

Governance by Committee: The Role of Committees in European Policy Making and Policy Implementation

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The European Institute of Public Administration is currently conducting a two-year research project on “Governance by Committee: the Role of Committees in European Policy Making and Policy Implementation”. The research is partly funded by the key action “Improving Human Potential and the Socio-Economic Knowledge Base” within the Fifth Framework Programme for Research of the European Community.

Introduction

The proliferation of different types of committees performing different functions in the political process characterises contemporary governance at the national, sub-national (regional and local) and supranational (European) levels of government.¹ The increasing role of committees can be seen as a response to the need for an ever-higher level of technical expertise, which stems from the growing complexity of regulating contemporary western societies. In multi-level governance systems such as federal political systems, committees also perform another function: they are mechanisms ensuring efficient co-ordination between the different levels of government.² The growing regulatory tasks of the European Community and the need for multi-level co-ordination explain why the committee system is so highly developed in the EC.

A basic typology identifies five different types of committees involved in different stages of the EC decision-making process:

- The *expert committees*, which provide the Commission with external advice during the drawing up of proposals;
- The institutions with consultative status such as the *Economic and Social Committee* and the *Committee of the Regions*;
- The *working parties* and the *Committee of Permanent Representatives (COREPER)* which prepare the decisions of the Council of Ministers;
- The *standing committees of the European Parliament*, through which the latter exercises its legislative powers;
- The *comitology committees*, which assist the Commission in exercising the implementing functions delegated to it by the Council and the Parliament.

Theoretically-informed empirical research on the role and function of committees in the EC policy process commenced only a few years ago. Recent publications have contributed to developing typologies of the different types of committees according to their roles and their

internal rules of procedures. Much attention has also been drawn to the inter-institutional debate on comitology committees. Most of the research has been essentially descriptive, trying to assess the functions of the different kinds of committees in the EC policy process such as: providing technical expertise, rule-setting, fund-approving, consensus-building, inter-level co-ordination, networking and influencing policy.

Building on this body of research, the project focuses on the question of to what extent and how different committees in the EC policy process go beyond their basic functions as providers of technical expertise and fora for multi-level co-ordination and constitute a central aspect of the “democratic legitimacy” of the European Union. Furthermore, a major task of the research project is to analyse how expert knowledge is integrated into the decision-making process of Parliament and Council, and to what extent the prerogatives of the legislative authorities are observed or violated in the implementation process, i.e. how experts with different loyalties “check and balance” each other in the European system of governance.

Committee structures and processes vary from one policy area to another. The research concentrates on five different policy fields (internal market – in particular telecommunications, the environment, research and development, social affairs and culture). Furthermore, it focuses on committees in the legislative process (the standing committees of the European Parliament and the committees and working parties of the Council) and in the policy implementation process (comitology committees). These three types of committees will be analysed in different subprojects. In addition, a fourth subproject will focus on the legitimacy of as well as citizens’ perceptions of the EC Committee system.

1. The standing committees of the European Parliament

The legislative role of the European Parliament has been strengthened significantly since the Single European Act. By introducing the co-decision procedure, the Treaty of Maastricht put the European Parliament and the Council on an equal footing in the legislative process in certain policy areas. This right, which was simplified and extended by the Treaty of Amsterdam, has established the Parliament as co-legislator in areas including employment, the environment, health and consumer protection, equal opportunities and treatment for men and women, and transport policy.

In dealing with these increasing powers, the standing

parliamentary committees play an important role. They have been described as the “*legislative backbone*” of the European Parliament.³ Their competences are laid down in the Rules of Procedure of the European Parliament.⁴ All legislative proposals must be considered in one of the 17 standing committees, which can propose draft amendments to Commission proposals or Council common positions. Requests made by the EP to the Commission for legislative proposals must be based on reports initiated by a committee. Committees can table questions to the Council, the Commission and to external experts, table resolutions following statements by other Community institutions and propose amendments to the plenary agenda.

This subproject

- documents how the committees of the European Parliament contribute to the shaping of EC law by incorporating expert advice into their committees;
- assesses the impact of outside influence such as national political parties, national governments, lobby-groups, etc.;
- analyses the manner and effectiveness of the control the committees exercise over other EU institutions (in particular the Commission and the Council);
- examines the possibility of scrutiny of and control over the implementation process with a view to establishing realistic procedures for controlling the implementation process.

