREPER, and groups/committees on the corresponding level, handle more general issues and politically sensitive questions which have not been solved at lower levels.

Thus, the Council is an arena specialised in negotiations where minor and more technical aspects of a problem are taken to have been sorted out and solved by lower levels predominately by the working parties and the attaché groups, the more problematic issues thus being handled by the COREPER, special committees and in the end by the Council meetings.

The Council’s own civil servants participate in the work of each and every committee and working party helping the Presidency to formulate compromises and agreements. However, it is important to point out that normally the civil servants in the Council are not the foremost experts on the topics being treated, even if many of them become very knowledgeable and influential with time. The knowledge and expertise mainly resides with the Commission and the Member States. In the Council committees and working parties

the discussions are often based on the proposals presented by the Commission, and the Commission has a representative at almost all the Council committees and working parties meetings – but not so the Parliament.

### **3.4.7 The standing committees of the Parliament**

To a certain extent the standing committees of the Parliament have the traditional functions of standing parliamentary committees and issues are allocated to them in a way we find in most democracies, i.e. each committee is specialised to deal with certain topics. However, they vary greatly in size, some having more than sixty members while others just have around twenty members, and their working methods are not always standardised. After the election in 1999 seventeen standing committees were set up (the Parliament can also set up ad hoc committees for special issues). However, it is worth pointing out that the European Parliament, in contrast to the US Congress, does not have any significant number of sub-committees linked to its standing committees – in that way avoiding conflicts over power and prestige between the committee and its sub-committees that we sometimes see in the US Congress. Instead the Parliament sometimes sets up working parties, which are easier to establish and generally have no official status<sup>16</sup>

The Parliament can also set up committees of inquiry and temporary committees.

The influence and function of the Parliament and its standing committees varies somewhat depending on what issues are being treated and which decision-making procedure is applicable.

In the Parliament, in contrast to the Council, the members are not primarily organised along the lines of Member States. Instead the MEPs belong to different political parties – two political parties are much bigger than the others, the Christian Democrats/Conservative group and the Socialists. The composition of the “blocks”, i.e. the two large and dominating party groups in the Parliament, also play an important role in shaping the work of the parliamentary committees.

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<sup>16</sup> Corbet et al. 2000, p. 124-125.

### 3.4.8 How standing committees work

The chairperson, the different party group co-ordinators and especially the rapporteur play important roles in shaping the opinions of the standing committees. Whenever a standing committee is asked to formulate an opinion one of its member is nominated to be the rapporteur (or a draftsman if it's an opinion just going to another committee), i.e. to come up with a proposal expressing the opinion of the committee. In many cases the opposing political parties may set up shadow rapporteurs to complement and to monitor the work of the rapporteur. The party group co-ordinator is the party's spokesperson and a kind of 'watchdog' for his or her party in the committee, ensuring that the members of a political group are adopting a cohesive position.<sup>17</sup>

### 3.4.9 Scrutinizing comitology committees

Thus, Parliament has the right and obligation to scrutinize all parts and aspects of the policy process and the EU institutions involved in it – and in recent years, after years of discussions and criticism, the special means to scrutinize the activity of the implementation committees (comitology committees). In 1999 a deal was made, which at least temporarily seems to have accommodated Parliament's interest.

The agreement between the Parliament and the Council prescribes the following.

To improve transparency:<sup>18</sup>

The decision of 1994 on Public Access to Commission documents shall apply to the committees.

- The Commission will adopt Standard Rules of Procedure for committees that shall be the 'basis' for the rules of procedure to be adopted by each committee

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<sup>17</sup> Neuhold 2002, p. 95-97.

<sup>18</sup> Council Decision 1999/468/EC, O.J. 184, 17.07.1999.

- The Commission shall publish in the OJ a list of all comitology committees that shall specify the basic instrument(s) under which each committee is established
- The Commission shall publish an Annual Report on the working of the committees
- All documents sent to the European Parliament shall be made public in the form of a register with references to the documents.

The Parliament's right to receive information and to express its views<sup>19</sup> :

- Parliament shall be informed regularly
- Shall receive agendas for all meetings and draft measures when decisions were taken under the co-decision procedure
- Shall receive information on the results of any voting and summary records
- Shall receive a list of authorities and organisations to have represented Member States
- Shall be informed whenever a proposal or measure is transmitted to the Council.

Under certain circumstances the Parliament has the right to request a re-examination of the draft measures, when the co-decision procedure was applied, but only when the Parliament considers that the Commission's draft measure exceeds the implementation powers provided for in the basic instrument (*ultra vires*).

In other words Parliament has the right to information and participate, although under different procedures, in the decision-making phase and the implementation phase but has no formal right to intervene in the policy development phase, other than to request the Commission to take an initiative.

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<sup>19</sup> Ibid.

### **3.5 The implementation phase**

In the third phase, the implementation, the Commission is often required – by legislation adopted by the Parliament and the Council – to request the opinion of an implementation committee (so called comitology committees) before reaching a decision on how to implement community law in a certain area. This contrasts to national governments where parliament usually delegates to government the implementation of the laws adopted by parliament, although checking afterwards that it has been done properly. The Council has yet to give the Commission the corresponding power. As far back as in 1961 the first comitology committee was set up in the area of trade/agriculture soon to be followed by several others.

In 1998, almost all the directives or regulations were decided on by the Commission assisted by a comitology committee with the exception of five cases where other means were used to invite the Member States.<sup>20</sup>

As a matter of fact, it rarely happens that the Commission is mandated to do the implementation alone, most of the time, that is carried out in conjunction with the comitology committees. Sometimes even the Council will take responsibility for the implementation by delegating implementing powers to itself.

#### **3.5.1 Comitology committees**

From the 1960s and onwards several types of comitology committees have been set up, competent to restrict, where warranted, the implementation power of the Commission. The great difference between the comitology committees is the extent to which the Commission needs the individual committee members' approval to get its draft measures or proposals accepted by the committee concerned – in some cases the committee only has advisory power while in other cases the Commission needs the majority's support. Thus, a system of comitology committees has emerged over the years, in the beginning lacking clear guidelines and principles concerning what type of committee could be set up and regarding the subject matters for which they could be used. Today, however, the guidelines are much clearer.

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<sup>20</sup> Bergström 2002, p. 168.

A comitology committee consists of representatives from the Member States – usually two civil servants from each country – and civil servants from the Commission. The committee votes on proposals made by the Commission and every Member State has the same weight of votes as in the Council. The chair is usually held by the Commission that also provides the secretariat, but the chair is not allowed to vote. Three main types of committees are operative: *advisory committees*, *management committees* and *regulatory committees*.

### 3.5.2 Types of procedures

The advisory procedure means that the Commission submits to a comitology committee a draft of the measures it wants to see implemented and the committee delivers an opinion, if necessary by vote. Then, when the Commission takes its decision on the matter in question it has to take the ‘utmost account’ of the committee’s opinion. What this means is that the Commission can go against the advice of the committee and decide on its own measures, but the Council and the Parliament have to be informed of the committee’s negative opinion.

The management procedure obliges the Commission to submit to a comitology committee a draft measure that will be accepted unless a qualified majority (62 votes or more) is against it. Consequently, the Commission can push through a measure with the help of a minority. However in the case of a negative opinion the Commission shall communicate the draft measure to the Council which can decide, during a certain time period (maximum three months), to adopt a new decision by qualified majority.

The third type of procedure, the regulatory procedure, demands that the Commission presents a draft measure to a comitology committee, where it needs a qualified majority of the committee in support (62 votes or more in favour) of the suggested measure in order to avoid a negative opinion. Should, however, the opinion be negative the Commission must submit a proposal to the Council, although it does not necessarily have to be the same measure, as opposed to the Management procedure. The Commission can in this case change its original measure before submitting it to the Council. When a negative opinion is communicated to the Council it is faced with several options. To begin with, the Council can amend the proposal unanimously or oppose it with a qualified

majority, in which case the Commission, after re-examination of the proposal, can submit the same proposal again to the Council, submit an amended proposal or present a draft for a new legislative act.

Both under the regulatory and the management procedure the Council can adopt the measure presented by the Commission or fail to act within the time limit, which means that the measure will be adopted and implemented by the Commission.

There is also a fourth type of procedure – *the safeguards procedure*. When this type of procedure is being used, mostly in the area of trade (see Table 3.2 below), no committee is appointed but the Commission must notify and in some cases consult with the Member States before the measures can be accepted. If any Member State so demands the measure will be referred to the Council where a new decision may be taken or revoked. In the case of the Council taking no decision within the time limit to be determined the Commission's draft measures are revoked.<sup>21</sup>

### 3.5.3 The comitology decision of 1999

The latest comitology decision of 1999 also stipulated that the different procedures should be applied along a few general principles, contrary to how it used to be. Thus 'the management procedure should be reserved to management measures such as those relating to the application of the common agriculture and common fisheries policy or to the implementation of programmes with substantial budgetary implications (Article 2(a)). The regulatory procedure is prescribed in the case of measures of general scope designed to apply essential provisions of basic instruments, including measures concerning the protection of the health or safety of humans, animals or plants and in updating the 'technical' elements of a basic instrument (Article 2(b)). The advisory procedure is applied in any case in which it is considered to be the most appropriate.'<sup>22</sup>

In short, the management procedure is mostly to be applied when the issue is economics and the budget while the regulatory procedure should be used for drafting or applying implementation legislation and, somewhat surprisingly, no specific guidelines seem to have been established for advisory procedures.

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<sup>21</sup> Nugent 1999, p. 132.

<sup>22</sup> Report from the Commission (COM (2001) 783, p. 5.

It is also worth pointing out, because it sometimes causes a bit of confusion, that a comitology committee normally handles more than one procedure and in some cases the procedures can be of different types.

#### **3.5.4 Number and meetings**

Comitology committees and their meetings can be divided under different DGs.

**Table 3.2** Number of comitology committees, broken down according to procedure and meetings (total numbers)

DG	I	II	III	IV	Mixed	Total	Meetings	Days
TEN	-	-	2	-	-	2	8	7
ENTR	8	4	17	-	3	32	54	64
EMPL	1	2	4	-	1	8	14	17
AGRI	-	23	3	-	4	30	367	258,5
ENER	1	1	2	-	-	4	10	10,5
TRANS	4	-	15	1	3	23	27	29
ENV	2	4	34	-	1	41	52	65,5
RTD	-	6	-	-	-	6	32	32
INFSO	1	1	5	-	3	10	30	30,5
FISH	-	2	-	-	1	3	10	9
MARKT	1	3	5	-	1	10	24	30
REGIO	-	1	-	-	1	2	16	24
TAXUD	1	2	4	-	2	9	110	147,5
EAC	-	-	-	-	6*	6	23	32
SANCO	4	-	7	-	11	22	122	178,5
JAI	-	-	1	-	1	2	7	5,5
RELEX	1	2	1	-	3	7	44	35,5
TRADE	1	3	-	4	3	11	28	15,5
DEV	-	2	2	-	1	5	19	26,5
ELARG	-	1	-	1	-	2	7	7,5
ECHO	-	-	-	-	1	1	7	7
ESTAT	-	4	-	-	2	6	15	22
BUDG	1	-	-	-	-	1	5	5
OLAF	-	-	1	-	-	1	1	2
<i>TOTAL</i>	<i>26</i>	<i>55</i>	<i>109</i>	<i>6</i>	<i>48</i>	<i>244</i>	<i>1,032</i>	<i>1,061</i>

\* All committees of mixed type (advisory/management).

*Source:* Derived from the Commission's report COM (2001) 783.<sup>23</sup> I=Advisory, II=Management, III=Regulatory, IV=Safeguard procedure Mixed=Committees operating under several procedures For explanations of the different abbreviation of DGs and Services see List of Abbreviations.

<sup>23</sup> Most of the committees in the table 3.2 belong to the old categories which means that categories II and III also include the two variations, a and b, following the old comitology directive of 1987, as well as new management or regulatory committees according to the directive of 1999.

As shown in Table 3.2 the number of committees each DG is linked to varies enormously. A few have a great number of committees like Environment, Enterprise and Agriculture. Then on the other hand, we have DGs Humanitarian Aid, Budget and Olaf – with only one committee each. Five DGs, Enterprise, Agriculture, Environment, Transport and Health and Consumer protection, are responsible for 61% of all committees. However, not all of these committees are involved in implementing legislation, many of them deal primarily with taking decisions on individual cases.<sup>24</sup>

Interestingly enough, the most common type of comitology committee is the regulatory – no less than 45% of all committees belong to this type. Regulatory committees are supposedly – in theory at least – the most effective way of restricting, if called for, the Commission's room for manoeuvre. Advisory committees are not common with only about 11% of all committees. Management committees make up the rest with 23%. The safeguard procedure, which is a very special case of comitology procedure, had only been used in six cases (2%), four of them linked to DG Trade. In 48 cases (20%) we find mixed committees, i.e. committees operating under several procedures.

Most of these 'mixed' committees handle advisory and management procedures (40%), and management and regulatory procedures (28%) according to available statistics from 2000.

DG Enterprise makes up for a large share (31%) of all the advisory committees, Agriculture has 42% of the management committees, and 31% of the regulatory committees belong to DG Environment. A substantial part (23%) of committees operating under several procedures belong to DG Health and Consumer Protection.

When we take a look at the number of meetings taking place and the number of days spent on meetings, a somewhat different picture emerges compared to when we looked at the number of committees linked to each DG. Hardly surprisingly, Environment is not the dominating DG, instead Agriculture takes the lead, with about three times as many meetings as any other DG, followed by Health and Consumer Protection and Taxation and Customs Union. In fact, out of the 1,032 comitology committee meetings during the period in question these three DGs made up for 58%.

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<sup>24</sup> An investigation of the directives and regulations 1998 showed that only 63 (26%) out of 243 comitology committees were involved in making secondary legislation (see Bergström, 2002, p. 169.)

Committees belonging to DG Environment only had 52 meetings, a remarkably low figure considering its number of committees.

Thus, what we have seen so far in giving a background to the EU policy process, is that there are a number of committees and groups active in the decision-making and implementation phase and that the EU institutions seem to have their own system of committees and groups. However, not much has been said so far about the number of Commission expert groups, which is after all the main subject of this study – but in order to give such an estimate one first has to find a working definition for an expert group.



## 4 Number and Types of Expert Groups

### 4.1 The expert groups of the Commission

Defining an expert group and clarifying what distinguishes it from other groups and committees is far from easy (for a fuller discussion on this topic, see Appendix 1) although a variety of techniques can be used. However, one approach is to look at what expert groups are supposed to do.

According to the semi-official definition the expert groups are expected to be – expert groups, i.e. the members are not there to represent national interests. On the other hand we often find that the “experts” in question are in fact officials sent out from ministries and government agencies of the Member States. The Commission in fact expects to be able to give a national view on possible obstacles to new or amended community legislation.<sup>25</sup> Sometimes this creates paradoxical situations and potentially conflicting roles for anyone participating in the work of expert groups, a scenario which is very well reflected in the paper from the Swedish Agency for Public Management: “The Swedish model of administration in the European Union”. This paper states that “When a Swedish administrative authority is represented by an expert in an expert group, he does not represent the Swedish government and consequently the ministry shall not, as a basic principle, give instructions.” The possibility of issuing instructions on a case-by-case basis is mentioned, however, in Circulation Paper I sent out by the EU Unit of co-ordination in the Foreign Office. Instructions shall be given when the expert is supposed to be

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<sup>25</sup> Cini 1996, p. 148-49.

mandated by the government. Otherwise issues raised in the expert groups will be dealt with by the government or by means of a dialogue between the ministry/ministries concerned and the expert.<sup>26</sup>

However, the expert groups are not necessarily centred around national officials, sometimes the members are experts from interest groups, particularly when the expert group is dealing with agricultural issues.<sup>27</sup> We also find groups with a mix of representatives from the scientific world, from the private sector and from authorities as well as regional and local representatives. A fact also to bear in mind is that an expert group may not have been established by the Commission but by a Council decision. In such case the Commission will usually play less of a leading role, and the chair is usually elected from among the committee members. Groups which are more or less mandatory for the Commission to set up on the basis of the EU Treaty or other directives and which it cannot dismiss on its own initiative are usually called committees. The expression expert groups, on the other hand, is normally used to describe less official entities. But the terminology is far from consistent. Neill Nugent, in his study of the European Commission, prefers to make a distinction between what he calls advisory committees, which are further divided into two sub-groups – expert committees and consultative committees. According to him the difference between the two types is:

*‘Expert committees consist of national officials and experts. Although nominated by national governments the members are not normally viewed as official governmental spokesmen so it is usually possible for the committees to conduct their affairs on an informal basis. Many of these committees are well established, meet on a fairly regular basis, and have a more or less fixed membership; others are ad hoc – often set up to discuss a draft of a Commission legislative proposal – and can hardly be even described as committees in that they may only ever meet once or twice. As for their interests and concerns, some of the committees are broad and wide-ranging.*

*Consultative committees are composed of representatives of sectional interests and are organised and funded by the Commission without reference to*

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<sup>26</sup> Statskontoret 2000, p. 35.

<sup>27</sup> Nugent 1994, p. 102.

*the national governments. Members are normally appointed by the Commission from nominations made by representative EU-level organisations.*<sup>28</sup>

Both from the report from the Swedish Agency for Public Management and Nugent's definition of the function of expert groups/committees it can be deduced that they are closely linked to the Commission's role as initiator of legislation.

It is also worth pointing out that the 'name' of a committee rarely reflects its task or function and sub-groups of comitology committees and working parties in the Council are also often called expert groups or committees.

In this study I have applied a wider definition which is more or less identical to the one used by the Commission itself, namely: expert groups are either structures that the Commission sets up or dismantles by itself without needing anyone else's consent or are listed by the Commission as expert groups in their own statistics or are formally set up by the Council but are regarded as an expert committee/group by the Commission. Bodies classified by Nugent as consultative committees and other bodies officially called committees are here regarded as expert groups, a definition that takes account of the fact that expert groups can be used in stages of the decision-making process other than just the policy development phase.

## **4.2 Number of expert groups and their meetings – an overview**

One way of shedding some light on the number of expert groups and how they can be classified is to use the Commission's own statistics.

For a number of years and on an annual basis the General Secretariat of the Commission, in co-operation with the DGs and Services, has collected and compiled data, primarily for its internal use, regarding the number of committees and expert groups, their meetings and how many are active.

The data also includes information such as what DG or Service a committee/group is placed under, whether a group is of a permanent character or is an ad hoc group, if it has sub-groups,

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<sup>28</sup> Nugent 2001, p. 244-45.

whether it is active or passive or has been abolished and finally how many meetings it was expected to have during the period.

However, it is important to remember that the data presented here only give an indication of the number of committees and expert groups and the frequency with which they meet, not exact figures (for a further discussion on this topic see Appendix 1).

In the 1999 communication from the Commission, the following official data were given regarding the number of committees and expert groups.

**Table 4.1 The number of committees, other bodies and expert groups during the period of 1996–1999**

Year	Number of committees and other bodies	Number of permanent groups of experts	Number of temporary groups of experts	Total number of groups of experts
1996	343	386	240	626
1997	365	373	325	698
1998	385	392	376	768
1999	366	415	381	796

*Source:* Note pour les membres de la commission SEC (1999) 1149, 14 juillet 1999, Procédure écrite No E/1252/99.

The number of committees (most of them are so called comitology committees) and other bodies does not vary much, while the number of expert groups, both permanent and ad hoc, seems to increase over time. In its comment, the General Secretariat also pointed out this fact and concluded that the number of committees and expert groups remained high for 1999. This in spite of the efforts to reduce it and a warning was issued by the Commission that a careful eye on the creation of committees and groups was necessary, especially in view of the limited funds and meeting rooms available.

Furthermore it was concluded that 51 committees and 118 expert groups had ceased meeting during 1999.

However, the table presented by the Commission in 1999 only gives a general overview of the development. Therefore on the basis of the data collected by the General Secretariat in 1999/2000, which is the latest available information, I tried to give a more detailed and somewhat extended picture of how expert groups are being used. In this presentation I have excluded what has been classified as committees in the Commission's data since this part of

the report mainly focuses on the existence and meetings of expert groups.

Commission data, as mentioned above, not only makes it possible to distinguish between permanent and temporary (ad hoc) groups but also between main groups and sub-groups. As shown in Table 4. 2 there are quite a few sub-groups. (See also Appendix 4, Table A.)

**Table 4.2**      **Numbers of expert groups  
– an overview**

	<b>Numbers</b>	<b>Per cent</b>
Permanent	710	53%
Ad hoc	642	47%
<i>Sub-total</i>	<i>1.352</i>	<i>100%</i>
Regular	851	63%
Sub-group	501	37%
<i>Sub-total</i>	<i>1.352</i>	<i>100%</i>
Passive groups	193	12%
Active and passive groups	1.545	
Number of meetings	3.874	

*Source:* Own estimates from ‘Liste d’autorisation des reunions de comites et groupes d’expertes. Preparé par le Secretariat Général 2001.

In the table below a distinction has also been made between active groups, i.e. groups which are operative even if some may not have met during the relevant period and passive groups. However, it is important to remember that passive groups are not to be mistaken for groups that have been abolished.

**Table 4.3 Total number of groups and meetings per DG**

DG	Total	%	Meetings	%
RTD	165	12,2	616	16
ENTR	150	11.0	393	10
EAC	125	9.2	309	8
ENV	125	9.2	266	7
EMPL	120	8.9	354	9
INFOSO	101	7.5	235	6
ESTAF	81	6.0	177	5
SANCO	78	5.8	339	9
AGRI	57	4.2	177	5
TREN	55	4.1	172	4
REGIO	40	3.0	105	3
MARKT	39	2.9	111	3
EX DG 1A	36	2.7	77	2
TAXUD	31	2.4	110	3
DEV	22	1.6	54	1
FISH	18	1.3	45	1
ENERG	18	1.3	49	1
ECFIN	17	1.3	44	1
JAI	16	1.2	45	1
SG	15	1.1	53	1
EX DG 1B	9	0.7	10	0,3
SGIC	8	0.6	32	1
ADMIN	7	0,5	17	0,4
COMP	5	0.4	34	1
ENLARG	3	0.2	6	0,2
TRADE	3	0.2	15	0.4
JRC	2	0.1	7	0.2
SECURITÉ	2	0.1	2	0.1
SCR	2	0.1	5	0.1
ECHO	1	0.1	15	0.4
JURIDIQUE	1	0.1	8	0.2
OLAF	-	-	-	-
<b>SUM</b>	<b>1 352</b>	<b>100</b>	<b>3 874</b>	<b>100</b>

*Source:* Own estimates from 'Liste d'autorisation des reunions de comites et groupes d'expertes. Préparé par le Secretariat Général 2001. For explanations of the above abbreviations see List of Abbreviations.

It is worth pointing out that the above distinctions are not always perfectly clear. In practice we find ad hoc groups that have been in existence for quite some time and in other cases the main group – although it has an ID number – never has meetings but only the sub-groups under it. The Commission data of 1999 sometimes also indicates that a sub-group has sub-groups of its own, and although these sub-groups of sub-groups may not have an ID number their meetings are registered as ordinary meetings. Furthermore, occasionally we find groups with a name but not a registered ID-number or indications of ever having had any meetings. I have solved all these classification problems by calling any body that has been given an ID number or has registered meetings a group or a sub-group. In other words, there is a distinct possibility that I have ended up with an exaggerated number of groups but the difficult cases are really quite few and therefore the general picture should be fairly accurate.

