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Decision-making in the council of the European Union. The role of committees.

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2 The Council's committee system

In this chapter, I present background information on the organisation of the Council's committee system and its role in EU legislative decision-making. Besides presenting context information necessary for evaluating some of the choices made in the descriptive and explanatory analyses that follow, the descriptions in this chapter also serve the purpose of illustrating the size, complexity and potential importance of the Council's committee system. Thus, this chapter presents additional justification for researching the role and functioning of Council committees in EU decision-making. I first give a stylised account of the involvement of working parties and senior Council committees in the legislative decision-making process. In line with the overall focus of the thesis, I concentrate on a description of a typical legislative decision-making process under the consultation and co-decision procedure, respectively. In the second section of the chapter, I consider the hierarchical structure of the Council organisation in more detail. I also describe differences in the Council's committee system across policy sectors and discuss changes over time. Finally, I depict the growth in the overall number of working party and Coreper meetings per year since the foundation of the European Communities and compare this development to the changes in the number of ministerial meetings during the same period of time. This description indicates that the practical relevance of Council committees is substantial and that it has been steadily increasing during the last 50 years both in relative and absolute terms. While practical or functional relevance should not be equated with political influence and power, these stylised descriptions and aggregate statistics about the number of committees and their meetings suggest that committees are potentially important political decision-making bodies that deserve more systematic empirical study.

2.1 Council committees in EU legislative decision-making

The EU institutions adopt legislation through a number of formal procedures, varying mainly in the degree of powers granted to the European Parliament and in the degree of inclusiveness of the Council's voting-rule (i.e. qualified majority or unanimity).

The EU treaties specify the decision-rules applicable in a certain issue area¹. To keep things simple, I describe only the two main procedures for adopting legislation on internal EU policies: the consultation and the co-decision procedure². The main difference between the two procedures regards the decision-making rights of the Parliament. Under the consultation procedure, the EP can only give a non-binding opinion. In effect, the Council is the sole legislator under this procedure. In contrast, the co-decision procedure grants equal rights to the Parliament. In both procedures, the Commission has the exclusive right of initiative and can withdraw and amend its proposal during the procedure³.

The Commission initiates both procedures by transmitting a proposal for legislation to the Council, the Parliament and, if required by the relevant treaty article, to the Committee of the Regions (CoR) and the Economic and Social Committee (ESC), respectively. The latter three institutions are all asked for their opinions and can suggest amendments to the draft legislation. The EP adopts its opinion by a simple majority of votes. The Commission is not obliged to incorporate any of these amendments into its text. In the case of the consultation procedure, the EP has the ‘power of delay’ (Hix 2005: 78). The European Court of Justice made clear in its 1980 ‘isoglucose’ ruling that no legislation can be passed until Parliament has given its opinion⁴. Thus, the EP can pressure the Commission to amend its proposal according to the EP’s wishes by delaying the formal adoption of the EP opinion. In contrast, the Council or the Commission can impose a tight time schedule on the

¹ Consolidated Version of the Treaty Establishing the European Community. 24 December 2002, OJ C325, pp. 33-159; and Consolidated Version of Treaty on European Union. 24 December 2002, OJ C325, pp. 5-32.

² For an overview of legislative procedures and decision rules in different policy areas, see (Hix 2005: 99-102, 415-421). Besides the consultation and co-decision procedure, the co-operation and assent procedure are noteworthy. In practice, the co-operation procedure has been largely replaced by the new version of the co-decision procedure, which was introduced through the Amsterdam Treaty of 1997. The assent procedure applies mainly to foreign policy decisions (i.e. the conclusion of international agreements and the ratification of accession treaties). See Chapter 5 for a more detailed justification of the focus on legislation adopted through the consultation and co-decision procedures.

