

# 1. Introduction: The role of Committees in the policy-process of the European Union

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## INTRODUCTION

This volume seeks to illuminate an aspect of European integration that is omnipresent yet frequently overlooked. It concerns, almost by definition, the ‘low politics’ of the European Union since it deals with the plethora of committees that prepare, shape, and implement the decisions that are taken by the European institutions. The attention of the media and the public, and largely also of the academic community, tends to focus on the political fora in which decisions are taken – the European Commission, the Council of Ministers, and the European Parliament. And while these institutions indeed are formally responsible for EU policy-making, and as such accountable to the public, looking at them often reveals only a small part of the story. The political level represented by these institutions is the tip of the iceberg of European governance. Submerged below the water-line is a much larger body of administrative interaction, which to a significant degree involves the work of committees.

Indeed there are so many committees, with such variation in powers, membership and procedures that it is difficult even for the initiated to find their way through this jungle. Of course, part of the problem lies in the ubiquity of the term ‘committee’, which is used to describe many different kinds of collective meetings in which aspects of EU policy-making are discussed. But beyond the inherent problem of the inflationary usage of ‘committee’, the potential for confusion is heightened by the particular nature of institutional arrangements in the EU. Committees are present in all stages of the policy-process, from expert groups advising the Commission in the pre-proposal stage, via Council working parties and EP committees in legislative decision-making, to the so-called comitology committees working with the Commission in the policy-implementation phase. In addition, the EU Treaty’s pillar structure introduces further differentiation, with committees in the area of the Common Foreign and

Security Policy having a particular role that includes both deliberation of policy and decision-making.

This book will cover the role of these different kinds of EU committees, seeking to illuminate the ways in which they contribute to policy-making. In doing so, the individual chapters will answer a number of wider questions that need to be asked about the role of committees in the EU. In particular we seek to address a number of wider issues through the study of individual committees. Given the nature of ‘committee governance’ as a microcosm of the EU, the detailed study of the role of committees in EU policy-making can reveal important aspects which are of relevance for our understanding of European governance more generally.

In doing so, the book contributes to the rising interest that there has been in this subject matter. While committees are regularly part of the story when specific policies or indeed particular pieces of legislation are being studied, there has been little treatment of committees *per se*. An early publication from the Economic and Social Committee (1980) presented the work of various consultative committees, and later publications looked in more detail at the Committee of the Regions (Warleigh, 1999). In the late 1990s a number of texts also engaged more specifically with the work of committees in the legislative process. Van Schendelen (1998) produced a collection of case studies of individual committees, covering both comitology committees and Treaty-based committees. Comitology – a particular aspect of the way in which EU policies can be implemented – was also the subject of books by Pedler and Schaefer (1996a), Joerges and Vos (1999) and Bergström (2005). The broader issue of ‘committee governance’ was introduced by Christiansen and Kirchner (2000), a theme that was also explored in more detail and with the use of survey data by Egeberg, Schaefer, and Trondal (2003). But since then no attempt has been made to address the role played by the different kinds of committees across the policy-process of the European Union. This book, then, constitutes a way of bringing together systematically the discussion of committees in the various stages of the policy-making process in the EU.

## THE ROLE OF COMMITTEES IN THE EU’S POLICY-MAKING PROCESS

Before going into the detail of the arguments and the plan of this book below, it would seem appropriate to briefly review the policy-making process of the European Union and take a look at the way in which the various institutions and within and beside them – different kinds of committees contribute to the taking of decisions. When talking about decisions we are

focusing in particular on the taking of *legislative* decisions, which means the setting of legal norms. Certainly, the EU institutions – and therefore the relevant committees involved – are also involved in much that is non-legislative work, such as the making of a Common Foreign and Security Policy for the Union or the activity within the Lisbon Strategy that involves the Open Method of Co-ordination. The latter method works specifically through a number of committees that were precisely set up to monitor developments in areas such as employment and social protection policies. However, in this volume we focus on the committees that are involved in the context of the more traditional ‘Community method’ as well as on the committees in the second pillar.