A look at Table A in Appendix 4 tells us that in 1999/2000 the number of active permanent expert groups was 369 and 103 (28%) of these had at least one sub-group. In total there were 341 permanent sub-groups, i.e. almost equal in number to the main permanent groups. The number of ad hoc groups was 482, but only 48 (10%) of them had sub-groups, totalling 160 ad hoc sub-groups. Finally, out of 193 passive groups 112 were permanent and 81 of an ad hoc type – in the category passive groups, sub-groups are included. In the same period, 129 groups (including sub-groups) had been abolished and 128 groups had no meetings, despite the fact they were classified as active – the reason for this normally being that only the sub-groups met, not the main groups.

Thus, the number of permanent groups is smaller than that of ad hoc groups a fact that contradicts the picture given in Table 4.1, the Commission's own aggregated statistics, according to which the number of ad hoc groups is always inferior to that of the permanent groups. This might be attributed to different techniques of counting and classifying groups, but judging by these statistics, there are no big differences between the number of permanent groups and ad hoc ones over time and if sub-groups are included then there are more permanent groups than ad hoc ones, as seen in Table 4.2. On the other hand, we also find that with this method of calculating, the number of ad hoc groups increases more than the number of permanent groups decreases and because of that, the total number of groups has gone up to 851 – in short the trend in

Table 4.1 continues and the number of expert groups tends to increase over time and the Commission has certainly not overestimated its number of expert groups, on the contrary. However, it should be mentioned that Rometsch and Wessels back in the mid 1990s estimated the number of expert groups was somewhere between 700 and 1 000, also noticing the difficulties in finding the correct figures<sup>29</sup>.

The number of 'permanent' sub-groups, i.e. groups under permanent groups, is much higher than ad hoc sub-groups, not least because many permanent groups have several sub-groups. The group '*Legislation denrées alimentaires*' linked to DG Sanco (Health and Consumer Protection) has a grand total of nine sub-groups. Therefore, if sub-groups are included in the total number of groups the sum rises to the impressive figure of 1 352 groups in 1999/2000, as can be seen in Table 4.2.

Table 4.3 shows that all the DGs and Services in the Commission set up expert groups to a varying degree. Some of them, like Juridique, Sécurité, SCR, JRC, Trade, Enlargement, OLAF and ECHO have very few expert groups or none at all, while others like RTD, ENTR, EAC, ENV, EMPL and Infso can have quite a few expert groups working for them. But we also find other differences between the different departments – some for example prefer to set up ad hoc groups instead of permanent groups like external EX DG1A, EX DG1B, Research and Infso, while the opposite is true for departments EUROSTAT, Employment, Agriculture and Tren. (See Appendix 4, Table B.)

The big DGs in terms of permanent expert groups are Eurostat, Enterprise, Employment, EAC and Environment and if sub-groups are included, DG Sanco would also belong to this category. The DGs with the highest number of ad hoc expert groups are Enterprise, Environment, Research and Infso.

Six DGs, Enterprise, Employment, EAC, Environment, Research and Infso have 58% (786) of all groups, sub-groups are included (Table 4.3).

The number of meetings in expert groups during the period of 1999/2000, as seen in Table 4.2, to a certain extent gives us the expected picture. To begin with, the total number of meetings is 3 874, with an average of three meetings per group (including sub-groups) annually. The permanent groups had 1 955 meetings, with an average of 2.75, ad hoc groups 2.99, i.e. on average ad hoc

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<sup>29</sup> Rometsch and Wessels 1997, p. 226.

groups meet more often. However, it should be remembered that 128 groups held no meetings at all during the relevant period and as many as 310 (10%) only met once. (See Appendix 4, Table C.)

When looking at the overall picture of meetings DG Research has the highest frequency of meeting, 50% more than any other DGs in the Commission, averaging close to four meetings every year. High frequency for expert group meetings can also be found in Enterprise, Employment, Sanco, EAC, Environment and Infso.

Hardly surprisingly, DGs and units with the highest number of groups also register for the highest aggregated meeting frequencies but even so there are some differences. DG Sanco for example is one of the DGs with a high number of meetings although the number of expert groups attached is not particular high. DG Environment, on the other hand, is an example of the opposite, considering the number of groups linked to it one would have expected a very high number of meetings but that is not the case.

Employment has the highest number of meetings of the permanent expert groups followed by DG Sanco, Enterprise and EAC. DG Sanco is also an interesting case registering a high number of meetings with a relatively low number of permanent groups linked. (See Appendix 4, Table C.)

The picture changes somewhat when we start looking at the ad hoc groups and in this category the expert groups of DG Research are outstanding in terms of number of meetings, not surprisingly considering the large number of groups, but the average (3.8) is well above that for ad hoc groups (2.99). Infso and Enterprise also clock up a great number of meetings for ad hoc groups. (See Appendix 4, Table C.)

What we find is a great variety of different types of expert group structures. Some of the DGs have a lot of groups but typically the Services (primarily internal functions in the Commission) usually have rather few groups – an indication that expert groups are more about the substance of policy and linkages with the interest groups and Member States that constitute the environment to the Commission. Secondly, some departments seem to have a habit of setting up permanent groups while others prefer ad hoc groups. Thirdly, the sub-group structure can be quite extensive and some departments are apparently using a technique of setting up groups with broad responsibilities which consequently are divided into sub-groups, while other departments favour setting up more specialised expert groups but the number of sub-groups is kept to a minimum.

In conclusion, by using the Commission's own data the result seems obvious – the number of expert groups is much higher than the official statistics show. Another interesting fact which emerges is the high number of permanent expert groups indicating that quite a few of the so called expert groups are permanent advisory bodies to be consulted on a variety of issues, not just temporary entities populated by highly specialised experts. Furthermore, some permanent groups seem to meet hardly at all and some ad hoc groups seem to have been around for a long time (for being ad hoc, that is). The manner in which the sub-groups are listed also gives the impression that the sub-group(s) are actually sometimes the ones doing the work that needs to be done. But in order to clarify what is really hiding behind distinctions such as permanent versus ad hoc or expert groups versus sub-groups, one needs to dig deeper into the informal structure of the policy-making process.

### **4.3 DG Enterprise – number and types of expert groups**

By using the Commission's own data a staggering figure of something between 800 and 1 400 expert groups were identified, but how true is this estimate? To what extent can we rely on the statistics published by the General Secretariat of the Commission and how they are classified? In order to check out the relevance of these questions one DG of the Commission was selected for a more detailed study. The choice fell on DG Enterprise, because judging by the official statistics given in the previous chapter, it looks like a DG with many expert groups of different types, both permanent ones and ad hoc ones. Therefore it could reasonably be assumed that DG Enterprise worked closely with expert groups and that groups often played an important role in formulating new policies in different areas.<sup>30</sup>

Almost immediately we discovered the difficulties DG Enterprise has in keeping an updated overview of its expert groups and to know their present status. Not surprisingly, the information supplied by the General Secretariat (see previous chapter) did not match the reality, since that data, at the time of the interviews, was at least two years old. However, what came as a bigger surprise was that even DG Enterprise's own list, supposedly an updated version of the one from the General Secretariat, proved to be very inaccurate, as shown in the table below.

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<sup>30</sup> This chapter largely builds on data collected by Jan Murk.

**Table 4.5 Coded expert groups of DG Enterprise**

	Current status clear		Current status unknown		Total number of groups	
		(%)		(%)		(%)
Permanent groups	37	60	25	40	62	100
Ad hoc groups	39	57	29	43	68	100
<b>Total no. of groups</b>	<b>76</b>	<b>58</b>	<b>54</b>	<b>42</b>	<b>130</b>	<b>100</b>

*Source:* Jan Murk, 2002.

In fifty-four cases (42%) it proved impossible to establish the status of the expert group, a fact that does not seem to be linked to the character of the group, the information on permanent groups is as accurate/inaccurate as the one on ad hoc ones.

Furthermore, of the thirty-seven permanent groups with a known status, only nineteen (51%) were active, thirteen (35%) were not active and five (14%) had ceased to exist or had never existed at all. For the ad hoc groups the figures were: eleven (28%) active groups, seventeen (44%) not active and finally eleven (28%) which no longer existed or had never existed at all. In other words, roughly 39% of the groups with a known status were active during the period of this study – even if we have to consider the possibility that some of the groups with status unknown could be active. Nevertheless, our findings seem to indicate that the category ‘not active’ expert group is much larger than what is indicated by the General Secretariat’s list. In the interviews several reasons were given for this discrepancy, one explanation being that there was a general lack of knowledge on the part of the people in the DG who had compiled the list, because they were too far away from the units and did not know what was going on. Another possible reason was the technical construction of the budget process. A unit will not officially write off a group unless everybody is convinced the group will not be needed in the future, because otherwise a new request and motivation has to be sent to the General Secretariat to reconvene the group.

In addition to the problem with existing and non-existing groups, we also found groups that do exist but are never officially listed, sometimes because they belong to the category of sub-groups financed under the same heading, especially if the sub-group is of an ad hoc type. In other cases we find groups

functioning as expert groups, although they do not have the formal status of a Commission expert group, because they are chaired or coordinated by a representative from a Member State or by a representative from industry, and they do not necessarily meet in Brussels. Naturally, the Commission does not finance these groups or networks but although a Member State coordinates the group and sets the agenda, the agenda has to be approved by the Commission. Finally, we also found an expert group financed by the Commission although it was not on the official list but the reason for not including it on the list could not be established.

#### **4.4 DG Enterprise – different types of expert groups**

Another revelation in the early stages was that the distinction between permanent and ad hoc groups did not carry much relevance in DG Enterprise. There we found groups that had been around for quite some time although they are still called ad hoc (temporary) and others that once upon a time were set up as permanent ones but disappeared shortly thereafter. A more important distinction however, seems to be the one between expert groups working in areas where the Community has legislative power compared to those working in areas where the Community lacks legislative power – as one might have expected, only about one fifth of all listed groups in DG Enterprise belonged to the non-legislative category. In one of the interviews the differences between the two categories were described as follows: *‘An expert group is only an expert group when it is working on draft legislation, and WES (Women entrepreneurship) is more of an information network. However, the experts are financed in the same way as experts in an expert group when the Commission calls them, whenever valuable information is needed. This type of group can be found in all sectors without regulating competencies... These networks can be mixed groups including both stakeholders, i.e. interest organisations, and Member States’ representatives.’*<sup>31</sup>

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<sup>31</sup> Murk, 2002.

#### 4.4.1 Four types of groups

Four types of expert groups could be discerned in the area where the community has agenda setting power. To begin with, we have the Senior Officials groups, working with policy development, which consists of high level civil servants from the Member States. These groups work out the general framework for the entire DG or a specific policy area. Actually, the issues discussed in these groups are very much about agenda setting and determining the boundaries for the unit within which they will do their work on policy development. In DG Enterprise we also find groups corresponding to Senior Officials groups with representatives from industry giving advice to the Commission.

Secondly, so called umbrella groups were found, although the concept is not officially used. What is characteristic for this type of group is that it can be extremely important in certain areas, especially if five or six Member States have a strong interest in the field and are sending high level officials to participate, because this means that the other states will follow with representation on the same level. Typically an umbrella group will have several specialised groups (sub-groups) submitting opinions and conclusions, the umbrella group will comment on and sometimes put together its comments in a final report, which may or may not be sent to a comitology committee or the Council and the Parliament, depending on the issue at hand.

Thirdly, we have the 'regular' expert group which is busy working on a draft proposal, amending or creating new legislation to be put to the Council (the Parliament), or to a comitology committee, or even to an umbrella group. In this type of group we often find, in addition to the representatives from the Member States, representatives from industry, interest groups and even NGOs.

The fourth type of expert group that is quite common is the sub-group, or working group as they are sometimes called, with a mission to assist the main expert group. A main group can have a significant number of sub-groups, as shown earlier, and in many cases they do much of the actual deliberation and the drafting of the proposals. In most cases there is significant overlap between members in sub-groups (working parties) and members in a regular

expert group. Sub-groups are rarely listed, in contrast to expert groups, thus they do not have official status.

#### **4.4.2 The relation between different types of groups**

To summarise: the four types of groups and their relations – regular expert groups may report to an umbrella group (steering group) but the umbrella group does not normally include the members of the expert groups. Below expert group level we sometimes find sub-groups including members from the regular expert group. Umbrella groups and expert groups, in contrast to sub-groups, have more of an official standing, although – as we have seen in the previous chapter – quite a few sub-groups are listed as well. There are also differences in terms of the number of participants; a regular expert group may comprise as many as 80 participants while a sub-group usually stops at 15, and groups preparing decisions to be taken by an umbrella group seem to be larger than those preparing the draft legislation. Finally, senior officials groups, umbrella groups and expert groups; all three can set up sub-groups.

What the special study of DG Enterprise showed was that not only are the statistics regarding expert groups and their status rather shaky but the classification into permanent and ad hoc groups can also be questioned. In many cases so called expert groups are just duplicates of committees, in other cases we find groups fulfilling the same function as expert groups but not listed – because they are financed outside the EU budget.

Furthermore expert groups seem to play an important part during the policy development phase as well as in the other phases, a conclusion which leads us to the other two main questions of this study; firstly how the Commission controls the expert groups and secondly, what influence do the expert groups exert on the larger policy process. But in order to be able to answer these two questions, we need to elaborate the original ‘official’ model of how the policy process is structured and where different types of committees and groups can be pinned down in terms of influence and different phases, this time taking into account the more informal aspects of the policy-making process. In other words, we are now moving over to the part of the report that describes the more informal structures of the EU policy process.

## Part 2. The Informal Structure

### 5 The Role of Expert Groups in the Informal Policy Process

#### 5.1 An alternative model

Dividing the policy process in a political system into three or four different phases is nothing unusual, it has been done before.

However, the policy-making process rarely follows a mechanistic and rational cycle like the one described in chapter 3, instead we find different phases being linked to each other often making it difficult to see where one phase begins and where another ends. Furthermore, the decision-making process does not always begin with the defining, or the selection of a problem, the reverse situation is not uncommon where we have a solution looking for a problem, or where there is a high degree of uncertainty regarding what type of outcome to expect.<sup>32</sup> This description of a more irregular decision-making procedure is sometimes called the 'garbage can' model and can be seen as a more anarchistic approach to the decision-making procedure. Indeed, many have actually described the EU decision-making procedure as fragmented, poorly knit, badly organised, unpredictable, chaotic etc.<sup>33</sup> Although, against this interpretation of the EU machinery stands the fact of a rather impressive output in terms of numbers of decisions, directives and regulations, which one perhaps would not expect from a badly and chaotically organised institution and that many of the solutions seem to work when they are applied in practice.

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<sup>32</sup> March and Olsen, 1976.

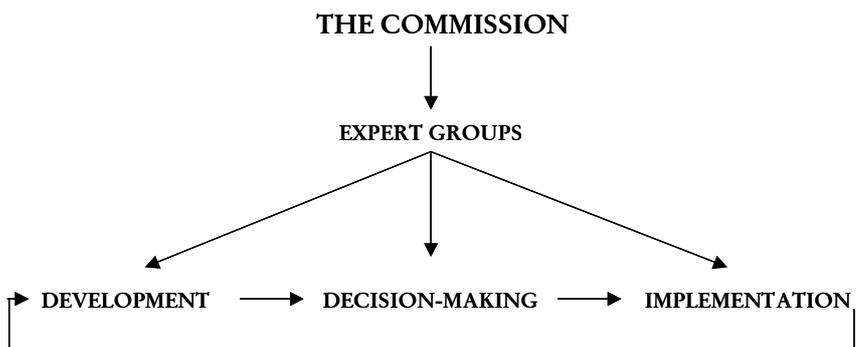
<sup>33</sup> Peters 1996, p. 69.

So far, what has been presented could be called the official or formal picture of how the EU institutions operate and are linked together in a policy-making process.

### 5.1.1 A two-step process

In this and the following chapters an alternative way of understanding how the Commission uses its prerogative to set up expert groups will be used. What is suggested, as indicated by the figure below, is a two-step process where the Commission is controlling expert groups which are then used as an instrument to influence and manage the whole policy making process. In short, what we might believe to be a chain of decision-making by looking at the formal picture – where different committees and people scrutinize a proposal made by the Commission as if it was the first time they had seen what is suggested – proves to be something else when the true nature of expert groups is revealed.

**Figure 5.1** The role of expert groups in the EU policy-making process



It is hardly a secret that the Commission has expert groups that are active in the decision-making and implementation phases or that the committees and groups ‘officially’ belonging to these phases are used by the Commission to get an input of ideas and reactions to proposals during the development phase. Neil Nugent, e.g. points out that this happens partly because the responsibilities of the Commission in the different phases overlap and because the Commission’s willingness to be given good advice can help a

proposal to glide through the different stages of the policy-making process.<sup>34</sup>

What Figure 5.1 tries to illustrate, to begin with, is that the Commission has many ways of keeping a tight control of the expert groups that are set up, which will be explained in the following chapter. Secondly, the Commission can then use expert groups to influence the policy development phase and in that way preclude much of what can be agreed on in the two phases of the policy process that follow. Thirdly, it can directly influence the decision-making and implementation phases, either by having one or more expert group linked to these arenas as well, not just to the agenda setting phase, or by overlapping membership where the groups/committees may have different names in the different phases of the policy process, but more or less the same people meet all over again. The technique in how the different phases of the decision-making process are linked (integrated) differs from one institutional arena to another depending on history and how the institutions are organised or the nature of the policy problem.

## **5.2 Control and management of expert groups by the Commission**

Anyone in charge of setting up committees or groups will have unlimited possibilities to use this to his /her advantage in order to influence the outcome of the committee or group by deciding on who is going to chair the committee or group, its members, who is going to be the secretariat and so on.

One important way of influencing is by deciding who is going to sit on the committee, especially the chairperson and the secretariat. However, it is important to point out that it is not always an advantage to appoint one of your own as chairperson. A chairperson from one of the DGs can be interpreted as the outcome already being anticipated by the Commission, or it may be an indication of just how important the Commission finds the subject. On the other hand it is easier for the Commission to distance itself from the outcome if it has not held the chair. What is more, appointing someone from the outside signals a willingness to pursue an independent investigation.

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<sup>34</sup> Nugent 2001, p. 244.

### 5.2.1 Selecting the chairperson and the secretary

The Commission cannot put civil servants to chair all the expert groups, especially not in the more specialized areas where they need to bring in external expertise. In many cases it is regarded as an advantage to be a specialist if one is to chair an expert group since they are often set up to deal with a very technical subject. However, being a specialist can also sometimes be a disadvantage since it can mean not being trained to keep the necessary overview over the topics to be discussed. Therefore, although most of the time the chairperson is from the Commission it is sometimes more convenient to recruit an outsider. Not only when the Commission lacks someone with enough knowledge in a certain field is an outsider needed but it can also be a question of possible strategic advantages. Two examples were given in the DG Enterprise study, one in the group 'Road Traffic Noise' and the other 'Motor Vehicles Emissions'. In both groups the chairman is or has been from a Member State, not the Commission. The reason for this is that the work in these two groups was linked to what went on in two corresponding UN groups in the same field and it so happened that these UN groups were already chaired by someone from a Member State in the European Union. Therefore it seemed logical to have the same person chairing both the EU-group and the UN-group.

The main responsibility of the chairperson, according to the DG Enterprise study, seems to be to conclude the broadest possible agreement in as few meetings as possible. However, a lot of the discussions are carried out on an informal and person to person basis between the chairperson and the participants. The instrument used most when there is disagreement in an expert group is the setting up of a working group, where the participants with the strongest interest in the subject can work out a compromise that is then discussed in the larger group.

Normally, the Commission will not only provide the chairperson but also the secretariat of expert groups. It is a well known fact that the one holding the pen has far more influence than most other members of a committee, even taking into account that the secretary does not have the right to vote. It is probably safer to say that although the Commission may sometimes decide to let an 'outsider' chair an expert group it will rarely leave the secretariat functions to a person not employed by or closely linked to the Commission.

### 5.2.2 Selection of members

Few rules guide how the Commission may set up expert groups. There are budgetary regulations that have to be observed, stating that the Commission will only finance travelling expenses and accommodation for one expert (exceptionally two) from each Member State. The representatives from industry were not, according to this survey, financed by the Commission. However, there are some rules of thumb applied by the Commission when recruiting members to their expert groups. Even if the Commission can call for the setting up of an expert group whenever it finds it necessary and appoint whoever it wants to chair, it has less control over the selection of the other participants. When civil servants or experts from the Member States are going to participate, the Commission will almost always turn to the permanent representations with a request for names and often, at the same time, to the responsible ministry in the Member States as well. When it comes to recruiting representatives from NGOs, industry or other interest groups, the Commission usually follows the internal unwritten guidelines stating that all sub-sector industries are invited if they are represented in a Europe wide organisation that is a solid federation. It has happened that interest groups wanting to become part of an expert group have been denied a seat due to a lack of sufficient European coverage.

Expert groups in DG Enterprise can consist of representatives from the Member States, industry, NGOs, the EEA countries, the candidate countries and notified bodies. Out of the twelve expert groups studied, industry was not directly present in two, the other ten were all so called tripartite groups, including the Commission, the Member States and industry. In most groups EEA and candidate country-observers were present, and in half of the groups NGOs.

The Commission's advantage – derived from chairing the expert groups – can be limited depending on status and recruitment of the other members and especially if many of the members of the group have more experience of this kind of work than the chair. All chairpersons in the DG Enterprise study described the expert groups as characterised by a high degree of continuity in terms of participants and a high degree of specialist knowledge. In some cases a group that is active at the moment had had a predecessor comprising more or less the same people. Interestingly enough, the experts often participate in the work of a group for much longer

periods than the (Commission's) chairperson, and many of the experts know each other quite well and communicate freely and frequently on the phone or via the internet between meetings.

### **5.2.3 Inside or outside the *aquis***

Obviously, the Commission can influence the work and the final outcome considerably by outlining the committee's work – broadly or in detail. In some cases the committee is given a very clear instruction as to what the limitations are and in other cases it is left a more open affair. An important distinction can be made between groups working in areas where the Commission is competent to draft legislation and those working in areas outside the first pillar. In the latter case, the expert groups have more open discussions and it is more of a true exchange of views between the participants than a procedure for formulating draft legislation to be forwarded to the Council and the Parliament.

Out of the twelve groups studied in DG Enterprise two did not work in the legislative area at all (as many as two thirds of all the listed expert groups in DG Enterprise are estimated to be working outside the *aquis* area). Out of the other ten, two were working on the implementation of existing directives, seven on drafting new legislation and evaluating (updating) existing legislation, and one group was doing both revising and implementation.

What became clear from the interviews with the two chairpersons responsible for expert groups drafting the implementation of new directives and regulations, was that it was the sole responsibility of the Commission to draft the proposal. The expert groups were there to provide information and work out technical details, although it might happen that members of the expert group had some good ideas that could be accepted by the Commission.

### **5.2.4 Policy development**

A somewhat different picture emerged regarding the policy process when chairpersons from the seven groups working on drafting new legislation and evaluating (updating) existing legislation (policy development) were interviewed. According to the Commission representatives in these groups, the deliberations usually started with a 'brainstorming phase', 'a very open exchange of views',

followed by a phase where the focusing was on solving specific problems in the drafting of a proposal. In the second phase it was common to find coalition building strategies put into practice as well as disagreement among the participants. However, if the issues were about amending existing regulations not much 'brainstorming' took place before the more substantial and detailed discussions were launched. The expert groups usually aim for a unanimous recommendation, but the views expressed by an expert group have no legal basis what so ever, and it is a well known fact that Member States may change their positions later in the policy process. Thus, limited time and energy is spent on hammering out a compromise between the participants on politically sensitive issues in this first stage of the policy process – because the positions are likely to change anyway later on. Consequently none of the respondents from the policy-making groups had ever experienced taking a vote – decisions were always taken by unanimity and in the rare cases when one or several experts disagree, this is mentioned in an accompanying note to the final report.