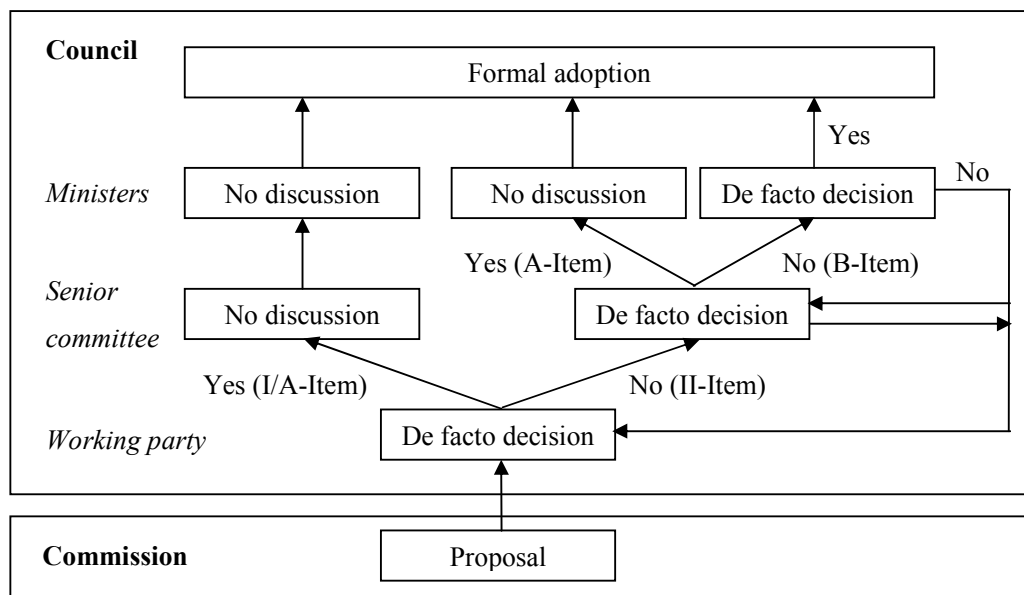
³ Some exceptions exist in the field of Justice and Home Affairs, where the Commission shares its right of initiative with the Member States.

⁴ ECJ judgement on SA Roquette Frères v. Council of the European Communities. Isoglucose production quotas. Case 138/79, 29 October 1980.

delivery of the opinions of the CoR and the ESC. Thus, the non-delivery of an opinion within the set time period by these institutions does not constitute an obstacle for the legislative process to proceed (Nugent 2006: 405-406).

At the same time as the EP, the CoR, and the ESC prepare their opinions, the Council starts negotiations on the dossier. As noted, the Council can only take a formal decision after the Parliament has delivered its opinion. In reality, Council decisions are de facto often taken before the EP adopts its amendments, but with the restriction that they are 'subject to Parliament's opinion' (Nugent 2006: 504). Before ministers discuss a proposal, a number of subordinate committees of national officials first deal with it. I distinguish three main Council levels: working parties at the bottom of the hierarchy, senior committees in the middle, and ministerial meetings at the top. Figure 2.1 illustrates the internal decision-making process in the Council.

Figure 2.1 The internal decision-making process of the Council



Note: The term 'Council' refers to the Council as an organisation, not to the Council as a legal institution as described in the Treaties. The Council as a legal institution refers only to meetings of ministers. The possibility that a proposal fails completely is not considered in the figure. In general, a proposal can fail at all levels of the Council hierarchy.

Source: Figure 1 in Häge (2008).

The dossier first enters the internal decision-making process of the Council at the level of working parties. The Committee of Permanent Representatives (Coreper) is

usually responsible for establishing and dissolving working parties⁵. The Council Presidency decides when and which working party discusses a certain dossier. Working parties consist of policy experts, which are either based in national ministries or temporarily seconded to the Member States' permanent representations in Brussels. As in other Council bodies, the Commission is also represented in working parties. A delegate from the country holding the Presidency chairs the meetings and the working party members can draw on the support of the Council's secretariat and the Council's legal service. The working party members aim at reaching agreement on as many issues as possible in order to relieve higher decision-making levels of workload. The responsible working party often discusses the proposal during several meetings. Meetings usually last either half a working day or a full working day.