The EU policy-process can be conceptualised as consisting of three distinct phases: first, the agenda-setting or pre-proposal stage; second, the decision-making stage; and, third, the policy-implementation stage. The main focus of attention is usually on the decision-making phase, that is to say the phase in which the formal institutions take legislative decisions. This phase begins with the Commission’s proposal being submitted to the legislative institutions, namely the Council of Ministers and, depending on the procedure, the European Parliament. In areas of co-decision there are then also elaborate processes to co-ordinate the efforts of Parliament and Council, involving informal tripartite meetings together with the Commission aiming to prepare agreements at first or second reading or ultimately in the Conciliation Committee. Much attention in this stage is paid to the level of the political summit of each institution, the ministers in the Council and the MEPs in the EP’s plenary – these are the political players who are ultimately held to account and who are politically responsible for the outcome of the process. This outcome is the passage of a legislative act, a European directive or regulation, and when that decision is formally taken, the decision-making phase has come to an end.

However, in the course of the decision-making process, an important element in the procedure is – in both Council and Parliament – the committee stage. In the Council, legislative dossiers move up and down between COREPER, the Committee of Permanent Representatives, which prepares the agenda of ministerial meetings, and the more specialised working parties that discuss Commission proposals initially. COREPER allocates proposals to a specific working party of member state representatives, whose members then engage with the dossier, seeking to find consensus. Eventually the working group will report to COREPER the degree of agreement that has been reached and indicate in which areas, if any, further negotiation in COREPER or, as the case may be, among ministers is still necessary. More than half of the Council decisions are informally agreed on these

administrative and diplomatic levels of the Council, and only a minority are ultimately left to the debate among ministers.

In the European Parliament, a Commission proposal is dealt with in the first instance by one of the 20 parliamentary committees. It is here that a ‘rapporteur’ is appointed to prepare the EP resolution on the draft legislation and propose amendments to it. Once the committee has agreed a draft resolution, this is submitted to the plenary for further debate and the final vote. In the case of co-decision procedures, committee chairpersons and rapporteurs are prominent in the informal tripartite meetings at first and second reading, as well as in the ‘trialogues’ which prepare the Conciliation Committee, together with the chair of the EP delegation. Generally speaking then, most of the legislative work of the Parliament is done by the committees, given the size of the plenary and the specialised knowledge that this responsibility requires.

Both before and after the formal decision-making, important aspects of EU policy-making take place. This applies both to the agenda-setting stage which precedes the Commission’s adoption of a legislative proposal and to the implementation phase which follows the approval of the legislative act. Looking first at the pre-proposal phase, we need to recognise that this is a crucial stage in the policy-process because it permits the actors involved to frame the issues that are being considered for legislative action, to set the legislative agenda of the Union, and to ‘pre-decide’ the issue somewhat. In the formal decision-making phase a decision is taken, but only on the *proposal* that is being submitted, and that usually means that the options are limited by the ‘pre-decisions’ that have been reached in advance, excluding some possible solutions and prioritising others by including them in the proposal.

Clearly the Commission is in the driving seat in this phase, having the monopoly of initiative in the legislative process, and it is therefore not only privileged to decide what is proposed but is also in a central position vis-à-vis the multitude of organised interests and national actors that seek to influence the process during this stage. The Commission, being the object of such intense lobbying from a wide range of public and private actors, has been described as a spider in the centre of its web – the network which exchanges information and ideas with respect to the domain within which legislation is being prepared.

Such ‘attention’ being bestowed on the Commission is a natural part of the political game by which other actors seek to influence the drafting of proposals – an important game given what we said above about the significance of agenda-setting. But beyond the politics of interest representation the Commission also has a genuine need to gather information about the issues at stake. The Commission is generally regarded as under-resourced and in need of external expertise, and therefore not only tolerates the contact

with organised interests but in fact encourages it. If more information flows into the Commission from the outside at this stage, Commission officials are better able to get a handle on the policy they are seeking to shape.

Beyond gathering information the Commission can use the interaction with other actors in this pre-proposal stage as a way of legitimising subsequent initiatives: the consultation of organised interests and national authorities can assist the later passage of legislation in the decision-making process, and subsequently the implementation in the member states. Systematic consultation with the member states allows the Commission to be more confident about the achievement of the relevant majority in Council, and the results of consultation with private actors can be used by the Commission to bolster its position also vis-à-vis differing opinions in the European Parliament. And, beyond the actual decision-making, the implementation of policies should be smoother the more authorities and other actors in the member states have an opportunity to comment on draft legislation and the Commission has a chance to react to such comments.