### **5.2.5 Complex structures**

What may look to be just an expert group can in reality be a very complex structure with a three level hierarchy – at the top we find a steering group or a high level group under which one or several expert groups operate, and they in turn may have several sub-groups or working groups doing much of the actual work – each with its own chair person and secretariat.

Most expert groups keep minutes of their meetings but only the final report is published; about half of the groups also published their results on the Internet.

Finally, the Commission can always close down a committee that is thought to be on the wrong track or the Commission may choose not to act on the results of the deliberations. A special technique frequently used is to put a committee on the shelf indefinitely, officially calling it inactive (passive) but with the possibility of taking it back down off the shelf (sometimes with a new composition), should the times change and turn out to be more favourably inclined to the original ideas.

In expert groups set up to propose new legislation the discussions are often free and open in the beginning, but from the

Commission's point of view experts sent out by Member State's governments are expected to advocate the government's opinion to some extent also, or at least the opinion it is likely to have, on the subject matter – they are not regarded as independent experts only. From the point of view of DG Enterprise experts and civil servants from the Member States are actually seen as representatives or semi-representatives; only one respondent stated explicitly that experts are not supposed to represent their home country. In other words, the Commission does not want to discuss technical details only or 'brainstorm' optimal solutions for Europe, it also wants to know what the political opinion is on these topics in the Member States and what degree of resistance proposals are likely to meet, if any.

In conclusion, several options are open to the Commission regarding how to control and manage the expert groups and these options are certainly put to use - as the case study of DG Enterprise has shown. However, there are naturally limitations to this power, limitations depending on what the legal framework is for the issue in question, the prestige and the knowledge of the members of the group and, last but not least, what the Commission hopes will happen later on in the policy-making process.

In at least ten of the twelve groups, in the DG Enterprise study, there was a high degree of overlapping in terms of participants, and in some cases even a perfect match between those in the expert group and the Member State's representatives in the Council working parties or a comitology committee. In the two cases where a perfect match, in terms of personal overlap, was found between the expert group and a comitology committee this had in one case led to the committee not meeting any more and in the other case the meetings were kept very formal and short because the real discussions were carried out in the expert group.

Thus, there is a substantial degree of overlap between the members of an expert group and the members of a committee or a Council working party – a conclusion that leads us over to how expert groups are used by the Commission to link itself to the different policy making phases and how, as a consequence, the boarder line between the three phases becomes blurred.

## 6 Expert Groups and Policy Development

### 6.1 Agenda-setting, policy initiation and policy-making

Policy initiation and agenda setting are often treated as practically synonymous concepts but they are not necessarily not be. Usually the agenda setting process is regarded as an extremely important part of the decision-making process – perhaps the most important of them all – since deciding what problems to solve and defining the problem partly determines the final outcome.<sup>35</sup> The Bachrach and Baratz thesis in ‘Two faces of power’, is often used in the analysis of agenda setting. According to Bachrach and Baratz, power is not just about, as in Robert Dahl’s old definition, where person A has power over person B if A can get B to do something that he otherwise would not have done – it is also about who decides what issues to decide on and what the rules are.<sup>36</sup>

One way of interpreting the Bachrach and Baratz thesis is that there is one type of power struggle taking place on the centre stage while there is another one going on back stage. In the glaring spotlight of the stage, where different groups and individuals all try to force or persuade the others to accept their ideas and their solutions, much of the struggle is taking place before the very eyes of the media and the public. But what is going on behind the scene is, for obvious reason, hidden from the eyes of the public. When you look at it this way the agenda setting theory definitely has a manipulative flavour with a hint of conspiracy.

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<sup>35</sup> McCormick 1999, p. 194-197.

<sup>36</sup> The concept of power also has a third face, namely to shape people’s preferences (indoctrination) as pointed out by Lukes. (Ham/Hill 1984 p. 67)

### 6.1.1 Different types of agendas

Nevertheless, agenda-setting theory also stresses the element of open political debate. Agenda setting is quite often seen as what the current topics are in the media. A distinction is sometimes made between systemic agendas, which represent the sum total of all the issues in a political system which have been accepted as legitimate items for concern, and more specific institutional (formal) agendas.<sup>37</sup> Not all items on the systemic agenda will, in other words, make it to the institutional agendas and trigger a policy-making process, and not every governmental decision-making process starts by a public debate.

However, agenda-setting is not only about starting a public debate it is also about how the debate is structured, i.e. what is the problem and what are the possible solutions. It is very important for a political actor not only to be able to put an item on the political agenda but also to keep it there and to control the development making sure the definition works in his or her favour – the agenda setting phase is perhaps the most creative of all stages in the EU process.<sup>38</sup> In many cases it is better not to put a topic on the agenda at all, compared to having an issue defined by people with different interests.

### 6.1.2 Removing issues from the agenda

Struggling over agendas is not, however, just about preventing unwanted topics from emerging on the public arena or defining the issues in advance in a specific way, it is also about removing things from the arena. In a democratic society, it is a well known fact that a government only has limited control over what topics will appear on the agenda. In an open society many things can and will go wrong, anything from an earthquake to the miscarriage of justice will call for the government to react. Some of the unforeseen events taking place will work to the government's advantage, but many incidents are unwanted. This is the reason why the government needs strategies preventing some issues on the agenda from triggering decision-making processes, just like it needs

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<sup>37</sup> Peters 1996, p. 63, Hinnfors 1995, p. 66.

<sup>38</sup> Cini 1996, p. 144.

strategies to control a decision-making process once it is up and running. Setting up committees of inquiry is one example of a technique where government can bury an unwanted and politically sensitive issue, or just make some issues cool down for a while. In other words, not all the government initiatives during the agenda setting phase are intended to ‘rig’ or start a decision-making process, sometimes this is done to take an issue which is potentially difficult to handle off the agenda and deal with it out of everyone’s sight.<sup>39</sup>

### 6.1.3 Policy initiating and the Commission

Consequently, the preparations going into an issue before it reaches the more official and public stages of the policy-making process are important and this is perhaps where the Commission really comes into its own. Rometsch and Wessels concluded in 1997 that:

*‘The Commission controls the game in this phase and its basic strategy is one of ‘engrenage’ (Coombes 1970, p. 86), i.e. to include relevant national civil servants and representatives of lobby groups early enough in its work to get additional information and insights/ and also to establish a solid network of influence (Pouillet and Deprez 1977). From the point of view of national civil servants, there is an expectation that their input will be taken seriously by the Commission and that its later proposals will not include unpleasant surprises for them. Thus ‘engrenage’ is a two-way process for establishing a set of mutually rewarding interactions.<sup>40</sup>*

Fouilleux et al. even concluded in their study of the working parties in the Council that sometimes the discussions during the preparation phases, as in the case of the Working Time directive, really are a kind of negotiations between the social partners, leaving little room for any changes in the proposal put on the Council’s table.<sup>41</sup> What happens up-stream in the policy-making flow naturally affects what happens down-stream but in different ways depending on what has been regulated.

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<sup>39</sup> Hogwood, p. 46.

<sup>40</sup> Rometsch and Wessels 1997, p. 226.

<sup>41</sup> Fouilleux 2002, p. 69.

On the other hand we also find researchers questioning whether the agenda setting power of the Commission is not overstated, arguing that in reality this power is not unique but shared by the Parliament and the Member State holding the Presidency. Secondly, that there have been cases when the Commission could have used its agenda setting power but was reluctant to do so and, thirdly, that the agenda setting power varies a great deal depending on what type of decision-making procedure is being used – more power to the Commission when the consultation procedure is being used and less when it is co-decision.<sup>42</sup>

## **6.2 European agenda setting and the expert groups of the Commission**

Claims have been made to the effect that agenda-setting is much easier in a presidential systems than in parliamentary systems. In presidential system, or in a power sharing system, more actors are promoting their interests and there are more arenas for exposing the issues. The political scientist Guy Peters in this context, called the EU ‘a paradise of agenda setting’<sup>43</sup>. In a way the EU can be seen as the linking of fifteen national agendas where the national governments’ control over what is put on the agenda is much more limited than normally.<sup>44</sup> An interest group which has not been successful in projecting its schemes on the national arena can try its luck somewhere else, another country or the European scene. On the other hand, Peters also contrasts this openness and flexibility in the agenda setting process with that of the implementation process in the EU, which, according to him, is more hierarchical and rigid than anywhere else in national government.<sup>45</sup> A tension, thus, seems to exist here where the agenda setting phase tends to generate decision that are difficult to implement.

The Commission’s expert groups are only partly linked to the agenda setting of the EU, since the decision to set up an expert group is a clear sign that part of the pre-cooking of the decision-making process is over and the issues are now out in the open or at least on the EU table. Furthermore, the Commission is not obliged to set up an expert group in order to draft the legislative acts unless

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<sup>42</sup> Schmidt 2001, p. 144-46.

<sup>43</sup> Peters 1996, p. 71.

<sup>44</sup> Cini 1996, p. 143-46.

<sup>45</sup> Peters 1996, p. 71-74.

the Council forces it to do so which, for example, happened when the Committee for Monetary Financial and Balance of Payment Statistics was set up, which had the task of ‘advising’ the Commission on the application of the convergence criteria for EMU. But since only part of the agenda setting process is carried out behind closed doors and the definition of a problem can be altered after it has been presented to the public. Consequently, it seems logical to assume that expert groups may have considerable influence on how the Commission defines and approaches a topic before presenting it to the Council and the European Parliament. A question begging to be answered is to what extent the theories on agenda setting in nation states also can be applied to the EU decision-making process.

### **6.2.1 Few initiatives from the Commission?**

In reality most initiatives do not emerge spontaneously in the Commission. Several observers have tried to estimate the number of initiatives that emanate from within the Commission, with varying results from five to twenty per cent of all initiatives.<sup>46</sup> Most of the initiatives are the result of some kind of external pressure being exerted or the logical consequence of the on-going policy in a certain area like fulfilling the obligations laid down in international treaties or simply carrying out an evaluation of a specific policy that had already been decided.<sup>47</sup> But on the other hand the Commission also plays an important role in other areas where the right to take initiative is shared with other institutions/entities. Thus, since the formal power of the Commission varies between different areas the Commission may redefine issues in ways that bend them towards those areas they yield power.<sup>48</sup>

Another aspect of the Commission’s preparation of its propositions is how it is financed. Considering the fact that the Commission has limited resources there are strong economic incentives at work when the Member States are brought into the process at an early stage.

But, so far, agenda setting has only been regarded in the context of making new EU legislation. It is important to remember that agenda setting theories can be applied to any type of proposals

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<sup>46</sup> Nugent 2001, p. 236-37.

<sup>47</sup> McCormick 2001, p. 86-87.

<sup>48</sup> Matlárý 1997, p. 143.

being made to a deciding body. Therefore the agenda setting power and influence of the Commission is not only important when drafting proposals for new laws, it is also of importance when the Commission suggests new regulations or tries to reach an agreement among the Member States on a common position before a negotiation with a third party.

### **6.3 Why expert groups are set up – some examples**

We know from studies of national government that a government may set up committees for a number of reasons. A few of them have already been mentioned; for example to make an impartial investigation into a matter of concern to society, often because of mismanagement by some part of public administration. The advantage with a committee in this case is that it gives the impression of being independent of the government. Another reason for using committees is because it links the government to its environment, making it possible to impart expert and interest groups' opinions at an early stage of the process, that way facilitating the implementation process. It is sometimes said that, although bringing in many and different interests early into the decision-making process may prolong the process of reaching an agreement and will make the proposals less radical, it will nevertheless have a greater impact on society in terms of implementation than if the interests had been left out of the decision-making process. In other cases, however, early involvement of different interests may also speed up the process of decision-making in its later phases.

In other cases the setting up of committees is symbolic, sometimes prompted by the fact the government is faced with issues it cannot solve (or does not want to solve) at least in the short term, for example a drastic increase in the price of oil. But when a government is responding by setting up a committee it gives an impression of doing something and there will be time for the issue to cool down in the minds of the public. Yet again a committee may be set up to coordinate or handle issues falling between the different branches of the public administration. On other occasions committees may also be set up to strengthen the position of one part of the public administration at the cost of another. Governments are not homogeneous bodies and a fierce power struggle is constantly going on at almost every level,

between departments and units and external support in this battle may be acquired by the means of a committee. Thus a committee will normally have several functions and we can find manifold reasons as to why it is set up.

This question as it applies to the EU could not systematically be explored. The following few examples of the multi-functional purpose of setting up expert groups will be given below. The specific expert groups have been selected as typical examples of different reasons why expert groups are set up. The descriptions of most cases are very brief, for a more fully account see Appendix 2. It is also worth noting that in many of the following cases the word committee is sometimes used instead of expert group because that is the 'official' name that has been given to an expert group.

### **6.3.1 The Climate Change Committee**

The European Climate Change Programme (ECCP) was initiated by the Commission, its aim being to identify common and co-ordinated policies and measures that would eventually make it possible for the EU to meet the target set by the Kyoto Protocol for the reduction of greenhouse gas emissions.

Seven technical working groups (expert groups) were established under the co-ordination of the ECCP Steering Committee. A number of expert groups opted to establish specific sub-groups. In some cases as many as five sub-groups were established and one sub-group served two expert groups.

In practice the Commission chaired all the groups (including the sub-groups). Most of the work and the meetings took place on the level of sub-groups. The members of the different groups came from the Member States, Commission departments, industry sectors and NGOs; not every Member State was represented in every working group or sub-group, however, only six to seven Member States took part in each group. Large Member States had seats in approximately 80% of the groups while smaller states had representatives in about 20% of the groups. All in all, more than 200 experts took part in the formulation of the ECCP,<sup>49</sup> even taking into consideration a certain amount of overlapping since the same person could sit in an expert group as well as a sub-group.

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<sup>49</sup> European Commission, Director-General Environment D(2001) 610253, Brussels 14-09-2001.

What this case illustrates is a typical example of a three level expert group system, as mentioned before, consisting of at the top, a steering committee under which we find the real expert groups (working groups) and below them a number of sub-groups. The ambition is to bring in the different players at an early stage and by using an open procedure to allow a lot of interests to participate in the beginning of the policy-making process

### **6.3.2 Transport Infrastructure Charging**

The committees and the groups which are active in this area deal with the problem how to charge each transport infrastructure with the right estimates of its cost in order to make fair competition possible where each and every sector of transportation carries its actual costs, i.e. marginal costs.

In order to solve the problem how to price each transport sector and to establish a common and comparable practice among the Member States, an expert committee (group) which had been dormant for some time was reactivated, although with new participants. However, this was not regarded as enough to get acceptance from the established sector interests. Thus a high level group on Infrastructure Charging was set up in 1999, including prestigious names from different parts of society, in order to improve the image and enhance the prestige of the process and the issues at hand.

The high level group set up three working groups (sub-groups), reporting directly to the high level group.

The expert group followed the work of the high level group and its sub-groups closely and it was always asked to submit its opinion on the reports presented by the high level group. Furthermore, the committee of experts functioned as reference group when formulating the white paper on 'Fair payment for infrastructure use' was drafted (published in 1998). Needless to say, the high level group was also asked to give its opinion on the white paper.

This is another example of a structure with several levels but with a less obvious hierarchy, in the previous example the high level group was clearly above the expert group but this one is not. Another interesting thing here is that it looks like the Commission knew what it wanted but needed help in selling the product by the endorsement of some well known names in the field – that's why it needed a high level group.

### **6.3.3 Clean Air for Europe (Cafe)**

The Cafe committee (expert group) is a mixed group with representatives from Member States, stakeholders, NGOs and industry. A normal meeting will comprise up to 40 representatives – including those from the candidate countries. Several Commission DGs take part, Environment, Transport, Enterprise and Research. The committee was set up in 2000 and is chaired by a representative from DG Environment.

The Cafe-committee has been established in order to evaluate the Roof directive and the Air Quality directive and to be a think tank for future policies in the area. The Roof and the Air Quality directives were prepared by a predecessor (the ‘Air Quality Steering Group’) to the Cafe committee, comprising more or less the same participants and representing the same interests.

At the moment the Cafe committee has four sub-groups. The secretariat for all four sub-groups is provided by the Commission.

Particularly interesting in this policy area is the existence of an almost parallel committee/group structure under the authority of the United Nations.

This looks like a rather splendid example of a case where the Commission’s ambitions have clearly been to be open and inclusive towards Member States as well as other interests, some of which even took part in discussions concerning how the groups should be organised. It is also a good example of the pseudo permanent character of many of these expert groups – even if a new group is set up it will most certainly resemble the previous one quite closely.

### **6.3.4 An evaluation group in the area of social welfare**

In the framework programme of social welfare, adopted 1995, it was explicitly stated that a special group should be set up to evaluate the need of future reforms in the area. This group was to be led by the previous Prime Minister of Portugal, Ponta Da Silva, and among the members could be found former ministers.

The Commission gave support in terms of providing the secretariat but otherwise the group acted independently of the Commission. However, in the end the result of the work carried out in the group had little or no impact on the policy in the area.

This is an example of one the simplest form of an expert group (not a group linked to a lot of other expert groups or with many sub-groups) and where the Commission chose to keep it at arms length, and in spite of its prestigious members the result was negligible.

### **6.3.5 The Renault factory in Belgium**

In 1996/97 the car manufacturer Renault decided to close down its factory in Vilvorde in Belgium and thousands consequently lost their jobs. Understandably, this caused a major outcry not only from those affected but also from the Belgian politicians. This issue was brought up in discussions with the Member States, even in Council meetings, and the feeling was that something had to be done. One response on behalf of the Commission was to set up an ad hoc group to study how this type of closure could be handled in the future. The former executive director of the Swedish car manufacturer Volvo, Per Gyllenhammar, was appointed to chair the group which also included some 7–8 members from different countries and walks of life.

The group worked independently but the secretariat – as usual – came from the Commission.

So far, the result of the group's work has had limited impact on EU policy, but a program for 'monitoring of re-employment' has been created at the Dublin institute.

Once again we have a group made up by members carrying a lot of weight but this time the group was a response to strong political pressure, and the results were limited.

## **6.4 The use of expert groups in the policy development phase – a summary**

It should be pointed out, however, that setting up an expert group or consulting Member States and other interests in other ways before a proposal is made to the Council and the Parliament is not obligatory. The Commission may well choose 'to shoot first and discuss later', a strategy which has sometimes been successful in situations when the Commission has foreseen strong resistance to its proposals.<sup>50</sup> But trying to ambush or surprise strong opponents

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<sup>50</sup> Fouilleux 2002, p. 70.

can be a risky technique that has sometimes backfired on the Commission. For example, the Commission ran into great difficulties and extensive criticism in its process of getting the Pregnant Women directive accepted in 1990–92, when it abandoned its usual procedure of consulting many of the groups and interests in the field before submitting a proposal to the Council and Parliament.<sup>51</sup>

Clearly, as has been demonstrated above, there are many reasons why the Commission sets up expert groups and one and the same expert group may fulfil many purposes. However, four seem to be of special importance:

- agenda setting
- preparing initiative
- mobilising support and consensus
- fig-leaf.

Perhaps the best example of expert groups dealing with *agenda setting* are those working outside the first pillar or without a clear mandate laid down in the EC Treaty or given by the European Council. In many areas the Commission has managed to expand the European competencies by starting with very informal and exploratory discussion among the Member States (see Chapter 7.1.2 or Appendix 3). Gradually the discussion in these informal groups (policy networks) can become more important and agreements can be reached for activating a process leading to a common European policy in the area – a formal initiative is thus taken. The agenda setting phase can also sometimes be described as sending up a pilot balloon, trying to find out whether there is any interest among the Member States and other interests in a certain topic.

The pure agenda setting phase is often followed by the *preparing an initiative* part where the Commission sets up an expert group with a rather clear mission of producing a report to be used as a basis for a proposal to the Council and the Parliament. In this case the expert group is more focused on identifying problems and finding solutions that can be accepted by as many participants as possible.

Thirdly, expert groups are also set up to *mobilise support and build consensus* for a certain idea or policy. These groups can be either of a permanent or an ad hoc character. Household or

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<sup>51</sup> Olsen 1996, p.163-179.

otherwise prestigious names are populating these types of expert groups in an effort to highlight the importance of certain issues or at an early stage linking persons to the decision-making process that might have an important part to play later on in the other phase of the decision-making process. Tightly knit relationships may be created where the participants tend to agree on how problems should be identified and solved, so called epistemic societies occurring.

Finally, the *fig-leaf* example, when expert groups are set up more as a response to pressure from the outside than following an ambition to formulate new policy. In many cases – as mentioned at the beginning of this study – an initiative that officially comes from the Commission can be the result of somebody else’s activity. Even if proposals coming from the outside are often in line with the preferences of the Commission, this is not always the case. The setting up of an expert group can therefore sometimes be a way of satisfying strong interests putting heavy pressures on the Commission to act and try to solve certain issues in which it has no real interest or is even incapable of handling – in other words, taking the heat off. In other cases there have been promises made in advance to set up a new group in order to create legitimacy for a new program. So-called evaluation groups especially are sometimes born that way.

As has been demonstrated above in the case studies, the character of an expert group can be inclusive or exclusive, bringing everybody or a very limited number from the same group of people together. Furthermore, the Commission can decide to separate or to connect people from different groups such as interest groups, NGOs, stakeholders and Member States’ representatives.

**Figure 6.1** Types of expert groups according to range and participants

PARTICIPANTS	RANGE	
	Inclusive	Exclusive
Experts	All relevant experts	Selective number of experts
Member States	All Member States	Selective number of M.S.
Interests	All relevant interests	Selective number of interests
Mixed Participants	All relevant inter/exp/M.S	Selective no of int/exp/M.S.

Thus the Commission may set up an inclusive expert group restricted to a certain category of participants, for example the Member States, typically called an umbrella group or a steering group. In other cases, the Commission sets up expert groups including interest groups, stake holders, NGOs, etc. but not Member States' representatives. The so called pure expert groups are the groups consisting of only experts, and in many cases this means scientists. Finally, there is the category where expert group participants from the Member States are thrown together with interest groups, stake holders, NGOs, scientists, etc. – which can be either selective or inclusive. This kind of technique to either include the Member states representatives together with different types of specialised interests and experts or not is used also in other phases of the decision-making process to which we shall return later on (see Chapter 7).



## 7 Expert Groups and Decision-Making

### 7.1 The informal linkages of expert groups to committees and working parties in the Council

The previous chapter on policy development described how the Commission manages to have issues put on the agenda and taken off the agenda, initiatives prepared, support mobilised and building consensus. All of these aspects are important, and each and all of them preclude what will happen in the decision-making phase.

However, this is not the whole story by half. By using basically the same constellation of people (the expert group) throughout the entire process, albeit using different names for it, we find that even if the meetings are separated in time we are in fact looking at a seamless process into which has been concentrated all the different aspects of the three-phase policy process. Another way of creating a fast track for the proposal is to set up a joint committee, i.e. an entity which is functioning at the same time as a Commission expert group and as a Council working party – also resulting in the compacting of the three phases into one.

But in order to fully understand how this is possible, a few words need to be said on the informal structure of the Council committees and working parties and the different roles played by their civil servants – and the Member States.

#### 7.1.1 The informal structure of the Council's working parties

In chapter 3 an impressive number of working parties in the Council were listed and the number may seem excessive but even so it is not the full story. Some of the working parties also have ad hoc groups or sub-groups (which are sometimes called expert groups just to confuse things further), thus increasing the number infinitely, or else the working party can meet in different constellations, formally under the same name but with different

participants depending on what is on the agenda. Again, behind this formal structure we find an informal one with a large number of sub-groups, one good example being the area of Environment. It is true that changes were made to the formal structure between 2000 and 2001, and today we only find two formal working parties – ‘Working Party on the Environment’ and ‘Working Party on International Environment Issues’. But the former uses the technique where – depending on the agenda – different participants meet under the name of that working party, while the latter one has three sub-groups – where in turn the sub-group on ‘Climate Change’ has in turn set up six very informal expert groups. So in reality, only one working party group has in fact been abolished between 2000 and 2001 – the ‘High-level Working Party on Environment and Development’. Therefore, looking at the official number of working parties will not give the complete picture.

