Technical or political? The working groups of the EU Council of Ministers

Eves Fouilleux, Jacques de Maillard and Andy Smith

ABSTRACT The Council is too often depicted as the battleground for intermittent clashes between national ministers. Based upon case studies of legislation produced in five 'First Pillar' sectors, the research presented here has explored the submerged, and much larger, part of this institutional ‘iceberg’: Council working groups. It does so by examining how members of these entities interact with civil servants in COREPER and ministers, on the one hand, and representatives of the Commission and the European Parliament, on the other. Contrary to many practitioner or formalist accounts, the principal finding is that working groups do not operate solely on a ‘technical level’. Instead, they are vital arenas through which the ambiguous nature of politics in the European Union heavily influences negotiating processes and legislative outcomes.

KEY WORDS Commission; COREPER; Council of Ministers; European Parliament; politicization; working groups.

INTRODUCTION

In beginning our research on the role played by Council working groups in European Union (EU) decision-making, we were immediately struck by how two schools of thought make implicit assumptions about such bodies:

- For rationalists, working groups have formal importance but they do not really weigh heavily upon the policy process because they are essentially communication channels through which national interests are expressed. Members of working groups are bound by national instructions based upon preferences which are formulated in their respective capitals. These preferences reflect the interests of economic, social and political actors from each member state and the outcome of bargaining that may need to take place at this level in order to establish a single national stance to be maintained in European-level negotiations (Beyers and Diericks 1998; Moravcsik 1998).
- For neo-institutionalists, working groups play a more active role in EU decision-making because they are arenas, or even social groups, within
which preferences are bargained over and also where the very rules governing such negotiations are defined. The work of J. Lewis on the Committee of Permanent Representatives (COREPER) is illustrative of such a perspective when he shows that four generic patterns can frequently be observed within the Council as a whole: ‘departing from instructions and making recommendations’, ‘the national capital signals that a margin of manoeuvre exists’, ‘there is a political need to minimize confrontation’, ‘the national capital cannot make up its mind’ (1998: 490–1). In short, members of Council working groups go beyond the mere function of negotiating between pre-existing interests. Instead they contribute to redefining European public problems, the rules and norms that structure negotiation and sometimes even the very identities of the actors involved.

Based upon case study research in five policy sectors (see Table 1 below),¹ our own research on Council working groups produced two general conclusions, the first of which feeds into this rationalist versus neo-institutionalist debate while the second opens up an alternative line of questioning.

In line with neo-institutionalist thinking, our first research finding is that working groups are always highly important but not because the Council is all-powerful. At a time when the balance between the EU’s institutions appears to have shifted considerably, working groups are instead best conceptualized as vital parts of the EU legislative process because they are the arenas where draft legislation begins to be firmed up and moves towards compromise solutions take place. Working groups are not predictable intergovernmental battlegrounds but sites for inter-member state, inter-institutional and ideological mediation. In short, these entities matter because they are both a structural part of the EU’s overall institutional structure and because they themselves are generally highly institutionalized. Nevertheless, the role which working groups really play does not match the formal institutional structure of the Council because the frontiers between such groups, COREPER and ministerial meetings are constantly blurred. Indeed, if working groups are clearly an integral part of

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¹ Based upon case study research in five policy sectors (see Table 1 below), our own research on Council working groups produced two general conclusions, the first of which feeds into this rationalist versus neo-institutionalist debate while the second opens up an alternative line of questioning.
the Council, it is also clear that over the past decade they have become increasingly involved in processes of negotiation with other EU institutions, in particular consultative groups chaired by the Commission and committees of the European Parliament (EP). This increase in inter-institutional relations has changed the role played by working groups in the complex rounds of negotiation where draft legislation is shaped and begins to be firmed up. This article develops this general claim and sets out responses generated by our research to the following more precise question: how do working groups relate to other components of EU governance, namely COREPER, Council meetings themselves, the European Commission and the EP?