The interest of the Commission in consulting widely externally in the draft stage of legislation is therefore threefold: maximising the inflow of useful information, having an early indication of likely voting intentions in Council and Parliament, and legitimising the proposed action from the outset.

Moving from the early to the later stages of EU policy-making, we also need to consider the implementation phase. The EU is a decentralised system of administration, meaning that while *decision-making* is done centrally, *implementation* is largely done within the member states. Directives – the EU's most common legislative instrument – require transposition through national parliaments, and it is then the obligation of national authorities to implement EU measures. Part of this decentralised system of administration is the involvement of national courts, which are the place in which non-compliance with EU law can be challenged by private actors, while it is the prerogative of the European Commission to take member states to the ECJ if and when it considers member states not to be complying with EU laws.

However, it is important to recognise that not all EU implementation is decentralised. Within the administrative structure that has developed in the EU over the past decades, there is ample scope also for centralised implementation, that is for the Commission to execute policies on behalf of the member states. If and when provision is made for this in the legislation, the Commission makes use of such delegated powers through the adoption of implementing measures. Part and parcel of this method of implementation is the use of committees composed of national representatives who control the Commission. Depending on the procedure chosen in the relevant legislative act, these implementing committees supervise the way in which

the Commission uses its delegated powers in different ways, from a merely advisory role to the possibility of blocking proposed measures.

This type of implementation is therefore also a domain with an extensive role for committees – committees which are located between Commission and member states and which have been identified as part of the ‘fusion’ of national and European administration. While the executive delegation enjoyed by the Commission is established practice also at the national level, the creation of such implementing committees is unique to the EU. Presumably that is why a particular term – *comitology* – has been created to describe this phenomenon.

These so-called ‘comitology committees’ have been a long-standing part of the EU’s administrative governance and not only serve to shape the way in which individual pieces of legislation are implemented but also function as a feed-back loop within the policy-making process: The systematic exchange between Commission officials and national representatives in the implementation committees provides the Commission with insights into the functioning of national administrative systems and thereby helps the Commission not only with policy-implementation but also with policy-initiation. Sometimes this is done formally, for example when the Commission uses a comitology committee for the preliminary discussion of a legislative initiative. But it also works in a more diffused way, by the Commission learning from the experience of implementation in previous legislative acts and using that experience for future initiatives.

Obviously, such policy-learning is the ideal rather than the norm, and what happens in some cases might not happen in other cases. But this conception of implementation through comitology as a learning exercise for policy-initiation is a useful normative concept. Taken to its logical conclusion, it means that we can view the policy process as a cycle, with initiation via decision-making leading to implementation and then back to initiation. The various steps in this cycle are linked dynamically to one another, as the actors involved use their knowledge about the likely behaviour of others in the later stages of the process to determine their own action (for example the decentralised nature of implementation – and the knowledge that national actors who do not agree with a particular measure might not comply – leading to the search for consensus among member states in the decision-making phase, even when decisions might otherwise be taken by qualified majority voting).

For our purposes here, the overview of the EU policy-cycle conducted above helps us to understand better the role and positioning of the various types of committees within the EU’s institutional structure. It should be clearer now that committees are present in all the stages of EU policy-making and how they can be distinguished from one another. Before looking

in more detail at the way in which different kinds of committees have been tackled by the contributors to this volume, we need to review the kind of questions that arise in the study of committees in the EU.

## NORMATIVE AND EMPIRICAL QUESTIONS IN THE ANALYSIS OF EU COMMITTEES

Given the omnipresence of committees within the EU's administrative structure, they are a phenomenon that is in need of systematic study. In this book, the various contributions address a number of different questions that can be regarded as the key issues in this context. These key questions concern both normative concerns and empirical issues. This section examines in more detail the agenda regarding the normative and the empirical analysis of EU committees.

One important issue concerns the kind of interaction that participants in committee meetings have with one another: is this better characterised in terms of deliberation and persuasion or as strategic bargaining? In other words, do committee members come to meetings with previously formed preferences on the basis of which they then engage in the representation of particular interests? Or, is this rather a question of developing opinions and positions in the process of negotiation? If it is the latter, committees may be regarded as arenas for policy-learning that contribute to the shaping of interests. This is an important question in the wider debate about European integration, and indeed decision-making in general, and the empirical study of committees in the EU context promises valuable insights in this respect.