Some of these working parties have sub-groups reporting back to them and in other cases the sub-groups report directly to COREPER. It can even happen that the working party asks the Commission to set up a special group (an expert group) to handle a technical and complicated issue, or in other words, part of the work is delegated to the Commission. Thus, behind the screen of working parties we sometimes find a strict hierarchical structure and sometimes a high degree of informality.

### **7.1.2 The Working party on External Fisheries Policy**

An even more fascinating group is the ‘Working Party on External Fisheries Policy’. What makes this group unique is that it accompanies the Commission’s delegation sent out to negotiate with third party nations, i.e. states that are not members of the European Union. The advantage with this construction, with the working party physically present on the location where the negotiation is taking place, is that the Commission gets a quick reaction and feed back on how much leeway it has when confronted with a bid from the opposite party. But it is not always possible for the representatives of the Member States present (not all Member States will be going abroad) to agree on a position and in those cases the issue may be referred back to the working party in Brussels, which may or may not be composed of the same people as those who could not reach an agreement during negotiations in the third country. Furthermore, the Commission may be involved

in parallel bilateral fisheries negotiations in more than one country, which means that the 'International Fisheries Policy' can have cousins appearing in different places all over the world simultaneously. Normally, one would perhaps expect the Commission, after discussions with the Council, to get a mandate to negotiate with third party nations and afterwards report the result back to the Council which then either agree, or disagree with what had been achieved. Having people on the spot sounds like an interesting construction that perhaps benefits the Member States with the strongest interest in the field who without hesitation to send people across the world, being present at all negotiations.

## **7.2 Distinguishing between committees and working parties**

It is often believed that there is a fundamental difference between working parties and committees such as COREPER where the former mainly deal with technical issues. However, the difference between what is a technical, a legal or an administrative matter and what is a more general or a political matter is often hard to distinguish in practice. In many cases we find that rather technical matters are solved on higher levels and issues with clearly political implications are handled at working party level.<sup>52</sup> In fact an issue can be shuttled back and forth between working parties and COREPER a number of times before a solution is reached.

To conclude – what we find when taking a closer look at the Council is a variety of committees and groups even if many of them, especially the working parties, are not groups in the normal sense of the word, since one and the same working group may consist of different members and handle different topics. In fact, as an outsider it is quite difficult to understand the logic, of giving names to working parties when they can take on such various guises, in terms of assignments and participants. In practice a close informal working relationship exists between many committees and working parties of the Council and the Commission, especially in the field of agriculture.<sup>53</sup>

However, in reality many issues are solved on working party level or by attaché groups and it has been estimated that as many as 70% of all issues are sorted out at this level, if one is to believe

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<sup>52</sup> Fouilleux, et al. 2002, p. 71-74.

<sup>53</sup> Grant 1997, p. 172.

statistics. An important explanation for the working party success rate is the composition of the groups which differs vis-à-vis COREPER and the special committees. In COREPER and the special committees the members are career diplomats from the Foreign Office of the Member States or trained negotiators from the ministries or likewise, while the normal working party representative is an expert or a specialist with a high degree of knowledge in a particular area. The experts in a working party know that if they cannot solve an issue it will be transferred to a higher level, but this involves some risk taking since quite a bit of horse trading may take place on the higher levels and package deals may be made including issues that are not substantially related. Consequently, there is a strong incentive for the participants in working parties to resolve their differences, since what is solved on this level will not have to be discussed again at a higher level.

Every meeting is preceded by a 'planning' meeting between the chair (the Presidency), the Commission and the General Secretariat of the Council. Naturally, some other types of deliberations in connection with committee or working party meetings also take place outside the meeting room, during a break or before and after the formal meeting, just as informal bilateral and multilateral discussions and negotiations are conducted outside the formal setting of a meeting, to large extent.

Furthermore, by setting up expert groups or committees shared by the Commission and the Council the hierarchical procedures can be cut short or sometimes even dispensed with all together. In other cases all relevant interests have been committed already in such way, during the deliberations in an expert groups, that little room for new compromises is left when a draft proposal is given to the Council. In other words the borderline between the policy development and the decision-making arena sometimes becomes quite blurred, which will be illustrated by the following examples.

### **7.2.1 The Personal Representative Groups (PRG) of financial management and budget control**

Only one month after the appointment of the Santer Commission in 1995 two commissioners, Gradin and Liikanen, set up a joint expert group to reform the financial management and the budget control regime of the Commission.<sup>54</sup> The idea was to bring in representatives from the Member States at an early stage in the decision-making process, gradually getting them used to thinking in terms of having to change the system of financial management and budget control.

The expert group included representatives from the Ministries of Finance in the Member States. The participants' level was corresponding to that of the head of the Budget Bureau of the Ministry of Finance, with a substitute on a lower level. The group was to be chaired by a commissioner, Gradin or Liikanen.

Thus, a link was created between the DGs responsible for financial and budget control and the Ministries of Finance which could be used to put pressure on other DGs and commissioners.

The group, met twice a year and after each meeting a report was sent to ECOFIN. In the first couple of years a report was also sent to the European Council and in the beginning at least once a decision was taken in a 'comitology' meeting as a result of what had been agreed on in the group.

In other words, this group was used as a forum to prepare decisions for the Council or within the comitology procedure.

Another interesting aspect of this group was that one of its purposes was to enhance the influence of one of its DGs in the internal battle between the departments in the Commission. The DGs – as in all large bureaucracies – fight for their corner in order to protect their special interests and the setting up of expert groups can be an important tool in this power game. However, this group has now been terminated.

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<sup>54</sup> Skr. 1996/97:80.

### 7.2.2 The Employment Committee

Today, the Employment committee is not, formally speaking, an expert group – it belongs neither to the Commission nor to the Council.

This committee was set up as ‘a joint approach’ (shared responsibility), in reality an expert group, between the Commission and the Council. This translates as the Council being responsible for chairing the committee and the Commission being in charge of providing input in terms of policy suggestions and providing the secretariat. Consequently, the chairman would be substituted depending on which state was holding the Presidency. All the Member States were represented (in some cases with people from more than one ministry) in the committee and the Commission was represented by its Director-General for employment supported by civil servants on a lower level including some from another DG (DG II). This committee was to be the place where the employment strategy, demanded by the Council at the Amsterdam summit, was to be formulated.

It was within this setting the Commission suggestions was to be discussed and, in practice, decided on by the Member States. Any agreement would have to be channelled through the COREPER and finally taken formally by the Council of Ministers, but once agreement had been reached, few changes would be made. In other words, the committee created a space for the preparation of the Commission’s and the Council’s (the Member States) proposals to the European Council and the Council of Ministers.

The work of this committee can be described as a process where the participants gradually over time develop a deeper understanding of each other’s problems and the need for a common policy in the area. Thus the participants will over time develop not only a deep knowledge of the policy of the other Member States but also an understanding of the personality of the other participants in the group and a procedure for handling problems at hand.

This is a nice example not only of how the Commission manages to control an expert group and the policy development phase but also of how an expert group can be used to influence the rest of the policy-making process by directly linking it to other institutions and arenas.

### 7.2.3 The Customs 2002

Customs issues are divided among the first and third pillar and for that reason matters proceed differently in the Commission and Council depending on to which pillar they belong.

As regards matters under the first pillar, the Commission has about 50 expert groups or committees assisting it in its work. But that is not all. For example one of these 50 groups is a steering group consisting of the general directors of customs affairs in the Member States. Below this steering group there are five sub-groups, one dealing with administrative matters while the others are involved in policy-making. Every Member State has a seat in each sub-group and the Commission is chairing the steering group, the five sub-groups and provides the secretariats. These groups are working within a framework called 'Customs 2002'. Below the level of the five sub-groups there are some 50 ad hoc working groups of a more informal character, each including only some 6–7 participants.

What is agreed upon in the 'Customs 2002' is usually accepted by the Council without discussions. In reality, the five sub-groups are the real brokers and problem solvers of issues that have not or cannot be sorted out by ad hoc groups. The steering groups rarely have any objections to the proposals made by the sub-groups. However, this procedure is applied particularly in situations where issues are formally decided by the Council. In other case, when the Council has delegated power to the Commission to implement decisions formally taken by the Council and the Parliament, the steering group function as a comitology committee and expresses formal opinions on the measures put forward by the Commission.

This is an illustrative example not only of how complex the expert group structure can be with several levels but also its importance for what happens on the formal decision-making and implementation arenas.

#### **7.2.4 The Advisory Committee on Safety, Hygiene and Health Protection at Work**

In many areas the Commission has set up special committees/groups in order to be able to seek the advice of and to exchange views with interest groups, stake holders, NGOs, etc. Sometimes Member States are included in these committees and sometimes they are not. Whether these consultative groups should be placed under the heading of agenda setting, decision-making or implementation can be debated but in many cases these groups can be activated and used throughout the entire decision-making process. Two examples are presented below.

The Commission's Advisory Committee on Safety, Hygiene and Health Protection at Work has been active since 1974, meeting about twice a year.

This is a huge committee with 90 full members, i.e. two government representatives, two trade union representatives and two employer representatives per Member State, appointed by the Council for a period of three years. The committee is usually chaired by the Director General of DG Employment, and the Commission also provides the secretariat.<sup>55</sup> The committee consists of three sub-groups – representatives from the trade unions make up one, the employers' organisations another and the Member States the third – and the sub-groups meet separately during the first day, 'in the margin' of the general meeting. When an opinion on a proposal for a Commission directive is needed the committee sets up an expert group to formulate and pre-negotiate what is later to become the opinion of the committee.<sup>56</sup>

The main objectives of the committee are to assist the Commission in the preparation and the implementation of activities in the field of health and safety at work and to facilitate cooperation between national administrations, trade unions and employer organisations. The committee produces an annual report on its activities.

This is an example to illustrate how the Commission, with the help of committees and groups, can set up something almost resembling a 'mini parliament', although not including members from the European Parliament, where more or less all the

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<sup>55</sup> <http://europa.eu.int/comm/employment-social/h&s/committ/adcomm2-en.thm>

<sup>56</sup> Olsen 1996, p. 75.

important social partners and Member States are represented. Then this arena can be used to pre-cook proposals to be decided by the Council at a later stage. However, in contrast to the Employment committee, this committee is chaired by the Commission and the other members are appointed by the Council. But is not always that things work out according to plan and occasionally the committee has been regarded by the Commission more as an obstacle than as a supportive partner.

### **7.2.5 The Committee for Social Dialogue**

In many areas the Commission has set up special committees for a social dialogue with the labour market parties, i.e. the organisations representing the trade unions and the employers on the European level. These committees operate on several levels with a great number of sub-committees, each covering a narrow sector of the labour market. However, one level above the specialised committees we find a committee for dialogue consequently covering a large area. This committee is chaired by the general director of DG Employment but the idea here is not for the Commission to take the lead; the Commission is supposed to facilitate the dialogue between the parties on the labour market. However, in reality the picture looks somewhat different since the Commission is setting the agenda for the meetings and most of the documents presented have been prepared by the Commission. Consequently, the parties normally find themselves having to react and act on material presented by the Commission only.

And, as mentioned earlier, when there is agreement between the social partners there is usually not much room left for the Council and the Member States to modify during the later stages of the policy process.<sup>57</sup>

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<sup>57</sup> Fouilleux et al. 2002, p. 69.

### **7.3 The Parliament and its linkages to experts groups**

Practically no examples have been found in this study indicating that the European Parliament plays a significant role in the process of policy development. Few examples have been found of members of the European Parliament having been invited to participate in expert groups meetings and when it has happened it has usually been on an ad hoc basis or as an experiment, never to be repeated again. In other words, efforts to link the Parliament to expert groups or other forms of consultative procedures before the formal decision-making phase takes place have usually been one-offs, not tried again. On the other hand, it is not unusual that ex members of the European Parliament sit on expert groups, since being a former rapporteur or having served a long time as member of the Parliament often means you have substantial experience to rely on and sound knowledge of a certain area that the Commission wants to benefit from. But it is rare to find MEPs actively participating in the preparatory processes preceding the presentation of proposals to the Council and the Parliament. On the other hand, the introduction of co-decision has linked the Council closer to the Parliament and turned the Parliament into a more active participant with more clout, which according to some has made it more difficult for the Commission to use its agenda setting power to its own advantage.<sup>58</sup>

#### **7.3.1 The Conciliation Committee**

If the Council and the Parliament cannot agree on an issue where the co-decision procedure is applied, the conciliation committee will be called into action. However, since the conciliation committee is not a very practical place for negotiations much of the real haggling and hauling is done within the so called triologue. According to Peterson and Shackleton 'at trialogues there are normally no more than twenty-five with speakers restricted to two or three members of the Parliament delegation, the deputy permanent representative of the member state holding the Council presidency (most matters in conciliation fall under the responsibility of COREPER 1) and a Director or Director-General

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<sup>58</sup> Peterson and Shackleton 2002, p. 107.

of the Commission'.<sup>59</sup> Indeed, a version of this type of informal procedure, the *trialogue*, has come to further use, and today it can be applied during first reading before the conciliation committee has been called upon. In fact, it is not uncommon today for the Presidency, assisted by the Commission and the General Secretariat of the Council to have multilevel contacts with the Parliament before the Council formulates its opinions.<sup>60</sup> Usually, the chairperson keeps his working party or the *attachés* informed and committed during the discussions with the Commission and the Parliament, at least in order to sort out issues where only minor disagreements may erupt – but even major disagreements can be solved in this way.

Nevertheless, it has not been shown that the setting up of expert groups is or can be used to influence the power and decision-making procedures of the Parliament, although informal contacts may be taken between civil servant in the Parliament and the Commission in the earlier stages of the policy-making process. The Parliament is still to a large extent kept on the outside until the formal decision-making phase begins. In other words, the Parliament comes into the decision-making process at a later stage than most other actors in the EU policy process. The link that sometimes can be established showing that expert groups and committees interface between the Commission and the Council is not at all evident in relation to the Parliament, although individual MEPs may have had a profound influence on the outcome of some of the EU legislation.

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<sup>59</sup> *Ibid*, p. 106-107.

<sup>60</sup> Burns 2002, p. 72.

### 7.3.2 The Parliament and comitology committees

To be on the outside and to enter at a rather late stage of the policy-making process is the traditional role played by MPs in many parliaments, especially for MPs on the opposition benches. However, the European Parliament, not having a clear division among its members into a ruling and an opposition side, has on a regular basis objected to being excluded from the policy-making process. But interestingly enough much of this objection has been directed to the comitology committees, i.e. the implementation phase, not the expert groups in the development phase.

Thus, the Parliament has always had its doubts about the comitology committees, feeling that it is a technique to keep the Parliament out of the decision-making process while enhancing the influence of the Council. Furthermore, the Parliament and other critics have argued that the whole procedure is lacking in transparency. Whether the new means given to Parliament to scrutinize the comitology committees will have any dramatic affect only the future can tell, but in reality, the decision of 1999 did not improve the Parliament's influence significantly.

However, the rate of informal contacts especially between civil servants from the Commission taking part in comitology committees and civil servants from the Parliament's standing committees seems to increase when matters of common interest are at hand.<sup>61</sup>

On the other hand, the agreement of 1999 seems to have been more successful in terms of improving the openness and transparency of the comitology system – since the information before and after committee meetings is divulged to the public. In the future the Commission will have to keep much better track of the comitology committees and what they are doing and consequently the meetings and procedures will have to be more “by the book”. One way the Commission seems to have responded to the new demands is by making one report, a shorter version, for the public and the Parliament and another one for committee members – internal use only.<sup>62</sup>

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<sup>61</sup> Schaefer et al. 2002, p. 160.

<sup>62</sup> *ibid*, p. 160.

## 8 Expert Groups and Implementation

### 8.1 The informal structure of Comitology committees and its linkages to expert groups

The mandate of a comitology committee includes, formally speaking, all the different phases of the implementation process – deliberation on implementing measures, applying existing implementing procedures or monitoring/evaluating the policy in a specific field. In practice the distinction between the implementation phase and other phases of the policy-making process is often difficult to discern. In fact, it is officially recognised that some committees although, having ‘been given the task of assisting the Commission in the exercise of its implementing powers, may also fulfil other tasks which can sometimes constitute their main functions.’<sup>63</sup>

In reality, comitology committees are not only about assisting the Commission, it is an instrument for the Member States (the Council) to control the Commission’s handling of the implementation power delegated to it by legislation. But a comitology committee is always chaired by a Commission representative and the secretariat is also always provided by the Commission. The person or persons in charge of the secretariat often play an important role, quite often it is he or she who has the closest contacts with the members of the committee and a lot of the informal dealings and discussions go through the secretary rather than the chair.

Chairpersons and members of a comitology committee may sit for quite some time, it is common for chairpersons to lead meetings for three to four years or longer and Member States’

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<sup>63</sup> Standard rules of procedure for Comitology Committees O.J. 8.8 2000, C 225/2.

representatives may participate for even longer periods. In the end, a close relationship will emerge between the participants and a common way of understanding and defining problems will be developed, especially in committees that meet frequently.

Formally speaking every decision is taken by a vote but the Commission will never take a vote on a measure unless it is sure it has the necessary majority when management of regulatory procedures are applied. Therefore the consultation and deliberation phase may take quite some time, up to a one and a half year until the final draft has been made and a vote is taken.<sup>64</sup>

There is also substantial overlap between the committees and the different procedures in terms of participants. During a meeting dealing with a variety of the issues on the agenda, the same group of people may be taking decisions as an advisory committee and when other issues are brought up it will act as an administrative or regulatory committee.<sup>65</sup>

The members of a comitology committee represent their respective Member State and consequently they have often been instructed by their respective governments how to react to the Commission proposals. However, in many cases the instructions are rather vague, giving the representative quite a bit of room to manoeuvre.<sup>66</sup> And although the representatives are expected to present the view of their respective government this does not necessarily mean that they are civil servant employed by the national civil service. Quite often, for example as is the case with Belgium and Germany, the representative may come from a regional or state government. Sometimes even members of an interest group have been mandated to represent a Member State. Thus, the comitology committees also carry out the function of linking multi-level governments.<sup>67</sup>

Not all Member States participate in all meetings, in fact there are indications that very few meetings take place where all Member States are present and Luxembourg and Greece seem to be the two countries most frequently being absent. In some cases this can be attributed to budget constraints in the Member State, in other cases it is due to the fact the government has not been able to decide which ministry representative to send.<sup>68</sup>

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<sup>64</sup> *ibid*, p.156-157.

<sup>65</sup> Peterson and Bomberg 1999, p. 42.

<sup>66</sup> *ibid*, p. 158-159.

<sup>67</sup> Marks et al. 1996, p. 288-289.

<sup>68</sup> Schaefer 2002, p. 155.

It may happen that candidate, EEA, and EFTA countries participate as observers in comitology committee meetings but they never take part in the voting procedures.

## 8.2 How expert groups complement the comitology committees

Chapter 3 contained a presentation of the legal status of different types of comitology committees, also stating that some types of committee restrict the Commission more than others. However, almost all the empirical data show that the Commission hardly ever receive a negative opinion obliging it to submit a proposal to the Council. The annual report 2001 from the Commission on the work of comitology committees showed that only six cases out of a total of 2 838 were referred to the Council – DGs Agriculture and Environment had one case each and DG Health and Consumer Protection had four cases.<sup>69</sup> Nevertheless, although the Commission has been successful in getting its draft measures accepted by the comitology committees, it would be a mistake to believe that the comitology system is appreciated by the Commission. In a proposal to the Convent 2002 the Commission has suggested that in principle advisory committees should be used in the future and only in exceptional cases regulatory committees.<sup>70</sup>

There are many explanations as to why so few issues are referred to the Council. One is the well known consensual strategy of the Commission. The Commission will walk many a mile to avoid a negative opinion from a committee and there are a number of reasons for this strategy. The first one is to avoid antagonising individual Member States by forcing decisions with the smallest possible majority, since short term victories may backfire in the long run. And when, for example, the advisory procedure is used (a procedure that in theory puts rather limited restrictions on the Commission) in a committee working with different types of procedure this becomes particular evident – if some Member States are overruled at one point of the agenda, they will surely strike back at a later point, when another type of procedure is being applied. Secondly, tomorrow is always another day and the Commission will need the cooperation of all Member States when

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<sup>69</sup> Report from the Commission COM (2001) 783 p. 6.

<sup>70</sup> Commission of the European Communities. COM(2002) 719final and Commission of the European Communities COM(2002) 728 final/2.

they meet again to discuss a new subject matter or when the same issues are dealt with again in the working parties of the Council, so committee members who feel they are being left out or not taken seriously is not a good strategy for a process where basically the same participants will meet over and over again.

The main technique, for reaching consensus is to set up a working party (an expert group) sometimes containing only the Member States with the strongest view on an issue functioning as a task force in critical situations – a strategy with an in-built guarantee of not bringing the issue before the full committee before an agreement has been reached.<sup>71</sup> In other cases the committee may meet as an expert group before they meet officially as a comitology committee in order to sort out the agenda and iron out any disagreements well in advance. Quite often these quasi ‘expert’ meetings are not chaired by the chairperson but by the secretary of the committee or somebody else from the Commission on a lower level than the chair, who usually is a director or a head of unit.<sup>72</sup> Two examples will be given here to illustrate how this technique operates.

### **8.2.1 The Cereal Committee**

It is a rather well known fact that agriculture is somewhat different when it comes to decision-making procedures and organisation, which becomes very noticeable when examining how committees are organised.

The policy-making and the implementation in the agriculture sector is heavily specialised and the groups and committees often deal with very narrow sectors. There is for example the special management committee (a type of comitology committee) exclusively for the implementation of the rules and regulations on cereal products.<sup>73</sup> However, not only a management committee is involved in this area, a so-called expert group is also active.

The expert group on cereal products is more or less a duplication of the management committee – at least in terms of persons attending the meetings of both the committee and the group.

Meetings in the management committee are more formalised and for about a year now, a comprehensive protocol has been kept;

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<sup>71</sup> Bergström 2002.

<sup>72</sup> Schaefer 2002, p. 158.

<sup>73</sup> Grant 1997, p. 177-178.

some meetings have even been taped. It is chaired by a high official in the Commission, on the level of director. The management committee belongs to the category 'meetings on a regular basis' and in 1999 it had no less than 48 meetings as opposed to the expert group constellation which had about half that number of meetings.

Furthermore, the management committee will often meet in the morning under the name of an expert group, freely discussing different issues, even some that may be on the agenda in the afternoon when they will be meeting as a management committee – provided an agreement has been reached during the morning session, which is perhaps one of the reasons as to why the 'official' expert group does not need to meet that often.

To a large extent, about ten out of the fifteen Member States are represented by the same person/s/ in the management committee/expert group as in the Council working party.

But in the area of cereals a consultative committee has also been set up by the Commission for discussions with the interest organisations of producers and consumers – a committee that also has sub-committees. Thus, the discussions with the Member States and the interest organisations are kept well apart – interest organisations are not invited to management committee or expert group meetings and the Member States are not represented in the consultative committee. The Commission normally gives a short oral summary of what happened during the last consultative committee meeting if the Member States so demand during a management committee meeting, but the Member States do not receive the protocols from the consultative committee meetings. But since the Member States are normally in close contact with their national interest organisations at all times, getting all the details from the meeting with the Commission this is not strictly necessary.