The second central finding of our research concerns the relationship between the ‘political’ and the ‘technical’ in the EU’s system of decision-making. Adopting a constructivist approach to the discourse of practitioners (Diez 1999; Checkel 2001), we discovered that working groups do not fit into this system simply because they ‘prepare negotiations’ by resolving ‘technical’ issues in order to leave more ‘political’ questions to COREPER, ministers and the EP. Instead, and contrary to what many actors interviewed themselves say and sometimes even write (Westlake 1999), the distinction between the technical and the political is constantly blurred both within and around Council working groups. Indeed, if the line between the technical and the political is repeatedly crossed both within working groups and between these entities and other EU institutions, this is often because the drawing of a clear-cut line between EU policy-making’s technical and political aspects would lead to inter-institutional and intergovernmental stalemate. In reality, the words technical and political are most often labels for issues that are used in the context of debates and conflict which go on within and between the Council, the Parliament and the Commission.

This second finding is important for both theoretical and normative reasons. From the point of view of social science theory, this finding is important because it encourages research to focus upon dynamic processes of politicization and depoliticization rather than on static ideal-types of technocracy and politics. Reasoning by ideal-type is the approach at the heart of Claudio Radaelli’s stimulating book *Technocracy in the European Union* (1999). ‘Politics’ is defined by this author in terms of reasoning from values, whereas ‘technocracy’ describes behaviour based upon expertise. If this is certainly a good starting point, our approach differs from Radaelli’s by avoiding the normative connotations which can be applied to either ideal-type and by focusing upon the way many practitioners in the EU use the lexicons of both politics and technocracy in order to further their respective goals, interests and strategies. More precisely, our research into the policy-making role of Council working groups led us to delve deeper into how actors within these arenas both consciously and unconsciously develop strategies which either politicize or depoliticize public issues (Smith 2004a).

Our finding on the blurring of the technical and the political also has normative implications because it enables one to clearly refute the often-heard criticism...
that the EU is intrinsically a-political or even anti-political. Instead, by conceptualizing politics not as a static ideal-type but as both a process and a tool of legitimation, the perspective developed here encourages observers and actors to focus more directly upon the processes of powering and disempowering which constantly take place at the heart of the EU’s government (Smith 2004b).

Both our findings are developed simultaneously in the three parts of this text. We begin by setting out the role played by working groups within the structure of the Council itself. Despite the misleading dichotomy between technical and political issues, we show that members of working groups possess a variety of forms of expertise which frequently influence the compromises at the heart of Council decisions (1). However, our findings also suggest that the role of these groups is partially externally driven and that the absence of a firm technical–political divide continues to have significant effects in such contexts. On the one hand, the processes that take place within working groups are often pre-structured by consultations with ‘civil society’ initiated by the Commission (2). On the other hand, negotiations conducted within working groups are intertwined with discussions with other institutional arenas, in particular those of the EP (3).

1. THE COUNCIL IN ACTION: WORKING GROUPS, COREPER AND MINISTERS

Formally, working groups report to COREPER and thence to ministers (Hayes-Renshaw and Wallace 1997; Lewis 1998; Sherrington 2000; Bostock 2002). Virtually all our interviewees considered that a separation between technical and political issues determines which of these bodies does what. If technical issues are left to the working group, political ones are treated at the level of COREPER or ministers:

‘In the working group, we treat only the technical issues. When there are important points of controversy, it goes to COREPER’; ‘the working group is a good arena to prepare the debate at COREPER and Council level’.

When interviewed, practitioners tend to consider that ‘political’ means major issues in which their respective hierarchies should be involved whereas ‘technical’ decisions can be taken by members of working groups. Given the frequency of such declarations, it is no accident if this representation of a world where the technical and the political are clearly identified is reproduced constantly by legal scholars and traditional forms of political science. However, when one delves deeper into the way the Council functions, the distinction between technical and political issues is rarely so clear-cut. What actually often happens is that if an agreement cannot be reached at the level of the working group, the text goes to COREPER. Therefore, on some occasions, working groups do deal with issues originally labelled ‘political’ by working group members.
A first example of this phenomenon concerns the negotiation of the racial discrimination directive. During the exchanges within the Council on this issue there was intense conflict between the UK and the Netherlands, on the one hand, and France, Spain and Sweden, on the other, about how a ‘discrimination’ case should be defined (Geddes and Guiraudon 2004). If the first category of representatives considered that discrimination could be proved by statistics, representatives from other countries considered that this was a ‘dangerous’ way of demonstrating ‘racial discrimination’. A solution was eventually found by putting the offending article in the directive’s recital and thereby sideling an EU definition of discrimination for the time being.6

What is of interest to us in this example is that when discussing this issue with a civil servant from one of the Permanent Representations, he began by telling us: ‘It was political...so it must have been solved in COREPER’, before recognizing (having reread his notes) that a solution had in fact been reached within the group.