2. Committees and working parties of the Council

The working parties or working groups of the Council are composed of civil servants and diplomats belonging either to the Permanent Representations of the Member States or to their national administrations. They prepare the meetings of COREPER, which in turn prepares the meetings of the Council of Ministers. Issues which have been agreed upon in working groups (where no formal vote takes place) are formally endorsed by COREPER, whereas issues on which no agreement has been reached are re-negotiated in COREPER (and later in the Council if necessary).

Although not mentioned in the Treaties (they are only referred to in the Council’s Rules of Procedure⁵), the working groups are a major element of the Council machinery: According to a list of the Belgian Permanent Representation, there were estimated to be 170 working groups functioning during the Belgian Council Presidency of 1993.⁶ In 1994, 2,580 meetings of working groups were counted, as opposed to 125 meetings of the Council of Ministers and 117 meetings of COREPER.⁷ Even more impressive when considering the importance of the working groups in the decision-making process are the estimations according to which 70 to 80 % of the legal acts adopted by Council are decided at the level of the working groups.⁸

These quantitative estimations do not, however, provide any answers to questions of a more qualitative nature as regards the content of the negotiations which take place in the working groups. In this context, the research analyses whether the decisions taken in the working groups are of a purely technical nature, or whether they have far-reaching political implications.

Furthermore, the negotiation style in the working groups is examined: To what extent are the negotiations “open”? What room for manoeuvre from their national administrations do the members of the working groups have? To what extent do domestic constraints (inter-ministerial co-ordination for instance) influence the behaviour of the members of working groups? Does this vary from one Member State to another? How do coalitions usually work between the national delegations? How influential are the representatives of the Member State holding the Presidency and of the Commission in working parties? To what extent do all these parameters vary according to the sector involved (and the corresponding legislative procedure)?

3. Comitology committees

The vast majority of legal acts in the European Community are not adopted by the legislative authorities (the Council and the European Parliament), but by the European Commission.⁹ Most of these acts are adopted by the Commission after the Council has conferred implementation powers on the Commission and a so-called “comitology” committee, composed of civil servants of the Member States, has given its opinion on a Commission proposal. Although among these legal acts there are many “routine” measures, decisions of enormous political and economic importance such as the embargo against British beef in connection with the BSE crisis in 1996¹⁰ are also taken according to comitology procedures.

The first comitology committees were established in the early 1960s when the Council recognised that it lacked the resources to make all the necessary implementation rules in the first agricultural market organisations. However, it did not want to delegate the implementation powers to the Commission without keeping some control. The committees – which have differing legal “weight” depending on the type of committee – have to give an opinion on an implementation measure proposed by the Commission before the Commission can adopt it.

The procedures for adopting EC implementing measures have been criticised ever since these procedures were set up in the early 1960s. Many suggestions and proposals have been made to ensure that decisions of a legislative nature or with significant budgetary implications are made following the usual EC legislative process, i.e. proposed by the Commission and enacted by the Council either in consultation, co-operation or co-decision with the European Parliament. The line that separates routine implementing measures from those with legislative and budgetary implications is, however, rather blurred.

The European Court of Justice has in a series of decisions left it basically to the legislator to distribute the powers between the legislator and the executive. In cases where the Council legislates alone, it is for the Council to decide the content of the basic act and the scope of the powers that are delegated to the Commission. The Council has tended to be rather generous in conferring implementation powers to the Commission since it can control the Commission through comitology committees. As the Court is not really willing to interfere in that

choice, the Council enjoys almost complete freedom in that respect. The European Parliament, which has no influence on the committee procedures, wants to restrict the delegation of implementation measures to purely routine matters. This is the root of the conflict between the Council and Parliament. In cases where the co-decision procedure applies, the European Parliament and the Council have to reach a compromise on what is decided in the legislative act and what in the implementing act. Also, the new comitology decision of 28 June 1999¹¹ has not addressed the question of what must be decided in a legislative or in an implementation procedure.

The research questions to be addressed by this subproject should contribute to a constructive solution to this important issue of institutional balance by first establishing the criteria for an operational demarcation between legislative and implementing measures, and secondly by assessing a large number of EC implementing acts to determine whether and in which cases implementing measures have in fact violated the prerogatives of the legislators, the Council and Parliament. The subproject therefore concentrates on the following questions:

- How can the line that separates implementing measures from those with legislative implications be drawn? How can the differentiation between legislative and implementing legal acts be made operational? How could an effective system of control be established that limits the implementing powers of the Commission and safeguards the prerogatives of the legislators, especially the Parliament?
- Have the prerogatives of the legislative authorities generally been respected in implementing decisions in recent years or have decisions with important legislative implications been decided on according to comitology procedures? In which policy arenas has this primarily occurred? In what way have these possible “transgressions” affected the institutional balance?