### **8.2.2 The Committee on the Ozone layer**

In March 1985 countries from all over the world signed a framework, the so called Vienna Convention, for the protection of the ozone layer, followed in 1987 by the Montreal protocol, which has been subjected to a number of amendments and adjustments. On an annual basis the signatories of this UN convention and protocol meet on an annual basis to discuss common problems and

future revisions of the protocol.<sup>74</sup> In order to fulfil its commitments to the convention and the protocol the EU has set up a comitology committee that controls the implementation of the agreements among the Member States. But the committee does not prepare and co-ordinate the EU positions before the annual meetings with the UN, that is done by a special ad hoc group that has been set up for this purpose. An interesting thing with this ad hoc group in the field of the ozone layer is that it has the same members as the comitology committee. Furthermore, should issues regarding the ozone layer be brought up in the Council the preparatory work would have been done by a working party consisting of the same persons as in the comitology committee and the expert group – in other words, an almost perfect overlap.

### **8.3 The formal and informal picture of comitology committees**

To sum up, the comitology committees are really two sides of the same coin. On one side we find a very formalised image – the committees can be of three different types, they restrict the Commission in different ways, they vote on proposals and measures drafted by the Commission, their protocols are made public and the agendas are transmitted to the Parliament before meetings and so on. On the other side, we find a more informal picture where the comitology committees appear as the arena in which, no matter what procedure is applied, consensual agreements are sought and reached (normally). In addition most of the controversial discussions will be dealt with outside of the formal setting of a comitology meeting, either by bilateral discussions between the Commission and individual Member State or in a multilateral setting comprising all or those most concerned of the Member States – in expert committee meetings. Furthermore, as demonstrated by some of the cases presented earlier in this study, another ('scientific') expert group or committee often is asked to comment and in reality solve the issue that is on the table of a comitology committee. On the other hand there have also been examples of a comitology committee or its expert group equivalent being asked by the Commission to reflect and comment on ideas concerning new and future policy – thus becoming part of the agenda setting and the policy decision-making.

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<sup>74</sup> McCormick 2001, p. 271-277.

Therefore, one should bear in mind that the boundaries are anything but fixed. Evaluating and supervising the policy will always be closely linked to the introduction of new policies, i.e. defining the problems and setting the agenda.<sup>75</sup> Furthermore, it is also quite common for officials sitting on the Commission expert groups to participate in the Council working groups, and/or sit on the implementation committee set up to carry out the legislation.

#### **8.4 Old hats with new crews and old crews with new hats – methods of linking expert groups to the policy process**

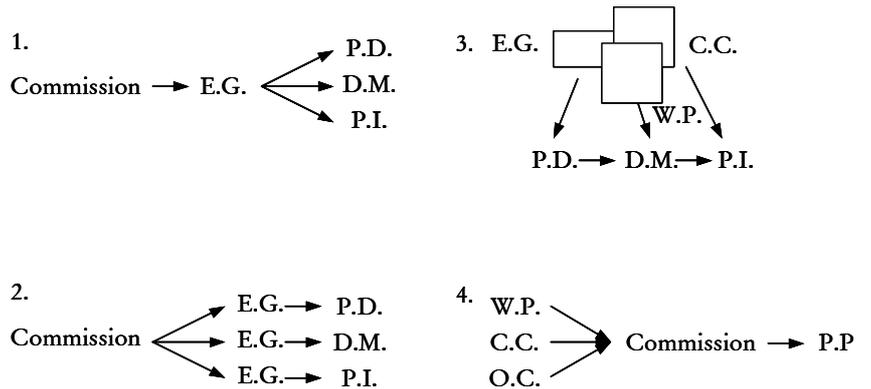
In conclusion, several methods can be applied in organisational terms to link together the different phases of the policy processes together with the help of expert groups. But even before taking any such steps, the discussions and the negotiations in the formal decision and implementation phases can be precluded by bringing in powerful actors at an early stage of the policy process or by formulating technically advanced proposals during the policy development phase.

However, if the strategy of streamlining the policy-making process during the policy development phase does not work out, there are at least four other different techniques the Commission can use to take a proposal through the policy-making labyrinth, as illustrated by Figure 8.1.

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<sup>75</sup> Schaefer and Haider 2000, p. 6.

**Figure 8.1** How expert groups can be linked to the policy process



Thus, one and the same expert group/committee can be active in two or all three phases of the policy process, especially it seems in third pillar matters. During the policy development phase it will prepare and/or comment on a draft proposal which in phase two will go directly to COREPER, working groups will not be used at all. Then the proposal will be formally adopted by the Council and Parliament. In the implementation phase, the same expert group can exert influence by taking decisions on questions referred to it by a comitology committee. Typical examples of groups/committees performing these tasks are the consultative, second and third pillar groups and groups shared by the Commission and the Council.

In other cases, separate expert groups are set up for each phase of the policy-making process. Separate expert groups for the policy development phase are indeed very common and it is often believed that this is the area where expert groups are primarily used. However, even if it does not occur very often, the Council may ask the Commission to set up an expert group to assist a working party. Finally, something which is much more common, many comitology committees appear in two guises – an expert group for informal discussions and a committee for formal decision-making. The third type of link is not based on the organisational structure as such but on the overlap, in terms of persons participating in several groups and committees active during the different phases of the policy process. It is possible to find that more or less the same groups of persons meet to discuss and negotiate a proposal as it is shuffled from one expert group to another in the development

phase, to the working parties and attaché groups in the Council, finally ending up in a comitology committee. It is not exactly the most common case – the same persons meeting again and again, only changing the official name of the group/committee when the meeting takes place – but it happens.

Finally, groups and committees active during the decision-making or implementation phases of the policy process which have not been set up by the Commission – such as working parties, comitology committees or treaty committees – can be asked by the Commission to fulfil the function of an expert group. Occasionally, the Commission may ask a working party or a comitology committee to comment on reports, ideas or drafts as part of its preparation of a proposal to the Council and Parliament. And in truth – any combination of these four ‘ideal models’ is possible and can probably be found.

In the end, what we find is a committee system which is large and complex, seemingly infinite. Even if we restrict the findings to the policy-development area, we can see that several parallel or hierarchical groups can be active at the same time, and the enormous flexibility with which they are being put to best use is impressive.

#### **8.4.1 Shifting authority and participants**

It can happen that groups/committees change hats (authority) at almost a moment’s notice in a truly fascinating way. When they do, they may look the same but under a different name, and the participants may even be the same, but there the similarity ends. In reality substantial changes in the organisation and character will have occurred and individual roles may well have changed as well.

In other circumstances, groups/committees may temporarily fade from the scene due to lack of progress on a particular issue or where an issue has turned cold. In such circumstances the whole issue can simply be put on the shelf waiting for the moment when perhaps another step forward is possible. What is essentially the same group/committee can then resume its work again, although not necessarily with the same participants.

On other occasions the Commission can propose a suggestion by an expert group although slightly altered, claiming that the issue has been discussed in an expert group.

Regarding the internal work of the Council we may find that a working party is not a stable structure but may contain a varying number of different civil servants as the topic being deliberated changes. In fact, a working group under the one name may not only address a number of different topics but completely new set of participants may also appear as Member States representatives. In addition, issues may travel back and forth between working parties (and expert groups of working parties), attaché meetings and COREPER.

In the implementation phase, a comitology committee often has a duplicate, an expert group with more or less the same crew as the committee and in some cases a comitology committee can switch hats quickly, taking on the guise of an expert group during a meeting, if difficult issues arise which need more informal discussions. In other words, more formal structures are constantly complemented and supported by informal ones.

Why one may ask, this need for a policy making structure if it so closely resembles the world of Alice in Wonderland where nothing is what it seems to be – could it perhaps have something to do with the EU system as such?

## **Part 3. Some Conclusions**

### **9 The System's Consequences for its Participants**

#### **9.1 Policy-making in systems with diffused power**

The EU and its policy-making system has developed gradually over time and quite often the structures and the procedures can be characterised as innovative or experimental governance – ideas and techniques are used which have never been applied by national governments. However, the EU system also has many features in common with national governments – at least the names of structures and procedures sound very familiar – and as with national governments a formal as well as an informal policy-making structure exists. In other words, there is no foundation for conspiracy theories – just because there is an official version and an unofficial version of how policy is arrived at in the EU. The fact that in reality the Commission plays a somewhat different and more dominant role than what the official version seems to indicate does not mean it is any different from national governments. In most national democratic governments the executive often plays a much more influential and powerful role than indicated by the constitution.

##### **9.1.1 Shapes of informal structures**

It is true that differentiating between the official or the formal structure of a government and the unofficial or informal one is never an easy task and it is made even more complicated in the EU. This due to the fact that many structures are of a semi-official character – their existence is known to the policy-making elite but

is rarely perceived by the outside world. We can find a whole range of these structures, varying from very specific and constitutionally sanctioned ones to very informal and diffuse ones, totally lacking a foundation in authoritative decisions. And again the relationship between the formal structure and the informal one is not always easy to define, because sometimes the informal structure can clearly be seen as complementing the official one but in other cases it is a reaction and a counterbalance to it.<sup>76</sup> Thus, the answer can never be simple but one explanation can probably be found in the character of the political system as such – a power sharing system as compared to most European governments which are basically parliamentary.

### **9.1.2 Parliamentary and power-sharing systems**

Parliamentary systems are commonly characterised by the concept of a rather direct and clear link between the people and those who rule them, the power of the people first being transferred to an elected parliament and then, by means of the parliamentary process the control of the government. In a parliamentary democracy the public power is thus concentrated to and rests with the government. In power sharing systems on the other hand, the power is diffused to different institutions with overlapping responsibilities, in that way balancing the power of the governmental organisations and counteracting any tendencies to concentrate public power to one institution.

However, since the EU is closer to a power sharing system than a parliamentary one it needs to develop an informal structure to compensate for some of the weaknesses characterising that type of system – even though parliamentary governments also have informal structures. A power sharing system creates much more uncertainty in terms of power, influence and responsibility than a parliamentary one. The institutions of the EU – the Commission, the Council and the Parliament – are not only dependent on each others' competencies, the different competencies also overlap. The knowledge that each one of the institutions can trespass into the others' territory generates a high degree of uncertainty. Unless there are means of bridging the gap between the institutions and ways of creating links between the parts of the decision-making process, thus reducing the uncertainty, the system cannot work.

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<sup>76</sup> Joerges and Neyer 1997, p. 620-621.

### 9.1.3 Consensus building

Furthermore, the EU system cannot, in contrast to national governments built on the power sharing concept, generate its legitimacy from the principle of a stable majority rule, i.e. a division into a ruling side and the opposition. Instead, the political legitimacy strategy has to be based on consensus building which creates the need for structures for bringing different types of interests into the policy-making process at an early stage, closely connecting the legislative phase with the implementation phase of the policy process.<sup>77</sup> And since the Member States are normally responsible for the actual implementation of EU policy it is important to have all of them committed to the policy pursued. In fact, even when using qualified majority voting the Council usually aims for a consensual solution that can at least be tolerated by every state. Therefore, lacking an executive that can build its legitimacy on a public majority, it is forced to search for consensual solutions acceptable to different types of minorities, thus bringing together large majorities. In the EU the majority situation is not stable, some of those who were on the winning side one day may be on the losing side the next day,<sup>78</sup> although decisions resulting in clear winners and losers are usually avoided.<sup>79</sup>

In that way the EU is more inclusive and consensus oriented, more 'democratic', than most national governments, where the political opposition is often kept on the outside. In the EU even small minorities have a good chance of making their voices heard.<sup>80</sup> But, in terms of opaqueness, there is a price to pay for this i.e. lack of openness and transparency, overview and co-ordination of the policy process. The effect of the large number of expert groups and committees is – at best – a partial overview and segmented control by the Commission and the Member States.

Consequently, if you analyse the EU system expecting to find authority and leadership you may be surprised at finding issue

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<sup>77</sup> Larsson 2002, p. 36-40.

<sup>78</sup> Abromeit 1998, p. 35-37.

<sup>79</sup> Peters 1996, p. 73.

<sup>80</sup> Schaefer and Larsson 2002, p. 2002, p. 179-182.

networks or policy communities instead. But the power in the networks and the policy communities is not always symmetrically diffused since the Commission has great potential for influencing how these arenas operate. The expert group in all its various guises is one of its powerful tools in this process.

#### **9.1.4 Parliament is not participating**

The EU is, without doubt, virtually spawning committees and groups, but the system would probably not function without them. Interestingly enough, there seems to be one exception to the general consensual approach in the committees and groups, namely, the parliamentarians are hardly ever invited to participate. In recent years, increased use has been made of the so called informal trialogue, leading some observers to conclude that the balance of power has tilted in favour of the Council and the Parliament lately.<sup>81</sup> However, it is important to remember that the negotiations at committee and group level only take place at a rather late stage in the decision-making process. In many ways the Parliament plays the role of the political opposition in a parliamentary system, ensuring that all relevant interests have been heard and checking that the correct procedure has been followed, seeking to attract public attention by giving publicity to a lot of issues, without the corresponding influence on the content of the draft proposal. By being on the outside, the Parliament is well placed to hold the other institutions accountable for the results of the policy process as such – a function that would be much more difficult to fulfil if it were also to be involved in the early stages of the policy process, even if early participation could give it the opportunity to exert more influence. In all fairness though, it should be said that in areas where the Parliament has been given co-decision power it probably has more influence than its homologues in parliamentary democracies – even if there are exceptions in some cases. In Sweden for example, even members from the political opposition may participate in the early stages of the government's drafting of bills for submission to Parliament for adoption.

But if expert groups are important tools for the smooth functioning of the EU machinery, what effect does this have on the influence of the Member States and other participants?

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<sup>81</sup> Warleigh 2002, p. 72-73.

## 9.2 New roles for national civil servants, experts and interest group representatives

The way the informal EU policy process is structured makes new demands on the role played by, and the functions of, national civil servants in particular but also to a certain extent on experts and interest group representatives. Normally a civil servant is expected to serve one master only, fulfilling in the main one of two functions, either advising politicians on new policy or implementing and running policy programs decided by the government – even if the two functions can be combined to a degree. In the EU things are a bit more complicated. During the first phase of the policy cycle national civil servants and other experts participate *à titre personnel*.<sup>82</sup> In other words, national civil servants act within the framework of a more flexible mandate and are not necessarily expected to receive instructions from their home capitals. In a sense, a civil servant is expected to act as a neutral expert with Europe's best interest at heart, not that of his or her own country.<sup>83</sup> However, this is not the whole truth either, as this study has shown, because in reality many of the expert groups constitute a pre-cooking (pre-negotiation) arena used by the Commission to find out whether and how the Member States' positions or other stake holders' opinions could create obstacles to the Commission's plans.

Thus, the Commission is not only interested in finding the best solution to a certain problem in technical terms but also one which stands a good chance of being accepted by the Member States once it has been presented to the Council and the Parliament.

It can happen that one and the same national civil servant can be found to express a particular opinion during an expert group meeting in the preparation phase and another opinion during the formal decision-making phase when the proposal is discussed in committee in the Council. The reason for this is that during Council deliberations a national civil servant comes with instructions and is supposed to represent his or her government and if that same civil servant has misjudged or did not care to take into account his or her government's position in the phases leading up to the Council committee meeting he or she may be forced to

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<sup>82</sup> Rometsch and Wessels 1997, p. 225-226.

<sup>83</sup> Schaefer et al. 2000.

endorse the opposite opinion.<sup>84</sup> It is more likely, however, that the opinion voiced by a civil servant at an early stage in the decision-making process will remain unaltered throughout the policy process.<sup>85</sup> Therefore, it is perhaps more correct to describe the role of the national civil servant in this phase as *semi-independent*.

### 9.2.1 Conflicting roles

What we find is an interesting contradiction, in terms of the role national officials are expected to play in the preparatory and agenda setting phase. On the one hand, participation in expert groups provides an excellent opportunity to influence the proposals, if the officials have a good knowledge of the area and are interested in exerting influence. But, on the other hand, participating officials from the Member States are not always trained in policy-making and in advising ministers. The EU policy cycle is basically organised in a way similar to the national decision-making process – but upside down. The national experts have become policy-makers and the Member States' civil servants (the generalists) often join the process only at the stage when proposals have reached the formal decision-making phase in the Council.

While the participation of civil servants in expert groups challenges the traditional conception of officials as being loyal and obedient servants to their political masters by forcing them to play a semi-independent role, and by converting the national experts into policy-makers, those working in or with the Council face another enticing prospect.<sup>86</sup> In the Council there is less uncertainty concerning the official role of the national civil servants, here officials are expected to represent their governments and speak with 'one voice', even if there are slight differences between those working at the permanent representations and those in the capitals regarding how far the national position should be defended.<sup>87</sup> But in reality, especially for civil servants who have been working with EU-issues for a long time, they are often forced into a 'go between position', having to find a compromise between the Commission, other Member States and their own government.<sup>88</sup>

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<sup>84</sup> It might even be the case that the government did not have an opinion during the earlier phases in the policy process, or it has changed its mind.

<sup>85</sup> Egeberg 1999, p. 470-471.

<sup>86</sup> Beyers 1998, p. 313-315.

<sup>87</sup> Hayes-Renschaw and Wallace 1997, p. 213-218, Fouilleux et al. 2002.

<sup>88</sup> Trondahl 2001b, Ch. 6.

National officials also actively participate in the implementation phase of EU regulations and directives. In order to assist – some would say supervise – the Commission in how to proceed when EU legislation is being interpreted, so-called comitology committees are set up by common accord of the Council and the Parliament. In this arena the civil servants or other national representative play a role which comes close to resembling a cross between an expert and a negotiator defending national interests, ensuring that the Commission's implementation rules can be applied in his or her Member State.

A civil servant following a proposal through all three phases of the policy process and participating in all the different types of committees and groups linked to the phases, which is particularly applicable to small Member States, may find that he or she is expected to play a great many conflicting roles during this voyage and not always having just one master to obey.

### **9.3 Consequences for small and medium-sized Member States**

It is common knowledge that most of the real work within the European institutions is carried out by different types of committees and groups. Informal committees and expert groups play an important role during all stages of the decision-making process – policy development, decision-making and implementation – because experts and civil servants from the Member States participate in an on-going discussion as to how to solve issues of common interest. However, there is a difference between how a large, small or medium sized Member State will adapt to the formal and the informal structure of the EU. Given the limited number of civil servants at the central level in small or medium-sized Member States, priorities have to be made regarding which type of committee or expert group to join and what level of available civil servants to use.<sup>89</sup> However, judging by the studies carried out regarding the role and the functioning of the EU committees, many Member States' governments appear to control quite strictly what their representatives are doing in committees linked to the decision-making and the implementation phase,<sup>90</sup> while there is less control and co-ordination in expert groups or in other types of

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<sup>89</sup> Thorhallsson 2000, p. 232-234.

<sup>90</sup> Rometsch and Wessels 1996, p. 330-334.

committees during the policy development phase. This is puzzling and becomes even more so taking into account the fact that it is in the expert groups (often the so called expert groups of the Commission) that a small Member State has its best chance of influencing the policy process.<sup>91</sup> However, it should be mentioned that different policy areas vary somewhat in terms of importance attached to the different types of committees. In some areas the committees/groups dealing with implementation issues can be of the utmost importance to the policy-making, while in other areas the committees/groups involved in the policy development phase are the important ones.

### **9.3.1 Larger Member States' advantages**

Larger Member States have a twofold advantage, firstly because they have enough resources to be active in most areas, although this study has shown that no Member State participates in all the groups and sub-groups because even large states find some issues to be of no interest. Secondly, large Member States can create their own data base, especially in areas regarded as important, and make their own analysis, which then can be used to challenge the analysis made by the Commission. The smaller Member States are forced to rely more on the facts and figures presented by the Commission but this may on the other hand lead to them being regarded as constructive partners with the Commission which in the end can enhance the possibility of influence.<sup>92</sup>

### **9.3.2 Policy implications for small and medium-sized Member States**

Nevertheless, so far the focus of EU Member States has been on comitology committees and groups and committees in the Council and there is certainly no lack of evidence as to why these arenas must be considered as important, but the result of this study indicates that other committees/groups may very well be equally or more important, especially for small to medium-sized Member States.

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<sup>91</sup> Sometimes expert groups are set up by EU institutions other than the Commission.

<sup>92</sup> Thorhallsson 2000, p. 122-128.

So, one may ask, is there any discussion going on at all within the governments of small or medium sized Member States in getting their priorities right when deciding to which EU committees and expert groups their civil servants should be assigned. Perhaps the outcome would be more beneficial from the perspective of the Member State if the expert groups' work in the policy development phase and was more strictly monitored and coordinated by the ministries.

On the other hand, one must also bear in mind that keeping track of all the expert groups is a difficult task for any Member State, since accurate information on existing and active groups is very hard to come by and the names of the members of expert groups are not listed in any official publication.

### **9.3.3 The expert groups and enlargement**

Furthermore, in a future European Union consisting of twenty-five Member States or more it will probably be even harder than today to reach agreements during the formal decision-making phase, unless the decision-making rules are drastically changed. Therefore it sounds reasonable to anticipate an increasing importance attached to the deliberations and discussions that take place during the agenda settings and initiating steps in the policy process. It will be even more important than before to bring in the Member States as early as possible in the decision-making process to be able to reach agreements in the later stages of the process. Consequently, a further increase in the number and size of expert groups is to be expected which in turn will probably lead to more sub-groups or working parties to help the enlarged expert groups handle the problems assigned to them. The result may well be an even more segmented decision-making process than today. On the other hand, since many of the new Member States are small, it may well happen that the position of the Commission is enhanced since small Member States tend, to a larger extent than large Member States, to support and accept the facts and figures presented by the Commission in the policy development phase, and it may thus become easier to reach agreements in the early stages of the policy-making process.

The upcoming enlargement will mean that a large number of small to medium sized states will become new members, all needing to set priorities regarding where best to concentrate their

efforts among the thousands of active committees and expert groups – welcome to the world of committees would perhaps be an apt greeting to the newcomers!

# Appendix 1    Methods

## **1        Definition: what is an expert group?**

Collecting reliable data for this type of study poses a number of methodological problems, one of which is how to actually define the research subject, i.e.: What is an expert group? I have already touched on this matter in the previous chapters but now it is time to dig deeper.

The word committee or group is perhaps the most misused word in the EU. Structures such as the Committee of the Regions and the Committee of Economic and Social Affairs, are called committees although they do not conform with the normal definition of a committee – something temporary or informal. To make things worse, what should be called a committee and what is a group is far from clear. A committee may decide to set up a working group or an expert group, and a working party in the Council may set up an expert group, just to give one example of the confusion. Furthermore, the Commission's expert groups may set up working groups or working parties, and to make matters worse, different labels for the same thing may be used, such as task force, umbrella group, steering committee or high level groups.

The question therefore arises: What criteria to use? The name of the committee/group, its function, its composition or how and why it was set up? It may sound strange but the fact is that in contrast to the working groups in the Council and the implementation committees (comitology committees), the concept of expert group is rather vague. Neill Nugent, who is one of the few who has tried to make some kind of classification in this field, makes a difference between what he calls advisory committees, divided into two sub-groups – consultative committees and expert committees

and other committees.<sup>93</sup> However, this type of classification also poses problems. First of all, one type of comitology committees is also called advisory committees, and secondly, in many cases the Commission officially uses the word group instead of committee, preferred by Nugent, and in some cases the so called expert groups are not only advisory bodies, they also deal with implementation in a major way.

In this study I have therefore applied a definition which is more or less identical to the one used by the Commission itself, namely: expert groups are structures set up by the Commission and which it can dismantle without needing anyone else's consent or entities listed by the Commission as expert groups according to its own statistics or groups formally initiated by the Council but is regarded by the Commission as an expert group. This is in contrast to groups/committees which are often established as the result of a request either made in a treaty or in a Council and Parliament decision. However, it should be pointed out that in many cases a request in a Treaty or in a decision taken by the Council/Parliament is often the result of a proposal made by the Commission. The request for setting up a committee may thus well originally emanate from the Commission.