A second example concerns the landfill of waste directive. One of the blocking points was the percentage of reduction in landfill for non-biodegradable waste. Generally working group members expect this sort of item to be left to ministers. In practice, this did not occur on this occasion (in contrast to an air pollution directive under discussion at the same time, for example, where figures like this were debated directly by ministers).7 Under the Luxembourg presidency in particular, it was argued that the figures for landfill were still quite technical and that therefore it was necessary to continue the pre-negotiation round in the working group. During this round, Permanent Representatives could try things out with their national capitals, and then restrict the range of figures to be discussed by ministers. For some directives, the Council itself (or COREPER) just ratifies solutions worked out in the working group, as in the case of the drinking water directive, for example, where ministers played only a symbolic function.

The latter example also shows that the frontier between technical and political issues frequently varies from one presidency to another, some using COREPER regularly, others spending more time in working groups. The second of these strategies appears more common: ‘We try to solve all technical problems at expert and attaché level so as to try to avoid COREPER. This is a level where you waste a lot of time as many new documents need to be produced.’8 Some presidencies have chosen, on the contrary, to use COREPER systemically in order to speed up negotiations. During the last French Presidency (July–December 2000), for example, a great deal of legislation was dealt with in this way.

The relationship between working groups and COREPER is thus a complex but vital one for understanding the making of EU legislation. As Lewis has underlined (1998), there is often considerable rivalry between those who sit in COREPER and those in working groups. Such rivalry is played out around the draft legislation which repeatedly circulates back and forwards between COREPER and the working groups. Within COREPER meetings, ambassadors and their deputies clearly have more formal authority than the
more junior members of their Permanent Representation who sit alongside them in meetings at this level, and who go to working group meetings with officials sent specifically for that purpose from the national capitals. However, the willingness of working group members to minimize the number of issues left for COREPER to decide upon is generally high. Having often spent weeks, if not months, mastering the complexities of an issue and piecing together a compromise, they live in fear that under-informed ambassadors in COREPER will make hasty decisions that unravel all the work done previously. Interviewees from small member states tended to be particularly anti-COREPER because they considered that its proximity to the relative voting capacity of ministers always returns power to the big member states. To cite a Belgian Permanent Representative, ‘COREPER is where the big countries can come to the fore . . . We are small. In the working group we are more equal.’

Over and above these points on working group–COREPER relations, our research also sought to answer the following related question: what is left for ministers to decide? If most of our interviewees continued to state that ‘political’ decisions are not taken in working groups but in Council, what do they mean in more precise terms? Judging by what we have been told, some issues like budgets are never really discussed in working groups. The role of the working group here is just to generate an initial idea about the different positions taken by each national delegation. In addition, deal-making involving intersectoral trade-offs is left for ministers to handle. A good example is the clash between environmental and industrial policy priorities during the negotiation of the end of vehicle life directive, which led to arbitration at ministerial level.

However, many other cases of decision-making suggest that less is left for ministers to decide on than one might have thought. This point can be illustrated by the case of the MEDIA negotiation, where the actors interviewed underlined the ‘efficiency’ of the working group: ‘documents were pretty clean before COREPER and Council, which is not always the case.’ In an example of policy-making where it was considered that there were many ‘technical’ issues to deal with, interviewees attribute this to the fact that some members of the group were ‘good’ professionals from this field.

Similarly, for the drinking water directive one of the French Permanent Representatives involved in this negotiation told us: ‘The directive was already tied up when I arrived in Brussels. It was already being processed by the working group and most of the problems had been settled. Just a few points of friction remained.’ Indeed, the drinking water directive offers a good illustration of the difficulty in building a clear frontier between what ministers and the working groups do and of the continuous nature of interactions between these two levels. In this case, the French delegation in particular had a major problem with the maximum levels of lead that this legislation would set. Finally, a solution to this conflict with the French delegation was found by the introduction of a higher maximum level for fifteen years and the inclusion in the directive of an additional derogation amounting to nine further years of grace to apply the new legislation. But this solution was only achieved in the
last minutes of the Council meeting by reactivating the working group under the form of a so-called ‘groupe en marge du Conseil’ created for the sole reason of solving this technico-political problem. Labelled a ‘quasi working group’ by one of our interviewees, it was achieved by widening the usual group to include some technical specialists from the national capitals and some senior officials from ministerial entourages. Those who had negotiated the legislation through from the beginning were thus directly present at the end! Ultimately, the ministerial meeting ‘dramatized’ the issue and injected urgency into the proceedings but the working group was very much involved in the final ‘political’ decisions.