A second question that this volume will address concerns the degree to which committees either contribute to or detract from the formalisation of EU decision-making. The creation and subsequent evolution of committee structures implies, on the one hand, the potential for the institutionalisation of mechanisms such as coordination, inter-institutional relations, and multilevel governance. However, they can also be seen as the cause of more informality in EU policy-making. As committees become established and their internal procedures are codified, the need for informal interaction among their members grows. Also, the (formal) work inside the committee may contribute to the formation of networks among and beyond committee members, which in turn creates further impetus for informal governance in the EU.

These questions about the degree of formalisation of, and deliberation in EU committees are essentially empirical questions. They need to be answered through the study of the way in which committees work and relate to the other institutional structures of the Union. As the contributions to this

volume demonstrate, the answers to these questions differ across different types of committees, and indeed from one committee to another. That is why this book examines the full range of different kinds of committees from the various stages of the policy-making process of the EU.

Beyond these empirical questions we also need to raise a number of normative issues about EU committee governance. The first of these concerns a central debate on the process of integration in the current phase of its development, namely the legitimacy of political action at the European level. Does the presence and intervention of committees in the EU's decision-making process aid the legitimacy of the EU, its institutions and policies, or does the involvement of committees instead detract from the EU's legitimacy? On the one hand, we can observe that throughout the policy cycle the intervention of committees – be it in the pre-proposal stage, in the decision-making stage or in the implementation stage – contributes to the removal of policy-setting from the public eye. Committees tend to meet in private, and their proceedings are usually less transparent than those of the formal institutions that are, in any case, more the subject of public scrutiny.

Many committees are also populated by technical experts, who tend to speak their own language and are frequently already part of policy networks. We might want to exempt EP committees from this judgement, but even here one should mention the committee officials from the EP Secretariat who should be recognised as technical experts in this regard and who might interact in such policy networks on behalf of MEPs. All this contributes to, indeed reinforces, the image of technocratic governance that is usually associated with the European Union. To the extent to which 'committee governance' is a synonym of technocracy, one might expect committees to have a detrimental effect on the legitimacy of the integration process: the image of unelected technical experts taking *de facto* decisions behind closed doors is clearly not what the Union needs at a time of unprecedented popular scepticism about the direction of European integration.

However, it is of course precisely the expertise that is harnessed in committees that is regarded as crucial for EU policy-making. Moreover, committees permit a *systematic* process to harness technical expertise for the taking of decisions in the EU, provide for an equalisation of access to information for the members of committees and therefore can also be seen to democratise the influencing of decision-taking. This observation leads us to the fourth question that the chapters in this book will seek to address, namely the way in which committees can be seen, despite the normative limitations mentioned above, as contributing to good governance. They may do this by providing an efficient space for deliberation and *de facto* decision-making, which means that a diverse range of opinions can be



heard in committees, that reflection about the implications of decisions can take place in them, and that ultimately, as a result of the involvement of committees, the policy-process leads to better outcomes.

The normative concerns surrounding the important role played by expert groups advising the European Commission is also the reason why over the last few years increasing attention has been paid to the regulation of this aspect of EU policy-making. The European Commission, benefiting on the one hand from this systematic access to expert opinion, is on the other hand wary of the negative consequences that (over-)reliance on 'undemocratic' input from organised interests might have on its legitimacy. Hence the attempts to provide for greater transparency such as the creation, in 2005, of a public register of expert advisory groups which are formally appointed by the Commission.

## OUTLINE OF THE BOOK

Before we go into the empirical detail of the various committees, however, there are two chapters devoted to the discussion of the theoretical and conceptual underpinnings of the study of committees in the EU. First, Torbjörn Larsson discusses the notion of deliberative democracy and the way in which its supranational version compares with other, more traditional forms of democratic theory. The central argument is that although the EU system has its unique features from a classical democratic point of view, in reality it is not as different from other forms of democratic government as we are made to believe. Guy Peters provides an account of the way in which various mechanisms in the policy-making of the EU can be seen as part of the informal governance that has developed over time. For him, EU committees are one aspect of this trend, and his chapter therefore contributes a useful conceptual perspective to the subsequent empirical studies of the different kinds of committees.