## **2 Three different methods**

This study has focused on answering the three questions asked initially: how many expert groups there are and of what types, how they are controlled by the Commission and, finally, why expert groups are set up and what role they play in the broader framework of the policy-making process.

Three different methods of collecting data have been used. How the three methods are related to the three questions is illustrated by the figure below.

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<sup>93</sup> Nugent 2001, p. 243-246, see also Cini 1996, p. 148-149.

### *Type of data*

Research question	Official statistics	DG Enterprise	Case studies
Number and type of expert groups	X	X	
Commission control of exp. gr.		X	X
Role in policy-making			X

*Table A.* How the research questions are related to the data

To begin with, in order to get an overview of how vast the committee system is, statistics collected by the Commission and other EU institutions have been used. Partly, the data have been collected from official publications, partly data of a more semi-official status have been used – i.e. primarily produced for internal use by the EU institutions. Secondly, a special study has been done of DG Enterprise’s expert groups, not only to check the reliability of the Commission’s statistics but also to get a Commission perspective on how expert groups are set up and managed. Jan Murk, a Dutch master student, has been in charge of this part of the study. Thirdly, a random selection of a few expert groups (cases) have been studied, to see how expert groups are set up and how they fit into a broader ‘system of committees’ and the policy-making process.

### **3 Statistics**

One important source of information used in this report is official or semi-official statistics produced by the Commission, but in order to be able judge the reliability of this a few words are needed on how and why it has been collected.

In 1984 it was decided that an overview of committees and expert groups was to be carried out by the General Secretariat of the Commission and since 1988 committees and expert groups have been listed in an internal document which is updated annually. Every year each DG unit has to file an application to the General Secretariat of the Commission for each and every expert group,

stating the number of participants and meetings in the forthcoming year, in order to be able to receive means to reimburse participants' travelling expenses and hotel costs. In return the General Secretariat allocates an administrative code to the expert group which is used by the units to authorise payments. One or two national experts per Member States and twenty independent experts per group will be covered by the Commission. The costs are covered under the A part of the budget, which the Commission receives as a lump sum to run the administrative machinery. The European Parliament has little or no influence on this part of the budget, in contrast to the B part. However, in some cases primarily concerning scientific groups and expert groups working with the structural funds, economic resources can also be made available from part B – normally earmarked for output activities (programmes) and under Parliamentary control.

Until 2001, every DG and Service (departements) was asked by the General Secretariat to set up a list of committees/groups (including comitology committees) subdividing them into active, not active or abolished, and also new committees/groups envisaged for the forthcoming year. In response, the General Secretariat allocated to each committee or group, when accepted, a number (an ID) which makes it possible for the departments to claim economic compensation for travel expenses and accommodations from the Commission. This procedure made it possible for the general secretariat to compile data regarding the number of and the frequency with which committees and groups meet, provided they asked for economic compensation from the Commission's budget.

All this changed however, with the 2002 budget. As of this year, a new type of allowance was introduced, a so called BA headline which increases the possibilities for the Commission to have its administrative cost financed via the B part. In reality this also means that the General Secretariat may lose control over the expert groups set up by each DG and the new budget procedure will probably mean the end of the effort to maintain an internal comprehensive list of the Commission's expert groups. However, it is important to remember that the data is not primarily collected by the Commission's General Secretariat but by the DGs reporting to the General Secretariat. In other words, it has been up to each DG to present the facts and of their expert groups, information which later on has been compiled by the General Secretariat.

This study like others – seems to indicate that there are well-founded reasons to doubt the accuracy of the statistics produced

by the Commission. Quite frequently the study has revealed that an expert group has been listed which no one has ever heard of, and in other cases existing groups has not be found anywhere on any list.

#### **4 DG Enterprise**

At the beginning of this project one of the ambitions was to take a closer look at all the expert groups of one DG and the choice eventually fell on DG Enterprise as having one of the largest number of expert groups of different types.

However, quite early in the work we realised that in nine cases out of ten expert groups was a matter for units to decide, not the central DG level. Because of this the ambition had to be to cover all units with expert groups linked to them. In reality this research strategy proved impossible, too many heads of units (often doubling as chairperson of expert groups) are busy people and hard to get hold of to interview, and since chairpersons from outside the Commission spend most of their time in other countries (because they live there), they are even harder to get. Therefore a more pragmatic research strategy had to be applied and only chairpersons who could be reached within a defined three month period and who worked in the Commission were eventually interviewed. Thus, fifteen interviews were made, including three supporting interviews, covering twelve expert groups out of a total of one hundred and thirty officially registered ones, involving eight units out of eighteen in DG Enterprise. However, the twelve groups covered turned out to be a larger portion of the total number of groups in that DG than we first thought, because far from all the expert groups really exist or are active.

#### **5 Case studies**

The third type of data, small cases studies of expert groups, can best be described as a type of snap shots. The idea was not to delve too deeply into the issue how the internal discussions were carried out on specific subjects, instead the ambition has been to get a general overview of how an expert group is organised and its relationship to other groups and committees. In other words, each and every group has not been subject to in depth analysis, only the

surface has been skimmed. The expert groups having been selected on a random basis also contributes to – as in any explorative study – making it difficult to draw any general conclusions from the cases studied.

Both in the study of DG Enterprise and the case studies of individual expert groups a lot of the information has been collected through interviews with civil servants in the Commission or in the permanent representations of Member States and national civil servants in Swedish ministries and agencies. In most cases those interviewed have been guaranteed anonymity. However, it was often possible to complement the oral material with written documentation, either published on the internet or in the form of paper reports and books.

# Appendix 2 Expert Groups and Policy Development: Examples

## 1 The Climate change committee

The European Climate Change Programme (ECCP) was initiated by the Commission, its aim being to identify common and co-ordinated policies and measures that would eventually make it possible for the EU to meet the target set by the Kyoto Protocol for the reduction of greenhouse gas emissions.

One of the programmes most important features is the multi-stakeholder consultative process, in which relevant players such as the Commission, national experts, industry and NGOs have engaged in a co-operative effort. This broad consultative approach was initiated by the Commission to help it design appropriate policy proposals for the reduction of GHG emissions in all the relevant sectors. Another distinctive element is that the ECCP is not operating in isolation. Links to existing initiatives in the areas having an impact on climate change have been created.<sup>94</sup>

Six technical Working Groups (WGs) were established under the co-ordination of the ECCP Steering Committee(SC) covering Flexible Mechanisms, Energy Supply, Energy Consumption, Transport, Industry and Research – all active as from June 2000. A number of WGs opted to established specific sub-groups. In particular Working Group 5 on Industry co-ordinates the work of four distinctive sub-groups: ‘Fluorinated Gases’, ‘Renewable Raw Materials’, ‘Voluntary Agreements’, and together with Working Group 3 on Energy Consumptions , a Joint Sub Working Group (JSWG) on ‘Energy consumption in products and industrial processes’. Working Group 1, Flexible Mechanisms, co-ordinates two sub-groups ‘Emissions Trading’ and Joint

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<sup>94</sup> European Climate Change Programme – Report June 2001, executive summary.

Implementation/Clean Development Mechanisms – JI/CDM<sup>3</sup>. Working Group 4, Transport, co-ordinates five topic groups (TG1: Vehicle Technology and Fuel, TG2: Transport Infrastructure, Use and Charging, TG3 Freight Logistics and Intermodality, TG4: Awareness Raising and Behavioural Change, TG5: Data Validation). Working Group 6, Research established a sub-group on the scientific aspects of ‘Sinks’. A seventh Working Group Agriculture was established in March 2001.<sup>95</sup>

The programme was not carried out in isolation but rather connected to on-going activities at EU level such as the Joint Expert Group on Transport and Environment and the Joint Expert Group on Fiscal Measures. It also dovetails with the Sixth Environmental Action Programme and the EU strategy for Sustainable Development.

The role of the Commission in the framework of the ECCP follows a complementary dual approach. On the one hand the Commission, through the ECCP SC, is responsible for the general co-ordination of the programme. On the other hand, the Commission is active as a facilitator of the different WGs.<sup>96</sup> In practice this means that the Commission was chaired all the groups (including the sub-groups) but not all the WGs and other sub-groups, were chaired by DG Environment. The WG for Industry e.g. was chaired by someone from DG Enterprise and the secretariat was also from that DG. However, most of the work and the meetings took place on the level under WGs and, just as an example, the Industry sub-group only met about three times and the Steering group practically never.

The members of the different groups came from the Member States, Commission departments, industry sectors and NGOs; not every Member State was represented in every working group or sub-group, however, only six to seven Member States took part in each group. Large states had seats in approximately 80% of the groups while smaller states had representatives in about 20% of the groups. All in all, more than 200 experts took part in the formulation of the ECCP,<sup>97</sup> even taking into consideration a certain amount of overlapping since the same person could sit in a WG as well as a sub-group.

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<sup>95</sup> Ibid, p.4.

<sup>96</sup> Ibid, p. 4.

<sup>97</sup> European Commission, Director-General Environment D(2001) 610253, Brussels 14-09-2001.

Representatives were appointed after the usual procedure with consulting the relevant ministries of the Member States and their permanent representations in Brussels. However, the emphasis during the work of these groups lay on delivering expert opinions, the participants were not expected to any large extent to express the opinions of their governments.

In many cases the material to be discussed in the different groups was provided by the Commission - which had assured the production of several scientific reports or reports written by consultants before the groups were set up – but studies were also undertaken by group members who felt that they had special knowledge in certain fields.

What this case illustrates is a typical example of a three level expert group system, as mentioned before, consisting of, at the top, a steering committee under which we find the real expert groups (here called working groups) and below them a number of sub-groups. Particularly interesting with this example is that one sub-group is 'shared' by two working groups (expert groups).

## **2 Transport infrastructure charging**

The committees and the groups which are active in this area deal with the problem of how to charge each transport infrastructure with the right estimates of its cost in order to make fair competition possible where each and every sector of transportation carries its actual cost – marginal cost. In using a committee of government experts, the Commission would develop detailed and practical guidance on best practice for charging for infrastructure use, congestion, and practical cost, and new or amended legislation. Four specific purposes were identified: 1) Develop Community guidelines on methods to estimate the marginal cost of transport, 2) Develop practices and promote transparency of accounts and development 'transport accounts' at Member States level, 3) Review charging practise, 4) Advise on statistical and research needs and priorities. In a white paper by the Commission a three phase approach was proposed. In Phase One, the charging framework should be established. In Phase Two, the Commission and Member States would begin to adopt charging regimes to implement the framework. In Phase Three, the transition would be completed, and all modes of transport would be subject to marginal

cost charging. In both phase one and two the expert committee would be active.<sup>98</sup>

However, since new legislation was needed it was important to secure as much political support as possible, so a high level group was set up.

A green book dealing with these issues had already been published strongly recommending that every transport sector carry its real marginal cost as a way of pricing their utility. The Commissioner, Neil Kinnock, who was responsible for Transport in the Santér Commission, had made this a priority and wanted to push for putting this idea into practise.

In order to solve the problem how to price each transport sector and to establish a common and comparable practice among the Member States, an expert committee which had been dormant for some time was reactivated, although with new participants. An important part of the work of the committee was to follow and to comment on the work on the white paper that followed the discussions of the green paper.

However, this was not enough to get acceptance from the established sector interests. Thus a high level group on Infrastructure Charging was set up in 1999 in order to improve the image and enhance the prestige of the process and the issues at hand. The group included person like ex directors of Deutsche Bank, Olympic Airways, Volvo Transport, Confiroute, as a well known professor in transport economy and a German MEP who had been the ‘rapporteur’ in the Parliament on the green paper. The interesting thing here is that it looks like the Commission knew what it wanted but needed help in selling the product by the endorsement of some well known names in the field – that’s why it needed a high level group.

The high level group set up three working groups (sub-groups), reporting directly to the high level group – ‘Infrastructure cost working group’, ‘Congestion, environmental external cost working group’ and finally ‘Accident cost working group’. The high level group closely followed the work of the sub-groups.<sup>99</sup>

The meetings of the high level group was given a high priority by Kinnock, and although he was not chairing, he often attended the meetings for sometime or showed up for lunch. In spite of this

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<sup>98</sup> Fair payment for infrastructure use. A phased approach to a common transport infrastructure charging framework in the EU, 21-25.

<sup>99</sup> Proposed working groups of the High Level Group on Infrastructure charging, draft terms of reference.

formal respect given to the high level group by the commissioner, the expert committee also followed the work of the high level group and its working groups closely and it was always asked to submit its opinion on the reports presented by the high level group. Furthermore, the committee of experts functioned as reference group when formulating the white paper on 'Fair payment for infrastructure use' was drafted (published in 1998). Needless to say, the high level group was also asked to give its opinion on the white paper. Today the high level group, along with its working groups, have all been abolished, while the expert committee is still there (2002) – but so far, we have not seen any concrete solutions or measures being put on the Council's table.

This is another example of a structure with several levels but with a less obvious hierarchy, in the previous example the high level group was clearly above the expert group but this one is not.

### **3 Clean Air for Europe (Cafe)**

The Cafe committee is a mixed committee with representatives from Member States, stakeholders, NGOs and the industry. A normal meeting will comprise up to 40 representatives – including those from the accession countries. Several Commission DGs take part, Environment, Transport, Enterprise and Research. The Committee was set up in 2000 and is chaired by a representative from DG Environment, and so far three to four meetings have been held annually. The meetings are well structured, minutes are being kept although not on a detailed level and interpretation is provided, although to and from a limited number of languages.

The Cafe-committee has been established in order to evaluate the Roof directive and the Air Quality directive and to be a think tank for future policies in the area. The Roof and the Air Quality directives were prepared by a predecessor (the 'Air Quality Steering Group') to the Cafe committee, comprising more or less the same participants and representing the same interests. In an ambition to come up with a broader approach and take a firmer grip on the issues the Air Quality Steering Groups was abolished, subsequently replaced by the Cafe committee. The setting up of the Cafe committee was prepared by a planning group including representatives from the Commission, four Member States and two stakeholders. The mission of the planning group was to formulate

an action plan, to discuss the organisational design of the Café committee and the setting up different sub-groups.

At the moment the Café committee has four sub-groups. One of the sub-groups, Technical Analysis Groups (TAG), is lead by the chairman himself and is responsible for the estimated costs of different methods of lowering pollution. In this group we find the technical experts, usually from Member States' agencies, in the field of measuring effects and cost calculations. Another sub-group deals with implementation issues and is chaired by a representative from Austria, a third sub-group handles issues regarding 'particulars' and is chaired by a German and finally a fourth group, lead by a Swede who is presently also a national expert in the Commission, works with target setting and policy development. The secretariat for all four sub-groups is provided by the Commission. With the exception of the TAG group, everyone with an interest has been told they can join any one of the sub-groups provided the sub-groups do not become too large – although formally speaking the Commission decides on the participation of stake holders – but so far no problems have occurred regarding the membership of different sub-groups.

It is worth pointing out that what is agreed on at the committee level does not necessarily end up in the final Commission proposal presented to the Council and the Parliament. One of the reasons for this being that the other DGs do not always express negative opinions during a committee meeting, instead they try to influence the wording or the structure of the proposal during the internal deliberations in the Commission. And when the proposal reaches the Council a new round of political discussions starts – sometimes, but not always with the same civil servants as in the expert committee.

However, particularly interesting in this policy area is the existence of an almost parallel committee structure under the authority of the United Nations. Based on a convention from 1979 a committee called 'Long Range Transmission of Air Pollution' (LRTAP) has been established, meeting in Geneva where the secretariat has been set up. Originally, the ambition was to bring the East European states into the policy making process of making the air cleaner but ever since the accession countries started to participate in the Café committee more or less the same people meet in the LRTAP sessions. The LRTAP has a sub-group structure similar to but not copying the Café committee, and the

secretariat of each of the two committees meet once or twice every year.

This looks like a rather splendid example of a case where the Commission's ambitions have clearly been to be open and inclusive towards Member States as well as other interests, some of which even took part in discussions concerning how the groups should be organised. It is also a good example of the pseudo permanent character of many of these expert groups – even if a new group is set up it will most certainly resemble the previous one quite closely.

#### **4 An evaluation group in the area of social welfare**

In the framework programme of social welfare, adopted 1995, it was explicitly stated that a special group should be set up to evaluate the need of future reforms in the area. This group was to be led by the previous Prime Minister of Portugal Ponta Da Silva, and among the members could be found former ministers, like Bengt Westerberg from Sweden and Shirely Williams from UK. In other words, high status from the point of view of participants but all Member States were not taking part because some countries found the topic uninteresting.

The Commission gave support in terms of providing the secretariat but otherwise the group acted independently of the Commission. However, in the end the result of the work carried out in the group had little or no impact on the policy in the area. The work could just as well have been carried out by the Commission, but for some reason the choice was made to set up an external group.

This is an example of a group where the Commission chose to keep it at arms length, and in spite of its prestigious members the result was almost negligible.

## 5 The Renault factory in Belgium

In 1996/97 the car manufacturer Renault decided to close down its factory in Vilvorde in Belgium and thousands consequently lost their jobs. Understandably, this caused a major outcry not only from those affected but also from the Belgian politicians. This issue was brought up in discussions with the Member States, even in Council meetings, and the feeling was that something had to be done. One response on behalf of the Commission was to set up an ad hoc group to study how this type of closure could be handled in the future. The former executive director of the Swedish car manufacturer Volvo, Per Gyllenhammar, was appointed to chair the group which also included some 7-8 members from different countries and walks of life – a Danish and an Italian labour union leader, a German director from the textiles industries and a former employment minister from Portugal. However, not all Member States were represented, especially not the smaller ones.

The group worked independently but the secretariat – as usual – came from the Commission.

The final report received some attention as it suggested that a person who faced the risk of being made redundant would be entitled to specific training at the employer's expense that would improve the chances of the person being employed by another company. The responsibility to make an unemployed person employable would rest with the employer. This conclusion was not appreciated by the European employers organisation quite understandably.

So far, the result of the group's work – again – has had little impact on EU policy, so far only a program for 'monitoring of re-employment' has been created at the Dublin institute.

Once again we have a group made up of members carrying a lot of weight but this time the group was a response to strong political pressure, and the results were limited.

# Appendix 3 Expert Groups and Decision-Making: Examples

## **1 The Personal Representative Groups (PRG) of financial management and budget control**

Only one month after the appointment of the Santer Commission in 1995 two commissioners, Gradin and Liikanen, from the two new Member States Sweden and Finland decided to set up a joint group to reform the financial management and the budget control regime of the Commission.<sup>100</sup> The previous commissioner responsible for these issues – under the Delors Commission, they had been centralised to just one Commissioner – had left a comprehensive memo with a description of what he thought needed to be done and where he argued for a radical change of the old procedures and routines.

Faced with this challenge, the two new Commissioners could choose one of two possible strategies. One: they could work out a radical proposal, without outside advice and help, and send it to the Council - a strategy which would probably been applauded in many quarters of the EU establishment especially in the Parliament - giving an impression of the new commissioners being active and in favour of dramatic changes. But the success rate with this strategy in terms of results, i.e. getting the reforms through and accepted by the Council, was bleak. In fact, several Member States were expected to resist a radical change of the existing order - a further complication was that decisions had to be taken by unanimity by the Council.

Strategy two was therefore adopted; less radical in the short term, but still with the ambition of making an impact and changing the existing order. The idea was to bring in representatives from

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<sup>100</sup> Skr. 1996/97:80.

the Member States at an early stage in the decision-making process, gradually getting them used to thinking in terms of having to change the system of financial management and budget control. An important element in this strategy was the setting up of an expert group with representatives from the Ministries of Finance in the Member States. The participants' level was corresponding to that of the head of the Budget Bureau of the Ministry of Finance, with a substitute on a lower level. The Commission had its civil servants from the DGs of Liikanen and Gradin and the General Secretariat included into the group. The group was to be chaired by a commissioner, Gradin or Liikanen, depending on what issues were at hand, meaning that the two commissioners would normally be present at all the meetings.

The idea, as mentioned, behind setting up this type of group was to get the Member States on board gradually, involving them at an early stage, starting with minor changes to the system gradually progressing to a discussion about greater changes later on. But this approach also became a means to underline the importance of these issues in the Commission's internal battle over priorities and executive attention. Thus, a link was created between the DGs responsible for financial and budget control and the Ministries of Finance which could be used to put pressure on other DGs and commissioners. The third angle this group was trying for was to affect the lower level of the public administration, below the ministerial level, in the Member States by disseminating new ideas about budget control and financial management.

The group, which no longer exists, met twice a year and after each meeting a report was sent to ECOFIN. In the first couple of years a report was also sent to the European Council. It so happens that ECOFIN took decisions based on the findings in the reports from the group and in the beginning at least once a decision was taken in a 'comitology' meeting as a result of what had been agreed on in the group. In other words, this group could be used as a forum to prepare decisions for the Council or within the comitology procedure.

At the beginning the focus was basically on structural funds, later on the launching of SEM 2000; a typical issue for the group became the annual report from the Court of Auditors. Representatives from the Court of Auditors have been present at some of the meetings and once even the Parliament was invited to participate but that experiment was not repeated. Instead, the Parliament was informed of the results of the meetings via the

chairman of the standing Committee of Budget control, who got a personal copy of the report from the PRG.

As opposed to the Budget committee in the Council, in which voting takes place all the time, the PRG never voted and the discussions was of a more informal nature. This means that the influence of each participant was more due to his or her knowledge and skills than on the size of the Member State he or she represents. In other words, it is easier for smaller states to make their opinions heard and to influence matters than when votes are counted.

An interesting aspect of this group was that one of its purposes was to enhance the influence of one of its DGs in the internal battle between the departments in the Commission. How to form and shape a proposal in order for it to sail through the internal decision-making process of the Commission is often an important part. Many issues involve more than one DG and there is often a bit of a struggle over which one of them is going to be the lead DG, i.e. have the main responsibility for taking an issue through the policy process.<sup>101</sup> The DGs – as in all large bureaucracies – fight for their corner in order to protect their special interests and the setting up of shared expert groups can be an important tool in this power game.

## **2 The Employment Committee**

Today, the Employment committee is not, formally speaking, an expert group – it belongs neither to the Commission nor to the Council. Instead, the Advisory Committee, established under the Article 130 of the Treaty, is formulating the opinions at the request of either the Council or the Commission and contributing to the preparation of Council proceedings. This status was given to the committee when the Amsterdam treaty was signed in 1997 but the story of this committee began long before that time.

This committee was set up as early as 1995 as ‘a joint approach’ (shared responsibility) between the Commission and the Council. This translates as the Council being responsible for chairing the committee and the Commission being in charge of providing input in terms of policy suggestions and providing the secretariat. Consequently, the chairman would be substituted depending on which state was holding the Presidency. All the Member States

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<sup>101</sup> Fouilleux et al. 2002, p. 70, Nugent 2001, p. 242.

were represented (in some cases with people from more than one ministry) in the committee and the Commission was represented by its Director-General for employment supported by civil servants on a lower level including some from another DG (DG II). This committee involved neither the interest organisations of the labour unions nor the employees – exclusively Member States, Council and Commission are represented; the Member States on a fairly high level – under-secretary or general-director.

This committee was to be the place where the employment strategy, demanded by the Council at the Amsterdam summit, was to be formulated. However, it all started earlier than that. Usually, when trying to trace the origins of new policy, one has to go way back in history before the formal decision was reached and in this case it seems important steps were taken at the summit in Essen, during the German presidency, when the so called Essen strategy was formulated. In Essen discussions on Delors' white paper had resulted in a collection of ideas, even if they were rather fragmented, in the area of employment. In order to prepare for and to conclude these discussions in Essen an ad hoc group had been set up by the Commission.<sup>102</sup> In the autumn of 1995 DG Employment, a few other DGs and the Spanish presidency were discussing the need to find a more stable structure in order to be able to continue the discussions, and in 1996 the ad hoc group was transformed into a permanent committee.