2. ‘CONSULTATION’ AND ‘PRE-NEGOTIATIONS’: NATIONAL REPRESENTATIVES, THE COMMISSION AND ‘CIVIL SOCIETY’

What goes on before Council working groups meet? Our case studies provide very different answers to this question, thus suggesting that this part of EU agenda-setting has no standard pattern. Indeed, the word ‘consultation’ is used by our interviewees to summarize at least four different channels of access to a working group agenda along which ‘technical’ and ‘political’ issues tend strongly to intertwine. Indeed, the word ‘consultation’ itself can be given a political or technical connotation depending upon who uses it and in what context.

Two main approaches to consultation dominate EU policy-making. The first of these is characterized by widespread and open consultation orchestrated by the Commission services. Research and telecommunication sectors are particularly clear-cut examples. In both instances, oral and written submissions of ideas for policy are solicited from all interested parties. Moreover, both sectors feature a committee which formalizes consultation of national governments: le Comité de la recherche scientifique et technique (CREST) and the Open Network Provision (ONP) Committee. The former is a committee of both the Commission and the Council and meets in parallel to the research working group. The ONP Committee began life as a comitology body and subsequently widened its role and its membership, even including for some time national telecommunications regulators and European consumer representatives until the Parliament raised objections to this practice. Beyond the need for Commission officials to seek and test new ideas for policy before sending draft legislation to Council, this approach to consultation must be understood in the context of the often intense differences of view which mark ‘inter-service’ consultation within the Commission and debates in its College of Commissioners. In the telecommunications sector, for example, widespread consultation over the last revision of the ONP directive enabled DG INFOSOC to produce a number of publicly available working papers before any draft legislation was put to other Directorates-General and the College.

Anticipating intra-Commission disputes can, however, lead to another quite different approach to consultation and the politicization or depoliticization of
policy-making. For example, officials from this institution who prepared the e-commerce and end of vehicle life directives claim to have very deliberately kept official consultation to a minimum in order to avoid inter-service and College ‘interference’ and dilution of their proposals. In the case of the e-commerce legislation, an intersectoral ‘framework’ directive that would demand a particularly high level of inter-service co-ordination, the approach adopted by DG MARKET officials was ‘to shoot first and discuss later’. More precisely, these officials ensured that the College committed the Commission to legislation on e-commerce in the form of statements made in a Communication before submitting a draft directive to inter-service scrutiny. In addition, although different interested parties had been contacted beforehand for their views in an informal fashion, more formalized exchanges, particularly with national government officials, had been avoided ‘because they are always against our attempts to make law’. In the case of the directive on the end of vehicle life, formalized consultation was also ruled out for similar reasons. Indeed, resistance from other DGs, in particular DG ENTERPRISE, is often anticipated by DG ENVIRONMENT officials because of their own relative weakness within the Commission (one of whom even went so far as to describe their DG ‘as the illegitimate child of parents who only got married after its birth’). If such officials also fear that member states will water down Commission proposals in this field, there is an even greater fear that consulting industry prior to the production of draft legislation excessively favours producers at the expense of environmentalist and consumer representatives: ‘There is a problem with this type of consultation. For non-governmental organizations, it is very expensive to participate. There is thus always the risk that producers will dominate proceedings. The representativeness of a consultative committee can thus very quickly become dubious.’

However, two less common forms of consultation also played a role in some of our case studies. The least common of these is when consultation actually starts in the working group. Held by some actors from the Permanent Representations, this vision of consultation seems to mean either that national governments have not formally been consulted at all or that the Permanent Representation in question had no prior knowledge of the file in question. A second quite different scenario occurs when organized interests or scientific experts have been consulted first and produce an agreement that the Council can do little to change. This was the case, for example, in the working time directives studied where the social partners reached an accord that was relayed to the Questions sociales working group by the Commission. In such instances, consultation in fact means negotiation because the representatives of the member states can do little more than validate what has been agreed without their involvement. To some extent, this model of consultation also fits with the setting of norms for the regulation of the telecommunications sector.