4. The Committee system, legitimacy, citizen’s perceptions and acceptance of the EU-system of governance

The EC system of governance could not function without the committees. They came into existence in response to the need to integrate expert knowledge and technical know-how into the policy decision-making and implementation process and in response to the need to provide co-ordination, control, and checks and balances between the major institutions.

Although the two major functions of committees in the political process of the European Community – mastering technical expertise and managing multi-level co-ordination – are uncontroversial and generally viewed as legitimate, the EC committee system is at the same time frequently criticised from different points of view:

Committees are seen as embodying the most opaque and even secret part of EC decision making. The committee system is certainly one of its least known aspects. Outside the participants in the system from the Community institutions and the Member States, and the small community of scholars in the legal, social and economic sciences, the existence and functioning of committee

system is hardly known. Even media reporters who cover Brussels have little understanding of it. Best known among the public at large are probably the committees of the European Parliament, whereas comitology committees and the working parties of Council are hardly known outside the group of officials who participate in the committee work.

This aspect is also of relevance in that part of the research devoted to an analysis of the committee system from the perspective of the citizens of the European Union. Decisions – which are taken by the committees behind closed doors – are in some cases of a politically sensitive nature and have direct implications for every citizen of the European Union. They include measures taken in the fields of the environment, social affairs, and research and development.¹² Within this context, a question of particular interest is how the committee system can be made more legitimate from the perspective of EU citizens. The new Comitology Decision can be seen as one step in this direction by improving the public’s access to information concerning the committee procedures. It makes the principles and conditions on public access to Commission documents applicable to committees, and obliges the Commission to publish a list of all comitology committees as well as an annual report on the working of the committees. Also, references to all documents related to committees which have been sent to the European Parliament shall be made public in a register.

The committee system raises questions about the democratic legitimacy of the EC policy process. Because most of the committees are not mentioned in the Treaties, their proliferation is sometimes seen as a deviation from the “constitutional” rules of the European Community. Committees are frequently seen as symbolising the “democratic deficit” and “bureaucratic and technocratic bias” of the EC system, since their members are not elected on a democratic basis (except for those on the EP committees).

The major objective of this subproject is to reflect the results of the other subprojects with a view to answering the question of to what extent and how the committee system can contribute to increasing the legitimacy of and strengthen support for the European system of governance.

Conclusion

The research will contribute to a better understanding of the decision-making processes in the European Community and the unique multi-level construction of the evolving European system of governance. The project will make the linking of the Member State level and the Community level through the various types of committees more transparent and show how technological expertise is integrated into this process. The project will make a major contribution to the debate on the “democratic deficit” of the Community system by showing that the many forms of checks and balances are an integral part of the committee system which guarantees the incorporation of expertise under conditions of mutual control. The analysis will identify deficiencies and weak points in the committee system and develop suggestions as to how they might be corrected. Finally, the project will contribute to discussions on the conflict between the institutions

over comitology. The efforts to develop an operational differentiation between legislative and implementing measures and to empirically establish how frequently, in which policy arenas and in what ways implementing measures have in fact violated the prerogatives of the legislative authorities, will contribute to making the debate on comitology more objective and thus help in finding an adequate solution.

The European Institute of Public Administration with Professor Günther F. Schäfer as project leader is responsible for the overall project co-ordination. The research will be conducted by EIPA faculty members in co-operation with researchers from the Universities of Bordeaux, Cologne, Rennes, King's College, London and the Institut für Höhere Studien, Vienna. Three workshops will be held at EIPA in Maastricht in which all the researchers involved will participate. One meeting will take place in Brussels in order to present the intermediary results and findings of the research to the Commission services and some selected end-users and policy makers. After the submission of the final report to the European Commission, a colloquium on the research findings will be held at EIPA. Finally, it is also intended that a book will be published on the research findings.

Progress on EIPA's two-year research project "Governance by Committee: The Role of Committees in European Policy Making and Policy Implementation" can be found on the web, under Working Papers or by contacting: g.haibach@eipa-nl.com.