It was within this setting (the committee) the Commission suggestions were to be discussed and, in practice, decided on by the Member States. Any agreement would, of course, have to be channelled through the COREPER and finally, taken formally by the Council of Ministers, but once agreement had been reached, few changes would be made. In other words, the committee created a space for the preparation of the Commission's and the Council's (the Member States) proposals to the European Council and the Council of Ministers.

The idea of this joint approach was very much the result of DG Employment's and the Commission's brain-storming. In 1994 the area of employment was still very much in the hands of the Member States and most of them were rather reluctant to give up any competence to a supranational structure. The setting up – first of an ad hoc group and later on a permanent committee, chaired by the Council but both in substance and practise controlled by the

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<sup>102</sup> Brine 2002, p. 90-94.

Commission – was a way of gradually bringing the Member States into a the same way of thinking. However, although the Commission always listens carefully to the ideas put forward by Member States, the Commission actually presents the suggestions for new policies in the area and controls what to put on the agenda for the meetings. All major suggestions put forward to the committee were therefore carefully co-ordinated and agreed on in the Commission before the Member States were asked to express their opinions, and although real discussions on policy substance were carried out during the meetings, problems expressed by an individual Member State was usually dealt with by bilateral negotiations with the Commission.

The idea behind this strategy was that no issue presented to the committee should come as a surprise for the participants and of course all the facts needed to be right. The work of this committee can be described as a process where the participants gradually over time develop a deeper understanding of each other's problems and the need for a common policy in the area. Thus the participants will over time develop not only a deep knowledge of the policy of the other Member States but also an understanding of the personality of the other participants in the group and a procedure for handling problems at hand.

As mentioned above, what was to become the European Employment strategy had begun with the White paper on growth, which was discussed by the Member States in Essen. Some time later, in 1996, the Commission published another paper entitled 'Action for Employment in Europe', and in the summit of Amsterdam, on French initiative, it was decided that a large scale employment strategy for five years should be launched to be presented at a special council in Luxemburg in November 1997. The state carrying the helmet of the presidency during the period the negotiations were to take place was not to keen on the mission, and as Luxemburg also had to chair the enlargement negotiations, being a small nation there was a feeling of being burdened down with too many assignments. Nevertheless, the French proposition was accepted and in a few months, after some 200 meetings in different arenas, the committee managed to put together a suggestion for a European Employment strategy which was build on twenty sub-strategies and some 50 plus more specific recommendations to the Member States. In 1999 the employment guidelines were finally adopted by the Council.

This is a nice example not only of how the Commission manages to control an expert group and the policy development phase but also of how an expert group can be used to influence the rest of the policy-making process by directly linking it to other institutions and arenas.

### **3 Customs 2002**

Customs issues are divided among the first and third pillar and for that reason matters proceed differently in the Commission and Council depending on to which pillar they belong. Two different working parties in the Council are handling the customs issues – Working Party on Custom Union (first pillar) and Working Party on Custom Co-operation (third pillar). Issues classified as belonging to the first pillar are handled by either COREPER I or COREPER II while third pillar issues are dealt with by the article 36 committee, and then send to COREPER II.

As regards matters under the first pillar, the Commission has about 50 expert groups or committees assisting it in its work. But that is not all. For example one of these 50 groups is a steering group consisting of the general directors of customs affairs in the Member States. Below this steering group there are five sub-groups, one dealing with administrative matters while the others are involved in policy-making. Every Member State has a seat in each sub-group and the Commission is chairing the steering group, the five sub-groups and provides the secretariats. The groups are working within a framework called ‘Customs 2002’ which has now changed its name to ‘Customs 2007’. Originally, when it was started in 1996, it was called ‘Customs 2000’. Below the level of the five sub-groups there are some 50 ad hoc working groups of a more informal character, each including only some 6-7 participants. Most of these ad hoc groups are working on technical and non-controversial issues; only about ten of them deal with matters concerning policy-making. Since the ad hoc groups are small not all Member States participate in every group, only Member States with a special interest of the issues have a seat. In fact there is no Member State that participates in every group, and a small state like Sweden participates in approximately half of the ad hoc groups. Nevertheless, the ad hoc groups are important and in many cases it is here where a lot of what is later to become official policy originates. It is also an opportunity for small Member States to

influence the policy-making process since everybody in the ad hoc groups has equal opportunities to influence the discussion - the importance of what is being said and suggested is not linked to the size of the state and its eventual influence in the Council. An active representative from a small Member State has every opportunity to take initiatives thereby influencing the agenda setting for the later stages of the decision-making process.

What is agreed upon in the 'Customs 2002' is usually accepted by the Council without discussions. In reality, the five sub-groups are the real brokers and problem solvers of issues that have not or cannot be sorted out by ad hoc groups. The steering groups rarely have any objections to the proposals made by the sub-groups. However, this procedure is applied particularly in situations where issues are formally decided by the Council. In other case, when the Council has delegated power to the Commission to implement decisions formally taken by the Council and the Parliament, the steering group functions as a comitology committee and expresses formal opinions on the measures put forward by the Commission.

However, it is only in the area of 'Customs 2002' the Council deliberations become mere procedure with little impact on the proposals put forward by the Commission. Where other matters are concerned, since not all custom's issues under the first pillar are covered by the 'Customs 2002', the Commission may put forward proposals that do not originate from any group/committee or, alternatively, has been dealt with by groups/committees outside the framework of 'Customs 2002' and in these cases the deliberations in the Council will be of the utmost importance and drastic changes can be made to the original Commission proposal.

When it comes to matters under the third pillar, the Commission has very few expert committees and in this field the Council plays a much more important role as initiator, agenda-setter and policy-maker of customs issues.

#### **4 The Advisory Committee on Safety, Hygiene and Health Protection at Work**

In many areas the Commission has set up special committees/groups in order to be able to seek the advice of and to exchange views with interest groups, stake holders, NGOs, etc. Sometimes Member States are included in these committees and sometimes they are not. Whether these consultative groups should be placed under the heading of agenda setting, decision-making or implementation can be debated but in many cases these groups can be activated and used throughout the entire decision-making process. Two examples are presented below.

The Commission's Advisory Committee on Safety, Hygiene and Health Protection at Work has been active for a long time, meeting about twice a year for the duration of two days each time, and it was established in 1974 after an initiative by the French president.<sup>103</sup> This is a huge committee with 90 full members, i.e. two government representatives, two trade union representatives and two employer representatives per Member State, appointed by the Council for a period of three years. The committee is chaired by someone working in the Commission, usually the Director General of DG Employment, and the Commission also provides the secretariat.<sup>104</sup> The committee consists of three sub-groups – representatives from the trade unions make up one, the employers' organisations another and the Member States the third – and the sub-groups meet separately during the first day, 'in the margin' of the general meeting. When an opinion on a proposal for a Commission directive is needed the committee sets up an expert group to formulate and pre-negotiate what is later to become the opinion of the committee.<sup>105</sup>

The main objectives of the Committee are to assist the Commission in the preparation and the implementation of activities in the field of health and safety at work and to facilitate cooperation between national administrations, trade unions and employer organisations. The Committee produces an annual report on its activities.

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<sup>103</sup> Olsen 1996, p. 72.

<sup>104</sup> <http://europa.eu.int/comm/employment-social/h&s/committ/adcomm2-en.thm>

<sup>105</sup> Olsen 1996, p. 75.

The committee has been described as having mainly three roles. First, to be an arena for discussions on scientific, technical and political matters concerning the issues presented by the Commission. This usually produces a final draft proposal from the Commission which – when it is presented to the Council and Parliament – includes opinions from the labour market partners, thus significantly reducing the potential of a conflict in the Council. Secondly, the committee plays an important role in the distribution of information to governments, trade unions and employer organisations. Thirdly, the committee plays an important role in defining problematic areas of problems where the Commission is not yet active, in fact it can take initiative of its own by for example initiating a pilot study on a topic it feels has been neglected.<sup>106</sup>

Just one example of the importance of this committee - two thirds of the legislation in the area of European Social Policy is about health and security in the workplace. But to a certain extent this committee can be said to have had its hey-days in the 1980s and the beginning of the 1990s. Today much of the legislation needed on a European level has been carried through. A lot of the deliberations in the committee are of a highly technical character. Consequently, the participants in the group tend to have a very high degree of technical and administrative knowledge in the area and many Member States' representatives are from administrative authorities where the knowledge can usually be found, not the ministries.

The Commission has often been keen to hear the opinion of this committee before presenting new proposals to the Council and should the parties agree on a subject the ensuing discussions on a concrete proposal in the working party, COREPER and the Council often become a formality. But, surprisingly enough, the Commission has not always regarded the committee as a resource and on occasions it has tried to avoid asking for its opinion or found that the committee has failed in reaching a consensual opinion.<sup>107</sup>

This is an example to illustrate how the Commission, with the help of committees and groups, can set up something almost resembling a 'mini parliament', although not including members from the European Parliament, where more or less all the important social partners and Member States are represented. Then

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<sup>106</sup> Ibid, p. 75-76.

<sup>107</sup> Ibid, p. 79-81.

this arena can be used to precook proposals to be decided by the Council at a later stage. However, in contrast to the Employment committee, this committee is chaired by the Commission and the other members are appointed by the Council. But is not always that things work out according to plan and occasionally the committee has been regarded by the Commission more as an obstacle than as a supportive partner.

## **5 The Committee for Social Dialogue**

In many areas the Commission has set up special committees for a social dialogue with the labour market parties, i.e. the organisations representing the trade unions and the employers on the European level. These committees operate on several levels with a great number of sub-committees, each covering a narrow sector of the labour market. However, one level above the specialised committees we find a committee for dialogue consequently covering a large area. This committee is chaired by the general director of DG Employment but the idea here is not for the Commission to take the lead; the Commission is supposed to facilitate the dialogue between the parties on the labour market. However, in reality the picture looks somewhat different since the Commission is setting the agenda for the meetings and most of the documents presented have been prepared by the Commission. Consequently, the parties normally find themselves having to react and act on material presented by the Commission only.

Originally, this committee dealt quite exclusively with conditions of employment, but later on it became a forum for negotiating collective agreements between the partners on the labour market. The committee also appeared as a partner in the macroeconomics dialogue for economic growth – an initiative taken by the Germans where the European Central Bank (ECB), the Commission, the Committee of Employment and the parties on the labour market were to have discussions on and exchange information as how to improve economic growth. This is, in other words, an excellent example of how committees can be linked to each other thus becoming a strategic network for policy making. And, as mentioned earlier, when there is agreement between the social partners there is usually not much room left for the Council

and the Member States to deliberate during the later stages of the policy process.<sup>108</sup>

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<sup>108</sup> Fouilleux et al. 2002, p. 69.



# Appendix 4 Statistics

**Table A** Number of permanent, ad hoc and passiv expert groups during 1999/2000

Departments	PERMANET GROUPS with			AD HOC GROUPS with			PASSIVE GROUPS	
	Groups	Subgroups	Subgroups	Groups	Subgroups	Subgroups	Total Permanent	Total Ad hoc
SG	3	-	-	3	1	9	-	1
JURIDIQUE	-	-	-	1	-	-	-	-
SCIC	-	-	-	3	1	5	-	-
ESTAF	41	13	40	-	-	-	4	1
SECURITÉ	-	-	-	2	-	-	-	3
EX DG 1 A	-	-	-	29	3	7	-	1
SCR	-	-	-	2	-	-	-	-
EX DG 1 B	-	-	-	7	1	2	-	2
ECFIN	5	-	-	4	4	8	-	-
ENTR	44	15	42	44	7	20	12	2
COMP	2	-	-	3	-	-	-	2
EMPL	40	11	64	12	1	4	35	4
AGRI	32	4	15	10	-	-	3	-
TREN	26	8	22	7	-	-	-	-
DEV	9	1	1	12	-	-	4	5
ADMIN	1	1	6	-	-	-	-	-
EAC	37	14	51	27	4	10	14	24
ENV	40	14	36	44	3	5	19	7
RTD	1	1	4	120	7	40	-	6
JRC	2	-	-	-	-	-	1	-
INFSO	5	-	-	61	9	35	2	-
TRADE	1	-	-	2	-	-	-	-
FISH	6	3	9	1	1	2	3	2
MARKT	14	-	-	23	1	2	3	3
REGIO	7	3	4	23	3	6	2	7
ENERG	8	2	4	6	-	-	1	2
TAXUD	14	4	11	6	-	-	2	-
SANCO	24	9	32	17	2	5	7	8
ENLARG	-	-	-	3	-	-	-	-
JAI	6	-	-	10	-	-	-	1
OLAF	-	-	-	-	-	-	-	-
ECHO	1	-	-	-	-	-	-	-
<i>SUM</i>	<i>369</i>	<i>103</i>	<i>341</i>	<i>482</i>	<i>48</i>	<i>160</i>	<i>112</i>	<i>81</i>

*Source:* Own estimates based on 'Liste d'autorisation des reunions de comites et groupes d'expertes. Preparé par le Secretariat Général 2001.

**Table B Total number of groups and sub-groups divided on ad. hoc. and permanent groups**

DG	PERMANET GROUPS			AD HOC GROUPS			ALL GROUPS		
	(1)	(2)	Total (1+2)	(3)	(4)	Total (3+4)	(1+3)	Total (2+4)	Total (1-4)
Departments	Groups	Subgroups	Groups	Groups	Subgroups	Groups	Groups	Subgroups	All
SG	3	-	3	3	9	12	6	5	15
JURIDIQUE	-	-	-	1	-	1	1	-	1
SCIC	-	-	-	3	5	8	3	5	8
ESTAF	41	40	81	-	-	-	41	40	81
SECURITÉ	-	-	-	2	-	-	2	-	2
EX DG 1 A	-	-	-	29	7	36	29	7	36
SCR	-	-	-	2	-	2	2	-	2
EX DG 1 B	-	-	-	7	2	9	7	2	9
ECFIN	5	-	5	4	8	12	9	8	17
ENTR	44	42	86	44	20	64	88	62	150
COMP	2	-	2	3	-	3	5	-	5
EMPL	40	64	104	12	4	16	52	68	120
AGRI	32	15	47	10	-	10	42	15	57
TREN	26	22	48	7	-	7	33	22	55
DEV	9	1	10	12	-	12	21	1	22
ADMIN	1	6	7	-	-	-	1	6	7
EAC	37	51	88	27	10	37	63	61	125
ENV	40	36	76	44	5	49	84	41	125
RTD	1	4	5	120	40	160	121	44	165
JRC	2	-	2	-	-	-	2	-	2
INFSO	5	-	5	61	35	96	66	35	101
TRADE	1	-	1	2	-	2	3	-	3
FISH	6	9	15	1	2	3	7	11	18
MARKT	14	-	14	23	2	25	37	2	39
REGIO	7	4	11	23	6	29	30	10	40
ENERG	8	4	12	6	-	6	14	4	18
TAXUD	14	11	25	6	-	6	20	11	31
SANCO	24	32	56	17	5	22	41	37	78
ENLARG	-	-	-	3	-	3	3	-	3
JAI	6	-	6	10	-	10	16	-	16
OLAF	-	-	-	-	-	-	-	-	-
ECHO	1	-	1	-	-	-	1	-	1
<i>SUM</i>	<i>369</i>	<i>341</i>	<i>710</i>	<i>482</i>	<i>160</i>	<i>642</i>	<i>851</i>	<i>501</i>	<i>1 352</i>

*Source:* Own estimates based on 'Liste d'autorisation des reunions de comites et groupes d'expertes. Preparé par le Secretariat Général 2001.

**Table C** Number of meetings in different types of expert groups

Departments	PERMANENT		AD HOC		ALL GROUPS	
	(1) Groups	(2) Meetings	(3) Groups	(4) Meetings	Total (1+3) Groups	Total (2+4) Meetings
SG	3	15	12	38	15	53
JURIDIQUE	-	-	1	8	1	8
SCIC	-	-	8	32	8	32
ESTAF	81	177	-	-	81	177
SECURITÉ	-	-	2	2	2	2
EX DG 1 A	-	-	36	77	36	77
SCR	-	-	2	5	2	5
EX DG 1 B	-	-	9	10	9	10
ECFIN	5	7	12	37	17	44
ENTR	86	216	64	177	150	393
COMP	2	22	3	12	5	34
EMPL	104	323	16	31	120	354
AGRI	47	94	10	83	57	177
TREN	48	146	7	26	55	172
DEV	10	33	12	21	22	54
ADMIN	7	17	-	-	7	17
EAC	88	205	37	104	125	309
ENV	76	161	49	105	125	266
RTD	5	8	160	608	165	616
JRC	2	7	-	-	2	7
INFSO	5	18	96	217	101	235
TRADE	1	3	2	12	3	15
FISH	15	23	3	22	18	45
MARKT	14	48	25	63	39	111
REGIO	11	20	29	85	40	105
ENERG	12	22	6	27	18	49
TAXUD	25	92	6	18	31	110
SANCO	56	270	22	61	78	331
ENLARG	-	-	3	6	3	6
JAI	6	13	10	32	16	45
OLAF	-	-	-	-	-	-
ECHO	1	15	-	-	1	15
<i>SUM</i>	710	1 955	642	1 919	1 352	3 874

*Source:* Own estimates based on 'Liste d'autorisation des reunions de comites et groupes d'expertes. Preparé par le Secretariat Général 2001.

# List of Abbreviations

## General Directorates and Services

<b>ADMIN</b>	Personnel and Administration
<b>EAC</b>	Education and Culture
<b>ENV</b>	Environment
<b>RTD</b>	Research
<b>JRC</b>	Joint Research Centre
<b>INFSO</b>	Information Society
<b>TRADE</b>	Trade (DG Commerce)
<b>FISH</b>	Fisheries
<b>MARKT</b>	Internal Market
<b>REGIO</b>	Regional Policies
<b>ENERG</b>	Energy
<b>TAXUD</b>	Customs and Taxation
<b>S.G.</b>	Secretariat General
<b>Juridique</b>	Legal Services
<b>SCIC</b>	Joint Interpreting and Conference services
<b>ESTAC</b>	EUROSTAT (Statistical office)
<b>SECURITÉ</b>	Security
<b>EX DG 1 B</b>	External relations: Southern Mediterranean, Middle and Near East, Latin America, South and Southeast Asia, North-South Cooperation
<b>SCR</b>	Common Service for External Relations
<b>EX DG 1A</b>	External relations: Europe and newly independent states, Common Foreign and security Policy, external missions
<b>ECFIN</b>	Economic and Financial affairs
<b>ENTR</b>	Enterprise
<b>COMP</b>	Competition
<b>EMPL</b>	Employment and Social Affairs
<b>AGRI</b>	Agriculture
<b>TREN</b>	Transport
<b>DEV</b>	Development
<b>SANCO</b>	Health and Consumer Protection
<b>ENLARG</b>	Enlargement Service
<b>JAI</b>	Justice and Home Affairs
<b>OLAF</b>	Fraud Prevention Office
<b>ECHO</b>	Humanitarian Aid Office

# Abbreviations

## General Directorates and Services

<b>ADMIN</b>	Personnel and Administration
<b>EAC</b>	Education and Culture
<b>ENV</b>	Environment
<b>RTD</b>	Research
<b>JRC</b>	Joint Research Centre
<b>INFSO</b>	Information Society
<b>TRADE</b>	Trade (DG Commerce)
<b>FISH</b>	Fisheries
<b>MARKT</b>	Internal Market
<b>REGIO</b>	Regional Policies
<b>ENERG</b>	Energy
<b>TAXUD</b>	Customs and Taxation
<b>S.G.</b>	Secretariat General
<b>Juridique</b>	Legal Services
<b>SCIC</b>	Joint Interpreting and Conference services
<b>ESTAC</b>	EUROSTAT (Statistical office)
<b>SECURITÈ</b>	Security
<b>EX DG 1 B</b>	External relations: Southern Mediterranean, Middle and Near East, Latin America, South and Southeast Asia, North-South Cooperation
<b>SCR</b>	Common Service for External Relations
<b>EX DG 1A</b>	External relations: Europe and newly independent states, Common Foreign and security Policy, external missions
<b>ECFIN</b>	Economic and Financial affairs
<b>ENTR</b>	Enterprise
<b>COMP</b>	Competition
<b>EMPL</b>	Employment and Social Affairs
<b>AGRI</b>	Agriculture
<b>TREN</b>	Transport
<b>DEV</b>	Development
<b>SANCO</b>	Health and Consumer Protection
<b>ENLARG</b>	Enlargement Service
<b>JAI</b>	Justice and Home Affairs
<b>OLAF</b>	Fraud Prevention Office
<b>ECHO</b>	Humanitarian Aid Office

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# **Svensk sammanfattning**

av

**Ds 2003:16**

## **Precooking in the European Union – the World of Expert Groups**

**Rapport till ESO av Torbjörn Larsson**



## Förord

I denna rapport riktas strålkastarljuset mot den arena i EU där beslut förbereds och ny policy initieras. Särskilt kartläggs och granskas kommissionens många hundra aktiva expertgrupper och vilken roll och vilka funktioner dessa har.

Forskning om detta saknas fortfarande. Därför har statsvetaren och docenten *Torbjörn Larsson* vid Stockholms universitet, tidigare verksam vid European Institute of Public Administration (EIPA) i Maastricht, på ESO:s uppdrag genomfört den explorativa studie som här presenteras.

Under kommissionens arbete med att ta fram nya policyförslag medverkar såväl specialiserade intressentgrupper som olika nätverk i de olika expertgrupperna. Det är i dessa grupper som kommissionens förslag, vilka senare ska underställas det europeiska rådet och Europaparlamentet, arbetas fram. Vidare deltar tjänstemän från medlemsstaterna i expertgruppernas arbete. Under detta skede betraktas de senare vanligen som experter, halvt självständiga sett i relation till det egna landets regering.

Processen för att fatta beslut inom EU kan delas in i tre olika faser; den beslutsförberedande fasen, beslutsfattandefasen och slutligen genomförande- eller implementeringsfasen. Under samtliga tre faser finns det hundratals kommittéer och grupper som deltar i arbetet med att formulera EU:s politik. Det förefaller emellertid som om flertalet medlemsstater i sina ansträngningar att förena samordning och strategiskt tänkande, har riktat fokus mot det formella beslutsfattande och genomförandet – inte på den fas när det nya EU-politiken de facto utarbetas och formuleras.

Av rapporten framgår att arbetet med att initiera och sätta nya politikområden på agendan bedrivs fragmenterat. Är det nuvarande arbetssättet det bästa sättet att organisera arbetet i initialskedet av beslutsprocessen? Frågan får ökad aktualitet nu när vi står inför en kraftig ökning av antalet medlemmar i Unionen. En annan fråga är om medlemsstaterna utnyttjar sina knappa resurser optimalt när det gäller koordination och strategisk beslutsfattande när man i första hand fokuserar på beslutsfattande och genomförande.

Genom att publicera denna rapport hoppas vi bidra till diskussionen om hur EU fungerar. Det är också min förhoppning att rapporten kan medverka till en debatt om var och när Sveriges insatser i EU:s beslutsprocess får störst effekt.

Som vanligt i ESO-sammanhang svarar författaren själv för innehållet i rapporten.

Stockholms i april 2003

***Eva Lindström***  
Ordförande för ESO

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# 1 När kartan och verkligheten skiljer sig åt

I alla politiska system finns det en inbyggd spänning mellan hur statsskicket är tänkt att vara organiserat och arbeta och hur det förhåller sig i verkligheten. Den officiella versionen av statsskicket kompletteras alltid – ibland till och med motsägs – av den informella versionen. Hur den informella strukturen eller det dolda styret formges och av vilka är av avgörande betydelse för hur makten och inflytandet fördelas i ett politiskt system. Denna studie har granskat en del av EU:s informella struktur och dess relation till den formella strukturen.