We will not expand more fully on these varied forms of consultation here other than to suggest that our research tends to confirm existing analysis of
the Commission as an agenda-setter (Cram 1993; Cini 1996). The typology presented above simply reminds us that different issue ‘streams’ tend to lead to different ways of beginning work in a working group. It also shows the thinness of the dividing line between consultation, pre-negotiation and negotiation. This line is frequently crossed well before working groups start their work, in particular through processes which label issues and construct problems (Rochefort and Cobb 1994; Muller 1995) as ‘political’ or ‘technical’.

3. THE EUROPEAN PARLIAMENT, COUNCIL WORKING GROUPS AND CODECISION

The introduction of codecision by the Maastricht Treaty has considerably changed the nature of inter-institutional negotiations within the EU (Shackleton and Raunio 2003; Maurer 2003). Agreements between the Council, the Commission and the EP have become necessary for many important pieces of legislation. Indeed, an increasingly common objective for working groups is to avoid the conciliation procedure by involving representatives of the EP (and/or their viewpoints) in negotiations much earlier than they previously had been. This trend has had at least two consequences for the relationship between Members of the European Parliament (MEPs) and other EU institutions. First, it has encouraged many of them to specialize in certain policy areas and adopt the discourse of the bureaucrat in order to win credibility and legitimacy (Abélès 1995). Second, as virtually all the actors interviewed mentioned, the codecision procedure has greatly complicated the negotiation phase. In nearly every case, this treaty change has induced a second negotiation phase which takes place in the Council (and in particular within its working groups) after the EP’s first reading. This often means that national delegations try to reach a compromise among themselves on the basis of the Commission proposal which can then be presented to the EP as the Council’s position. A second negotiation follows with the EP where, from a Council perspective, the main difficulty is to reach a second compromise without destroying the unity that helped to produce the first one.

As regards the directives and decisions we analysed, codecision was frequently a key issue (e.g. Socrates, the working time directive and Culture 2000 were all adopted through the conciliation procedure). A growing part of the Council’s (and the working groups’) activity is thus concerned with dealing with the EP. The Presidency especially is increasingly involved in negotiations with EP committees. On this relationship, two comments can be made. First, working group members and European parliamentarians represent competing legitimacies: ‘the problem is that Permanent Representatives have a technical legitimacy, but no democratic one, and it is the opposite for parliamentarians.’ As a consequence, the Parliament is often criticized not only for its inability to understand the constraints of the legislative procedure but more seriously for being uninformed or subjectively informed about the issues involved. The sources of information for European parliamentarians are often challenged by
actors operating in working groups who consider that they have better, i.e. ‘more objective’, information than parliamentarians do. The latter are often stigmatized for supposedly relying upon information from self-interested lobbies and private companies. The second point, partly a consequence of the first, is that most working group members regret the time ‘wasted’ by the new procedures.

The impact of codecision on working group activity merits more precisely focused research. On the basis of our own study, several exploratory conclusions can nevertheless be drawn about the ‘division of labour’ that has emerged. First, there is a lack of clear rules on consultation over draft directives that undergo a second reading in the EP. A Commission official sums up this position in the following way: ‘Conciliation is a form of third reading where the rules of the game are very precise. But the second reading is only structured by the know-how of the chair of the working group and of the Commission’s director general... so there is no safety net. You just need one person to be in a bad temper to make the whole negotiation break down.’

Second, the growing importance of inter-institutional negotiations to avoid conciliation underlines the role played by actors in a position to speak ‘in the name of’ institutions (working group and EP committee chairs, rapporteurs, etc.) and their ability to make agreements which stand a good chance of ‘sticking’. This is particularly difficult for EP committee chairs as their authority and that of their committee can constantly be undermined by the Parliament’s plenary sessions. It also highlights the lengthening of the time it takes to negotiate an EU directive.