These more empirical investigations are contained in the subsequent chapters, which logically follow the EU policy-process as we have introduced it here. Torbjörn Larsson and Jan Murk explore the rather complex system of expert and advisory groups which assist the Commission in its many functions, and discusses how these different types of groups have become arenas for deliberative governance and linking formal and informal elements of EU governance.

Eve Fouilleux, Jacques de Maillard and Andy Smith present their research on working groups in the Council of Ministers. Avoiding deadlock and maintaining flexibility are two essential ingredients in a deliberative decision-making process, explaining the relative success of the work done

by the Council working parties. Chapter 5 provides an in-depth account of the way in which these working groups operate in the first and third pillars of EU policy-making. The particularities of the second pillar deserve special treatment in this context, and this is provided by Simon Duke in Chapter 6. He illuminates what happens inside the 'black box' of the Council machinery by discussing the high-level committees and working groups active in the second pillar. Particular attention is paid here to the evolution of the Political and Security Committee, which has come to rival COREPER in recent years as the key institution preparing policy-decisions in the CFSP and ESDP area.

Completing the picture as far as committees in the legislative process are concerned are Christine Neuhold and Pierpaolo Settembri with a chapter on the role of committees in the European Parliament. As discussed above, most legislation in the EU today requires co-decision with the Parliament, which means that parliamentary committees also play an increasingly important role in the decision-making process. Chapter 7 illustrates the internal workings of parliamentary committees and discusses the degree to which deliberation in these committees influences EU policy-making.

Finally, the examination of committees throughout the policy-process is completed with a contribution on the role of implementing committees by Guenther Schaefer and Alexander Türk. Chapter 8 provides a comprehensive account of comitology committees and their role in the process of implementing EU policies when powers have been delegated to the European Commission. Particular attention is paid here to the nature of deliberation in committees which bring together representatives of national administrations who are frequently technical experts.

This study of comitology is complemented by two chapters that do not look at the operation of the implementing committees themselves but at the way in which the workings of these committees have been regulated and formalised by the intervention of the European Parliament and the European Court of Justice, respectively. Pamela Lintner and Beatrice Vaccari, in Chapter 9, discuss the evolution, current practice and future challenges of parliamentary scrutiny over comitology committees, demonstrating the way in which such parliamentary control has over time become more formalised. Alexander Türk, in examining the role of the European Court of Justice in the area of comitology, provides an analysis of the extent to which the case law of the ECJ has regulated comitology committees and thus influenced their potential as arenas for interplay between formal and informal implementation procedures. Taken together, these two chapters illustrate the way in which the work of comitology committees is determined not only by the European Commission and the member states but also by the other European institutions.

The volume returns to some of the questions raised here in the concluding chapter by Thomas Christiansen, Torbjörn Larsson and Guenther Schaefer. In particular, we come back there to the question of legitimacy of EU policy-making, in the light of the empirical and conceptual discussions on the role of committees. Looking again at the issue of committee governance in the terms of democratic theory that have been discussed previously, we conclude that the picture that emerges in the light of the analyses presented here is a mixed one. Despite the cumbersome nature of many of the procedures governing the work of EU committees, the system as a whole appears to be working fairly efficiently, not least because informal arrangements tend to accompany the formal procedures. Even if committee governance in the EU does not comply with the expectations of ideal-typical models of democratic rule, be it majoritarian or deliberative, it gains legitimacy from the inclusiveness of the process and the way in which it brings technocratic expertise to EU policy-making.

Important questions and further research remain in the study of EU committees. Among these the issue of EU enlargement and how this will affect the work of committees ranks highly. One might ask, for example, whether the enlarged membership in individual committees, be these expert groups, Council working groups or comitology committees, changes fundamentally the way in which these interact. Socialisation among members may be different in larger groups, and formal procedures such as the *tour de table* more difficult to follow, something that might in turn require a further shift to informal arrangements to overcome these obstacles. These questions and other questions will need to be answered in the future, when EU policy-making has adapted to the enlarged EU.

As far as past experience and current practice are concerned, we are glad to be able to present in this volume a comprehensive treatment of the way in which committees contribute to EU policy-making in the various stages of the process. It should be a thorough guide to the role of committees in the EU and, as such, hopefully also the foundation for further work that might look at more specific questions that have been raised in the course of this study.

## NOTE

1. The authors are grateful for helpful comments on a draft of this chapter from Edward Best and Beatrice Vaccari. The responsibility for any remaining errors remains, of course, our own.