NOTES

- ¹ This is not an entirely new phenomenon, as Kenneth C. Wheare, *Government by Committee: An Essay on the British Constitution*, Oxford, 1955 demonstrates.
- ² On the concept of multi-level governance see, for example, F.W. Scharpf, "The Problem-solving Capacity of Multi-level Governance", *Journal of European Public Policy*, vol. 4, No. 4, 1997.
- ³ M. Westlake: *A Modern Guide to the European Parliament*, Pinter Publishers, London and New York, 1994, p. 191.
- ⁴ European Parliament: Rules of Procedure, [1997] OJ L 49/1, in particular chapter XX.
- ⁵ Council Decision 1999/385/EC, ECSC, Euratom of 31 May 1999 adopting the Council's Rules of Procedure, [1999] OJ L 147/13, see in particular Art. 17 and 18.
- ⁶ See J. Beyers, G. Dierickx, "The Working Groups of the Council of the European Union: Supranational or Intergovernmental Negotiations?", in: *Journal of Common Market Studies*, 1998, vol. 36, No. 3, p. 289, 290.
- ⁷ M. Westlake, *The Council of the European Union*, London, Cartermill, 1995, p. 320.
- ⁸ See F. Hayes-Renshaw and H. Wallace, "Executive power in the European Union: The Functions and Limits of the Council of Ministers", *Journal of European Public Policy*, 1995, vol. 2, p. 562. See also W. Wessels, "The EC Council: The Community's Decision-making Centre" in S. Hoffmann and R.O. Keohane (eds.), *The New European Community. Decision-making and Institutional Change*, Boulder, CO., Westview, p. 140.
- ⁹ In 1996, in addition to numerous decisions, the European Commission adopted 2,341 regulations and 2,806 directives (i.e. legal acts with general application), whereas the Council adopted 484 legal acts in total (European Commission, *General Report on the Activities of the European Union*, 1996, Office for Official Publications of the European

Communities, 1997, p. 424, 426).

- ¹⁰ Commission Decision 96/239/EC of 27 March 1996 on emergency measures to protect against bovine spongiform encephalopathy, [1996] OJ No L 78/47.
- ¹¹ Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, [1999] OJ L 184/23.
- ¹² A notable case is Commission Decision 97/98/EC of 23 January 1997 concerning the placing on the market of genetically modified maize pursuant to Council Directive 90/220/EEC, OJ [1997] L 31/69. It was adopted in a IIIa comitology committee procedure. For details see: Kieran Bradley, "Alien Corn, or the Transgenetic Procedural Maize", in: P.P.C.M. Van Schedelen, *EU Committees as Influential Policy-makers*, Erasmus University Rotterdam, Holland, Ashgate, Aldershot, 1998.

Annex: Selected material for further reading

- Andeans Mads, Türk, Alexander (eds.) (2000), "Delegated Legislation and the Role of Committees in the EC", *Kluwer Law International*, London
- Bradley Kieran St. Clair (1997): "The European Parliament and Comitology: On the road to nowhere", in: *European Law Journal*, Vol. 3, N° 3, pp. 230-254
- Beyers, Jan/Dierickx, Guido (1998): "The Working Groups of the Council of the European Union: Supranational or Intergovernmental Negotiations?", in: *Journal of Common Market Studies*, Vol. 36, No.3, pp. 289-317
- Haibach Georg (1997): "Comitology: A Comparative Analysis of the Separation and Delegation of Legislative Powers", in: *Maastricht Journal of European and Comparative Law*, N° 4, pp. 373-385
- Haibach Georg (1999): "Council Decision 1999/468 – A New Comitology Decision for the 21st Century !?", *EIPASCOPE* 1999/3, p. 10
- Joerges Christian/Falke Josef (eds.) (2000): *Das Ausschlußwesen der Europäischen Union – Praxis der Risikoregulierung im Binnenmarkt und ihre rechtliche Verfassung*, Nomos, Baden-Baden
- Lewis, Jeffrey (1998): "Is the 'Hard Bargaining' Image of the Council Misleading? The Committee of Permanent Representatives and the Local Elections Directive", in: *Journal of Common Market Studies*, Vol. 36, No. 4, pp. 479-504
- Neyer Jürgen (1997): "Administrative Supranationalität in der Verwaltung des Binnenmarktes: Zur Legitimität der Komitologie", in: *integration*, N° 1/97, pp. 24-36
- Pedler Robin/Schaefer Günther (eds.) (1996): *Shaping European Law and Policy: The Role of Committees and Comitology in the Political Process*, European Institute of Public Administration, Maastricht
- Sauron Jean-Luc (1999): "Comitologie: comment sortir de la confusion?", in: *Revue du Marché Unique Européen*, p. 31
- Van Schedelen M.P.C.M (ed) (1998): *EU Committees as influential policymakers*, Erasmus University Rotterdam, Holland, Ashgate, Aldershot
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- Wessels Wolfgang (1998): "Comitology: fusion in action. Politico-administrative trends in the EU system", in: *Journal of European Public Policy*, 5:2, June, pp. 209-34. □