However, new voting procedures only partly explain the changing relations between working groups and EP committees. The timing of negotiations and institutional strategies are also important factors. Two examples may be given to illustrate this point. For the adoption of LEONARDO, the objectives of the German Presidency (and also of the Commission and the EP) were to
reach an agreement before the European elections of 1999. For this reason, and in spite of major cleavages (concerning the budget and the selection of projects), the representatives of the different institutions were under pressure to reach a common position quickly. Contrary to what happened to the SOCRATES Programme, this time constraint meant that a conciliation procedure was avoided (whereas the final acceptance of SOCRATES had involved a highly controversial conciliation procedure).

The second example concerns the anti-discrimination directive for which the EP formally only had a consultative role because its amendments would have no binding effect upon the Council. However, as one interviewee emphasized, ‘the EP did not accept the fact that the Amsterdam Treaty excluded discrimination issues from codecision.’ Consequently, even if it was not legally permitted, the EP tried to play a major role in processing this legislation. The Council and the Commission wanted to push this draft legislation through rapidly, but in order to do so they needed the Parliament’s opinion as early as possible, an opinion which representatives of this institution sought to trade off for the retention of some of its amendments. Even if, in the end, only a few amendments proposed by the EP were put into the final version of the directive, this example illustrates the activist strategy followed by the parliamentarians involved. This said, other examples also suggest that there can be a backlash amongst member state representatives against what they see as the encroaching influence of the EP. This appears to have been the position of Dutch representatives when the budget for Culture 2000 was negotiated, for example. These actors blocked the whole negotiation for a number of months by refusing to even consider any increase in the budget for this policy.

Committees of the EP are now in constant contact with Council working groups. Often intensified in order to speed up decision-making, this contact can sometimes produce impressive instances of inter-institutional co-operation. More often, however, the respective institutional logics and legitimacies of each institution lead to conflict and delay. Once again, the line between politics and technocracy is far from clear. Indeed, it is constantly blurred by the behaviour of many MEPs who, in order to gain credibility and respect with the issue-area specialists who make up their opposite numbers in the Commission and national delegations, end up behaving more like policy experts than ‘classical’ parliamentarians (Abélès 1995).

CONCLUSION

Council working groups now function in a context where neither the Council nor the Commission dominates the production of EU legislation. As an alternative to the often-heard opinion that the Commission ‘is a shadow of its former self’, it seems more accurate to depict the governance of Europe as conducted in a highly competitive inter-institutional environment where each player – national governments, the Commission and the EP – is obliged to focus intense attention on what happens in Council working groups
From this perspective, the two central findings of our research offer a number of insights which go beyond the precise question of conceptualizing these groups.

The first of these findings is that yet again neo-institutionalist theory provides an analytically effective means of studying and unpacking a number of key processes at the heart of EU decision-making. Rather than being dictated by the whims of national governments or by the functional complexity of societal problems, decisions in the EU are shaped by the institutional arenas which structure this process. Council working groups are a particularly good case in point because their membership, their rules of procedure and their relationships with other bodies are heavily influenced by rules and norms. These vary slightly from sector to sector and further investigation of such differences would be a logical next step from the research presented here. Indeed, in so doing it would be necessary to go beyond some of the actor-less strands of neo-institutionalist theory in order to encompass more sociological approaches to politics in general and public policy-making in particular.

Introducing more empirically oriented sociology into constructivist theory would also enable one to develop and thoroughly test our second finding about the ‘technical’ and the ‘political’ within EU decision-making. In this context, if the technical–political divide is omnipresent in the discourse of practitioners, our research shows that this is largely because the imprecision of this very distinction is, in fact, a powerful facilitator for reaching intersectoral and intergovernmental compromise at the EU level. However, as Christiansen and Kirchner underline: ‘Committees are regularly regarded as technocratic, concerned with the minute details of policy proposals. This may well be true . . . but this does not remove politics from the process. The proceedings of committee governance are highly political, whether or not the issue at stake is regarded as high or low politics’ (2000: 20). Indeed, from an analytical point of view, it is vitally important to understand that ambiguity over the technical–political divide is actually an essential part of EU decision-making. Without the flexibility that this ambiguity allows, much less legislation would ever reach the EU statute books.

If such forms of ‘depoliticization’ may enhance the efficiency of EU decision-making, this also has wider implications for institutional legitimacy and normative position-making over the undemocratic nature of European integration. Given that the institutional sedimentation at the root of the strong trend towards depoliticization has so many far-reaching effects upon the distribution of power in the EU, further research into both the politicization and the depoliticization of EU issues and problems is now nothing short of a necessity.