## 1.1 Tre frågor

Studien har fokuserat på expertgrupperna och deras främsta tillskyndare – kommissionen. Inom denna ram har tre frågor ställts.

*För det första*, givet kommissionens rätt att inrätta expertgrupper, i vilken utsträckning utnyttjas detta instrument och vilken typ av grupper inrättas?

*För det andra*, hur styr kommissionen arbetet i expertgrupperna rent organisatoriskt?

*För det tredje*, varför inrättas expertgrupper och på vilket sätt kan expertgrupperna användas för att påverka beslutsstrukturen i EU?

Kunskapen om hur kommittéer och olika grupper är organiserade och arbetar inom EU är begränsad eftersom mycket lite forskning har utförts på detta område och i synnerhet expertgrupperna har egentligen aldrig kartlagts. Denna studie rör sig därför i huvudsak på jungfrulig mark och följaktligen har den fått en kartläggande karaktär, där fokus har legat på att titta på fenomenet expertgrupper från olika håll och att diskutera vilken roll de spelar och vilken funktion de fyller.

## 1.2 Definition av expertgrupper

Att bryta ny mark är aldrig lätt och i det här fallet började problemen omedelbart, dvs. fastställandet av forskningsobjektet, eftersom det inte är så enkelt att definiera vad en expertgrupp är och dessutom kan det göras på olika sätt. För att komplicera saken ytterligare används ofta olika beteckningar på likartade fenomen som arbetsgrupper, kommittéer, styrgrupper, högstatusgrupper, paraplygrupper osv. I denna rapport används därför beteckningen expertgrupp på kommittéer eller grupper som inrättas och kan läggas ned av kommissionen på dess eget initiativ, eller på en kommitté/grupp som an-

ses vara en av kommissionens expertgrupper trots att den inte finansieras eller har inrättats av kommissionen. Expertgruppernas deltagare hämtas i huvudsak från andra ställen än kommissionen, men kommissionen är inte tvungen att vare sig lyssna på dem eller beakta deras råd, till skillnad mot kommittologikommittéerna, som inrättas av rådet och parlamentet.

## **2 Hur många expertgrupper finns det och vilka typer**

Att döma av statistik från kommissionens generalsekretariat använder sig kommissionen av sin rätt att inrätta expertgrupper i stor utsträckning. För år 2000 låg antalet expertgrupper enligt den officiella statistiken på mellan 800 och cirka 1 000. Det är dock mycket svårt att avgöra hur många av dessa som var aktiva. De som borde veta detta är enheterna i generaldirektoraten, men de har bara överblick över delar av området, inte helheten. Det verkar faktiskt som om ingen har fullständiga och vederhäftiga uppgifter om aktuell status för de enskilda expertgrupperna. Vidare är det skattade antalet expertgrupper inte baserat på fakta, ibland är det frågan om rena gissningar. Samma uppsättning människor kan nämligen uppträda i olika konstellationer och låtsas som om de har bildat en ny grupp när det i själva verket är samma som förut men med ett nytt namn. Alla uppgifter bör därför tas med en nypa salt. För alla som deltar i processen, lobbyister, intressenter, tjänstemän från medlemsstaterna och från kommissionen, är statusen på en viss expertgrupp tämligen klar, men för alla andra kan det vara ett problem. Men det finns ingen officiell och heltäckande förteckning över vem som sitter i vilken expertgrupp, vilka tidsramar gruppen har eller vilken budget den har fått. Och eftersom det dessutom finns expertgrupper som officiellt inte har inrättats av kommissionen, men inte desto mindre är nära knutna till den och ofta arbetar på ungefär samma sätt som de officiella expertgrupperna, gör detta osäkerheten ännu större.

### **2.1 Antalet ökar**

Med reservation för dessa osäkerhetsfaktorer förefaller det ändå som om antalet expertgrupper ökar över tiden, trots kommissionens ansträngningar att begränsa antalet. En anledning till varför det i princip är omöjligt att få fram hur många expertgrupper det finns är att dessa inrättar undergrupper, som ofta är i stort sett jämbördiga med de ursprungliga grupperna. Dessa undergrupper möts ofta med ännu större regelbundenhet än huvudgrupperna, och de gör ofta också en stor del av det viktiga grundläggande arbetet. I denna rapport visas att cirka 20 % av alla expertgrupper har undergrupper –

ofta flera. Detta innebär att till de cirka 850 förtecknade expertgrupperna år 1999 skall läggas cirka 500 undergrupper.

Enligt kommissionens eget klassificeringssystem är ungefär hälften av expertgrupperna permanenta och resten är av ad hoc-typ – en siffra som förefaller ha varit tämligen konstant över tiden. Av detta kan vi dra slutsatsen att många expertgrupper inte har inrättats endast för att hantera en viss frågeställning, utan för att arbeta en längre tid och med många olika frågor. I själva verket kan man i många fall konstatera att expertgrupperna fungerar som permanenta rådgivande organ till generaldirektoraten.

## **2.2 Aktiva och passiva grupper**

Kommissionens statistik ger oss dock inte hela förklaringen till skillnaden mellan permanenta grupper och ad hoc-grupper. Många ad hoc-grupper har varit aktiva under lång tid medan ett antal av de permanenta inte har varit verksamma alls under senare år. Vårt att nämna är att kommissionens generalsekretariats förteckning inbegriper passiva grupper men som fortfarande existerar, till skillnad från grupper som har lagts ned – för perioden 1999/2000 uppgick antalet passiva grupper till närmare 200. Dessutom registrerades inga möten för 128 av de "aktiva" grupperna.

Mötesfrekvensen varierar mellan olika slag av expertgrupper. Några av grupperna har i praktiken inga möten medan andra träffas varannan vecka eller till och med oftare. I genomsnitt har en expertgrupp tre möten per år, ad hoc-grupperna dock något fler än de permanenta.

Skillnaderna mellan de olika generaldirektoraten är också betydande när det gäller hur många expertgrupper som inrättas. Sex generaldirektorat svarar för hela 58 % av alla grupper, inklusive undergrupperna. Vi ser också att gruppernas genomsnittliga mötesfrekvens varierar stort mellan generaldirektoraten och här är det DG Forskning som framför allt avviker med genomsnittligt 50 % fler möten per expertgrupp än de andra.

## **2.3 Form och storlek**

Expertgrupper kan klassificeras på en mängd olika sätt, utöver generalsekretariatets gängse, särskilt om man beaktar antalet deltagare och vilken typ av sakkunskap och/eller intressen de representerar.

I en typisk expertgrupp ingår ett antal högt kvalificerade experter, ofta vetenskapsmän eller akademiker, som träffas för att lösa eller åtminstone diskutera en specifik fråga. Dessa företrädare bara sig själva och legitimiteten eller auktoriteten är baserad på deras samla-

de kunskap på området i fråga. I andra änden av skalan hittar vi expertgrupper som genom förhandlingar försöker lösa olika typer av konflikter och motsättningar. För det tredje finns det expertgrupper med företrädare för medlemsstaterna. Här återfinner vi tjänstemän som förväntas kunna ikläda sig både expertrollen, dvs. kunnig på ett visst område, och rollen som företrädare för regeringen med visst självständigt ansvar. Dessa tre kategorier, vetenskapliga experter, intresseföreträdare respektive medlemsstaternas tjänstemän kan också ingå i en och samma expertgrupp.

Vidare kan en expertgrupps sammansättning var bred eller smal. Det förra innebär att alla relevanta experter och företrädare för intresseorganisationer och medlemsstater deltar, medan det i det senare fallet endast ingår ett fåtal.

Expertgrupper kan också klassificeras efter vilken status de får genom den ställning deltagarna har. En sådan grupp kan t.ex. innehålla f.d. premiärministrar, ministrar, generaldirektörer, chefer från näringslivet, fackföreningsledare eller högre tjänstemän. Då kallas den ofta för en högstatusgrupp, ibland för en styrgrupp eller en paraplygrupp och den har ofta i uppdrag att samordna eller granska förslag och idéer från andra grupper eller från kommissionen. En högstatusgrupp, särskilt om den också är en styrgrupp, kan inrätta en mängd undergrupper men vanligtvis deltar inte de som sitter i högstatusgruppen i undergruppernas arbete, till skillnad från expertgruppernas undergrupper där ofta deltagare från huvudgruppen ingår.

Med andra ord, under beteckningen "expertgrupper" finner vi en rad olika företeelser. Detta leder över till frågan om hur och i vilken utsträckning kommissionen styr och påverkar expertgruppernas arbete.

### **3 Kommissionens styrning av expertgrupperna**

I teorin kan kommissionen styra expertgrupperna på en mängd olika sätt.

#### **3.1 Inrätta och lägga ned grupper**

Den första möjligheten att påverka någonting är att inrätta eller lägga ned en grupp. Kommissionen kan t.ex. välja att inrätta en expertgrupp för att ta reda på om medlemsstaterna och intresseorganisationerna har något intresse av att försöka komma fram till en gemensam politik i en fråga. Men om kommissionen kommer fram till – efter ett eller två möten – att stödet för en gemensam strategi är svagt, el-

ler går i en icke önskad riktning, kan den lägga gruppen på is till det rätta ögonblicket för att reaktivera den uppenbarar sig, dvs. genom att utnyttja tekniken med att omväxlande gasa och bromsa kan kommissionen elegant styra tajmningen i den politikskapande processen.

Rätten att utse gruppens ordförande är också ett kraftfullt instrument som ger kommissionen möjlighet att själv avgöra hur nära den vill liera sig med en viss grupp – på en skala från nära till knappt inom synhåll. För det mesta följer dock kommissionen vad som händer i en grupp antingen genom ordföranden eller genom det av kommissionen tillsatta sekretariatet.

### **3.2 Deltagare**

Hur deltagarna väljs ut är också betydelsefullt. Kommissionen kan välja mellan att låta medlemsstaterna delta i diskussionerna med experterna och företrädarna för intresseorganisationerna, eller att hålla dessa utanför och föra separata diskussioner med en medlemsstat i taget. Andra viktiga styrmedel som kommissionen använder sig av är att inkludera eller exkludera olika företrädare. Att låta endast några få experter och företrädare för intresseorganisationer och medlemsstater ingå i en grupp eller delta i förberedelserna är ett strategiskt beslut som kan ha stor betydelse både för hur expertgruppen arbetar och för dess resultat.

Vidare kan kommissionen inrätta flera expertgrupper för samma fråga. Styrgrupper eller högstatusgrupper stöds ofta av undergrupper eller andra typer av expertgrupper. Vilka undergrupper som inrättas och vilket förhållande de har till de olika grupperna (vem rapporterar till vem) påverkar också det slutliga resultatet.

Kommissionen kan därför, med hjälp av sin rätt att inrätta kommittéer och grupper, knyta ihop eller hålla isär delarna och deltagarna i den förberedande delen av processen kring utformningen av den framtida politiken inom olika områden på flera olika sätt.

Den kan dessutom länka processerna för beslut respektive genomförande genom att låta samma kommitté/grupp ställa förslag på flera olika arenor.

### **3.3 Styrtekniker**

Det bör också påpekas att kommissionen inte styr alla expertgrupper lika hårt. Detta gäller särskilt när frågorna ligger utanför första pelaren eller när en grupp har inrättats på rådets begäran och/eller när expertgruppen inte primärt finansieras av kommissionen. Då är det ganska vanligt att kommissionen spelar en mindre framträdande roll, som ibland beskrivs som ”den sextonde medlemmens”, och ut-

övar inflytande på ett mer subtilt sätt – t.ex. genom att avgöra vad som skall stå på mötets dagordning.

Inte desto mindre är det till syvende og sidst – med undantag av när rådet begär att kommissionen skall inrätta en expertgrupp – kommissionen som ensam avgör om en expertgrupp skall inrättas, hur den skall organiseras och vilket regelverk den skall följa. Det finns nämligen inte mycket officiell reglering fränsett vissa praktiska begränsningar. Kommissionen förväntas exempelvis ta hjälp av de ständiga representationerna i Bryssel när företrädare för medlemsstaterna skall rekryteras till expertgrupperna, och expertgruppernas slutrapporter (grönböckerna) publiceras ofta på kommissionens webbplats.

Sammanfattningsvis kan vi konstatera, att kommissionen har tämligen fria händer att inrätta expertgrupper och för det mesta kan styra gruppernas arbete. Men varför inrättas då expertgrupper och hur påverkar de politikutformningen i EU i ett större perspektiv?

## **4 Inrättandet av expertgrupper och effekterna**

Det hävdas ofta att eftersom kommissionens administration är liten och dess kompetens begränsad inom vissa områden, så behöver den både medlemsstaternas hjälp och hjälp av andra experter och företrädare för intresseorganisationer när ny EU-lagstiftning skall förberedas. Men, som denna studie visar, expertgrupper inrättas inte bara för att tillhandahålla nödvändig expertis för att förbereda ny lagstiftning, utan också för att fylla en lång rad andra uppgifter.

Expertgrupper utnyttjas under hela den process när ny politik skall utformas – från och med förberedelsefasen, under hela den formella beslutsfattandet och flitigt under genomförandefasen. Till detta kommer att en stor del av kommissionens åligganden inte handlar om lagstiftning eller genomförande. Andra uppgifter som att representera EU i internationella organisationer, att förhandla med tredje land, att övervaka den gemensamma marknaden och att administrera EU-programmen faller också under kommissionens ansvar, och till allt detta använder den expertgrupper.

### **4.1 Tre olika arenor**

Expertgrupperna syns tydligast under initieringsfasen, liksom deras möjligheter att påverka förslag till ny politik. Politikutformningsprocessen, som består av tre faser, kan sägas utgöra tre skilda arenor för skapandet av ny politik, där vad som sker på den ena arenan kan få återverkningar för vad som senare kan hända på de andra. En

stor del av arbetet utförs av olika kommittéer och grupper på de olika arenorna. En rapport översänds ofta från en grupp på en arena till en grupp på en annan arena likt pinnen i en stafettävling ända tills det slutgiltiga resultatet kan omsättas i praktiken.

Under förberedelsefasen hjälper expertgrupperna kommissionen med att ta fram utkast till lagstiftning. Senare, under beslutsfattandefasen, hjälper COREPER, arbetsgrupperna och andra rådskommittéer samt parlamentets utskott till med slutversionen för att de två lagstiftande institutionerna skall kunna komma fram till beslut. I slutfasen medverkar kommittologikommittéerna till att beslutet kan genomföras.

## 4.2 Varför inrättas expertgrupper?

I denna studie lyfts fyra huvudsakliga anledningar fram till att en expertgrupp inrättas:

- fastställa dagordningen
- förbereda initiativ
- mobilisera stöd och skapa konsensus
- kamouflage.

### Fastställa dagordningen

I alla processer där politik utformas är en av de viktigaste delarna att fastställa dagordningen. Klassisk beslutsfattandeteori understryker ofta att de som sätter dagordningen spelar en avgörande roll för vilka lösningar som söks och vilka beslut skall fattas. Eller, med andra ord, vad som händer i början av processen är avgörande för slutresultatet. I den här delen av processen kan expertgrupperna användas för att få upp en fråga på den europeiska dagordningen. Det kan t.ex. handla om att nå enighet om att ett visst problem kräver gemensamt agerande från medlemsstaterna, även om detta problem ligger utanför fördragen.

Ett annat sätt att uttrycka detta på är att det kan vara frågan om försök att utvidga EU:s kompetens. "Brain storming" eller mycket informella diskussioner är vanliga inslag i sådana expertgrupper. Men även frågor som omfattas av EU:s olika fördrag kan påverkas under den här fasen, t.ex. beslut som handlar om under vilken artikel man skall hantera frågan avgör vilka beslutsregler som skall tillämpas, och därmed i vilken mån EU:s institutioner ges inflytande. Ett förslag kan visserligen ifrågasättas i ett senare skede i politikutformningen. Det har hänt att kommissionen har övergivit sin egen dagordning till förmån för parlamentets förslag, men ursprungsförslaget har vanligen övertag i kraft av att det redan ligger på bordet. Accepterandet av en ny dagordning betyder nämligen ofta att hela processen måste börja om från början – med ytterligare förseningar som följd.

## **Förbereda initiativ**

Inrättandet av en expertgrupp signalerar ofta att processen för utformning av politik officiellt har dragits igång av kommissionen – ett första initiativ har tagits. Frågan har ofta redan satts upp på dagordningen, eller åtminstone har kommissionen en ganska klar bild av vad den vill åstadkomma. Men nu gäller det för kommissionen att hitta de bästa argumenten för förslagen för att uppnå det mål som har satts. Experter och andra kunniga personer erbjuds att delta för att bistå kommissionen med detta arbete. En välkänd teknik i detta sammanhang är att "avpolitiserar" denna process genom att omvandla politiska frågor till juridiska eller tekniska (vetenskapliga) frågor i största möjliga utsträckning. Här används ofta "salami-taktik", dvs. varje politikområde kapas i allt tunnare och tunnare skivor, och varje ny skiva leder till att en ny underkommitté eller undergrupp skapas. På detta sätt kan man ofta skilja de politiskt kontroversiella frågorna från de okontroversiella. I slutändan ger dessutom detta ofta så tekniskt avancerade eller komplexa lösningar, att aktörerna i de efterföljande beslutsfattande- och genomförandefaserna får svårt att ifrågasätta förslagen.

## **Mobilisera stöd och skapa konsensus**

Inrättandet av expertgrupper kan också användas för att mobilisera stöd för eller skapa konsensus kring en specifik fråga, eller för att lösa ett visst problem. Genom att bjuda in de berörda intressenterna redan tidigt till en expertgrupp men i själva verket också för att förhandla i förväg, kan man lösa många problem och andra led i beslutsprocessen kan ibland reduceras till en ren formalitet. I vissa fall kanske det inte ens är nödvändigt att inbjuda alla intressenter att delta; om de viktigaste kan enas räcker det ibland för att göra diskussioner och förhandlingar överflödiga under såväl beslutsfattandefasen som genomförandefasen.

## **Kamouflage**

Slutligen kan expertgrupper vara ett instrument för att kanalisera påtryckningar utifrån. Det är ingen hemlighet att många av kommissionens initiativ inte härstammar från kommissionen själv, utan är en reaktion på yttre tryck. I vissa fall är propåerna välkomna och uppmuntras, i andra fall inte. Det händer därför ibland att krav ställs på kommissionen att den skall agera på områden där det är oklart om den har behörighet eller där möjligheterna att uppnå ett framgångsrikt resultat förefaller tveksamma. Inrättandet av en expertgrupp kan då vara svaret, eftersom det åtminstone ger sken av att någonting händer.

Expertgrupperna används dock inte bara som ett instrument för att få stöd senare i processen med att utforma politiken. Frågor hör ofta ihop, men kommissionens hantering är splittrad på olika organisatoriska enheter, vilket kan skapa spänningar eller konflikter. Expertgrupperna kan i sådana fall användas för att mobilisera externt stöd i denna interna dragkamp.

### 4.3 Expertgruppernas möjligheter till inflytande

Expertgrupperna kan också direkt ha inflytande över det formella beslutsfattandet och genomförandet genom det som händer i förberedelsefasen. I huvudsak kan detta göras på fyra olika sätt.

- En grupp inrättas som inte bara konsulteras under den förberedande och initierande fasen, utan också under beslutsfattandefasen och genomförandefasen.
- Särskilda expertgrupper inrättas för att bistå andra kommittéer eller grupper som arbetar under den formella politikutformningsfasen och genomförandefasen.
- En expertgrupp inrättas för att göra det möjligt för deltagarna att komma in på ett tidigt stadium i politikutformningsprocessen, i förhoppning om att kunna skapa konsensus och stöd som kan påverka de senare delarna av processen när i stort sett samma människor kommer att mötas igen. Att sammanföra människor och låta dem lära känna varandra har alltid varit ett bra sätt att hitta lösningar till svåra problem, och inrättandet av expertgrupper är ett mycket bra sätt att göra det på.
- Ibland utnyttjar kommissionen grupper som officiellt har inrättats för andra syften, som exempelvis kommittologikommittéer eller rådets arbetsgrupper, som expertgrupper.

Sammanfattningsvis kan konstateras att expertgrupper kan användas för en lång rad syften och de flesta grupper inrättas av flera skäl. I grunden är de smörjoljan i EU:s administrativa och politikutformande maskineri, där formella och informella strukturer snabbt kan byta plats med varandra. Denna växling mellan formella och informella strukturer förekommer även i olika länders statskick, men har troligen i det närmaste nått sin fulländning inom EU. EU-systemets grundkaraktär gör att konsensuslösningar många gånger blir nödvändiga, bl.a. till följd av att makten är uppdelad mellan ett stort antal aktörer.

#### 4.4 Konsekvenser för medlemsstater och tjänstemän

En av följderna av det stora antalet kommittéer och grupper är att den process då ny politik skapas fragmenteras. Detta ställer stora krav på medlemsstaternas kapacitet att överblicka och kunna samordna verksamheten, för att kunna få optimalt inflytande. För närvarande tycks flertalet av medlemsländerna fokusera på samordning och kontroll när det gäller de kommittéer som sysslar med beslutsfattande och genomförande. Samtidigt låter man expertgrupperna – som primärt är verksamma under den förberedande fasen – tämligen fritt få fastställa både egna dagordningar och lösningar. Detta kan tyckas som en något märklig prioritering, i synnerhet när det gäller små och medelstora medlemsstater, eftersom det är just under den förberedande fasen som de har störst möjlighet att påverka EU:s framtida policy.

Under denna första fas bygger inflytandet nämligen i huvudsak på expertkunskaper av olika slag, mindre på hur stor en stat är eller hur många röster den har i den europeiska unionens råd.

Till detta kommer att allt eftersom medlemsstaterna blir fler ökar trycket på hur förberedelsearbetet skall organiseras och följden av detta kan bli att den politikutförande processen kan komma splittras upp ytterligare i allt mindre delar när fler och fler grupper och undergrupper inrättas, som ett svar på kraven att inrätta nya nationella policyområden i takt med att nya dagordningsarenor länkas till EU:s beredningsprocesser. Å andra sidan är många av de nya medlemsstaterna små, och eftersom små medlemsstater hittills har tenderat att ge stöd åt kommission under denna fas, kan kommissionens inflytande stärkas, något som de facto skulle kunna underlätta hanteringen av tvistefrågor inom EU.

Tjänstemännen från olika nationer befinner sig också under starkt tryck för att anpassa sig till nya roller och förhållningssätt jämfört med den traditionella rollen. Vanligen utbildas en offentlig tjänsteman till att lyda en herre och spela en enda roll i taget. Men EU:s kommittésystem ställer många gånger motstridiga krav på tjänstemännen i olika länder – det kan handla om att tjäna två herrar samtidigt – både EU:s och den egna regeringens – eller att spela olika slags roller. Under förberedelsefasen förväntas exempelvis tjänstemännen vara experter och därmed också ha en något självständig ställning i förhållande till den egna regeringen. På arenan för beslutsfattande är det å andra sidan viktigt att fylla rollen som skicklig förhandlare samtidigt som instruktionerna från den egna regeringen skall följas. I praktiken handlar det ofta också om att fungera som en länk mellan den egna regeringen och EU-institutionerna. När det sedan gäller genomförande fasen förväntas tjänstemännen besitta kunskaper om och insikter om följderna av de vanligen mycket detaljerade EU-besluten för administration och förvaltning i hemlandet. Men även här gäller det att följa regeringsinstruktionerna. Dubbla lojaliteter och växlande roller tycks därför med andra ord vare ett oundvikligt krav

på framtidens tjänstemän. Kraven på snabba växlingar mellan de olika roller drabbar särskilt tjänstemän från små och medelstora länder eftersom de många gånger måste agera på flera arenor samtidigt.