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NOTES

1 This method was deliberately chosen as a manner of supplementing, but also challenging, a number of assumptions and conclusions developed by questionnaire-based research (Beyers and Diericks 1998). In addition to examining documents and articles relating to these cases, we conducted forty-five interviews with actors involved in the relevant working groups (Commission officials, Permanent Representatives, civil servants based in national capitals). Although we amassed a considerable amount of detail in order to process-trace what happened in each instance, the results of this process-tracing are published elsewhere (Fouilleux et al. 2002). Instead, this article synthesizes the overall conclusions taken from our case studies in order to propose answers to the questions set out in this introduction.

2 In our case studies, only COREPER I is concerned as it deals with the internal market, industry, telecommunications, energy, the environment, research, transport, social affairs, health, education, culture; i.e. mainly First Pillar legislation.

3 Interview with a Permanent Representative, December 2000.


5 To give just one example, a recent edited book on COREPER provides many illustrations of this trend (Constantinesco and Simon 2001).

6 In this recital it was stated that statistical evidence could be one means among many others to define discrimination. In EU legislation, recitals are the introductions to legal texts which set out their purpose. These sentences are less legally binding than the precise articles which follow them.

7 Interview with a Council Secretariat official, November 2000.

8 Interview with a Council Secretariat official, October 2000.

9 Interview, June 2001.

10 Interview with a Permanent Representative, January 2001.

11 The participation of a Portuguese delegate who had worked in the film industry was mentioned in this sense. This point was underlined in a more general fashion by an actor interviewed at the Secretariat General of the Council Secretariat: ‘There is a necessity for the Secretariat General to have specialists intervene because, as you know, we are generalists’ (interview, January 2001).

12 Interview with a Permanent Representative, January 2001.

13 Following World Health Organization guidelines, the Commission’s initial proposal on maximum levels of lead in water was 10 mg/l. This level was politically inescapable so the challenge for negotiators was to set a norm of 10 mg/l, but not to render it obligatory. The French government was particularly reticent about accepting a strict norm which might oblige it to pay compensation to French private property holders who in future would have to rapidly replace lead piping (of which there are still vast quantities in this member state).

14 Consultation processes in the telecommunications sector have been highlighted by the Commission as an example of ‘best practices’ (The White Paper on Democratic Governance, 2001, p. 16). In the research sector the Commission has always consulted widely (researchers, firms, etc.) before defining its proposals for the Framework Programme. Some Commission-run ‘joint research centres’ are devoted to the preparation of priorities and strategies (e.g. the Institute for Prospective Technological Studies in Seville). Furthermore, co-operation seems to be intensifying between the Commission and a number of external institutes and foundations such as the European Science Foundation, the Organization for Economic Co-operation and Development, the European Molecular and Biological Organization, the European Organization for Nuclear Research. This form of information exchange often puts norms and criteria on the EU policy agenda.

15 Interview with a DG MARKET official, November 2000.

16 Interview with a DG MARKET official, November 2000.
As the Universal Mobile Telecommunication System (UMTS) case study highlights, the European Telecommunications Standards Institute (ETSI) is a particularly important source of such norms.

In particular, research on this question would have to address the policy alternatives which, for different reasons, were not even considered by the consultation and pre-negotiation process.

Art. 251 of the Treaty on European Union (previously art. 189 B).

Concerning the sectors we have studied, most of these now apply the codecision procedure, even if it affects each of these sectors differently. For example, in social affairs, if the working time and health and safety directives were dealt with under codecision, this was not the case for legislation on discrimination (art. 13 of the Amsterdam Treaty did not allow codecision).

The exceptions to this rule concern directives accepted in their first reading by the EP. If such a method appears efficient, it can also pose a number of problems. For example, one Commission official working in the telecommunications field told us: ‘The problem is that this procedure is a little too quick and not transparent enough. When we reach agreement on the first reading, the essential work is done between the President of COREPER and the EP’s rapporteur. It is up to the rapporteur to consult the other members of Parliament... So MEPs are often confronted with a choice between “yes” and “no” — there is no deliberation’ (interview, January 2002).

Indeed, a senior Commission official gave the following opinion on this matter: ‘The new role of the European Parliament does not change the way one works in working groups. However, it certainly does change the way the chair of each group works’ (interview, January 2002).

REFERENCES


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