After deliberations in the working party, the working party chair hands the dossier up to the senior committees at the second Council level. The two formations of Coreper⁶ and the Special Committee on Agriculture (SCA)⁷ form this level of the hierarchy. Coreper II consists of the permanent representatives of the Member States and prepares the meetings of the General Affairs and External Relations, Economic and Financial Affairs, and Justice and Home Affairs Council formations. The members of Coreper I are the deputy permanent representatives. They prepare the meetings of Council formations in the areas of Employment, Social Policy, Health and Consumers Affairs, Competitiveness, Transport, Telecommunications and Energy, Environment, Education, Youth and Culture. Coreper I shares the responsibility for preparing ministerial meetings in 'Agriculture and Fisheries' with the SCA. The SCA consists of senior officials from national agriculture ministries. The SCA is responsible for issues related to the common agricultural policy, whereas

⁵ Art. 19(3) of the Council Decision 2002/682/EC, EURATOM of 22 July 2002 adopting the Council's rules of procedure. 28 August 2002, OJ L230, pp. 7-26.

⁶ The role and functions of Coreper are laid down in Art. 207 of the Consolidated Version of the Treaty Establishing the European Community. 24 December 2002, OJ C325, pp. 118-119; and Art. 19 of the Council Decision 2002/682/EC, EURATOM of 22 July 2002 adopting the Council's rules of procedure. 28 August 2002, OJ L230, pp. 15-17.

⁷ The SCA was set up by an intergovernmental decision of representatives of the governments of Member States on 12 May 1960.

Coreper I is responsible for food safety issues⁸. After the initial discussions in the working party, the dossier forms either a I-item or a II-item on the senior committee's agenda. If the working party reached complete agreement, the Presidency includes the dossier as a I-point on the senior committee's agenda. In this case, the senior committee approves the agreement of the working party without further discussion and decides to forward the proposal to ministers for a formal adoption. If the working party was not able to resolve all issues, the dossier forms a II-point on the committee's agenda. Only II-items are subject to further deliberation by the senior committee⁹.

After the senior committee discussed the dossier, the Presidency transmits the proposal to one of the ministerial meetings. Ministers from the Member States currently meet in nine different formations¹⁰. These formations are distinguished according to policy areas. Together, the different ministerial formations represent the apex of the Council hierarchy. If either the working party or the senior committee have reached a settlement, the proposal forms an A-point on the agenda of a forthcoming ministerial meeting. A-points are adopted without discussion at the beginning of ministerial meetings¹¹. In many instances, the ministers adopting a dossier as an A-point are not even responsible for the policy area in question (Gomez & Peterson 2001: 62-63). Of course, the adoption of acts by ministers holding a different portfolio is of no concern in legal terms, as the EU treaties do not distinguish between different Council formations. If neither the working party nor the senior committee reached a complete agreement, the proposal forms a B-point on the agenda

⁸ As described further below, a number of committees composed of more senior officials exist in the Council structure. The SCA stands out among these committees because it reports directly to ministers (Hayes-Renshaw & Wallace 2006: 95). In contrast to other more senior committees, the SCA does not have to seek the approval of one of the Coreper formations to put an item on the ministers' agenda.

⁹ The SCA is an exception in this respect; it does not divide its agenda into I- and II-points. At least formally, the SCA discusses all dossiers falling within its field of responsibility.

¹⁰ The official list of the current Council formations is laid down in Annex I to the Council Decision 2002/682/EC, EURATOM of 22 March 2004 adopting the Council's rules of procedure. 15 April 2004, OJ L106, p. 37.

¹¹ However, any Member State or the Commission can demand that an A-point is withdrawn from the agenda. The withdrawal can only be prevented through a negative decision by the Council as a whole. See Art. 3(8) of the Council Decision 2002/682/EC, EURATOM of 22 March 2004 adopting the Council's rules of procedure. 15 April 2004, OJ L106, p. 25.

of a meeting of the relevant ministerial formation. Ministers discuss the dossier only in this case to resolve the remaining outstanding issues. Formally, only ministers may adopt legislative decisions of the Council. But as this description of the internal Council decision-making process shows, many decisions are de facto made at lower levels of the Council hierarchy. Of course, the description is somewhat simplistic. In reality, proposals can move up and down between the different levels of the Council hierarchy several times before ministers can finally adopt them. In these cases, the higher-ranking Council bodies discuss the dossier but refer it back to the lower levels with new instructions. In Figure 2.1, I indicate this possibility through feedback arrows from higher to lower Council levels.

The consultation procedure ends at this stage with a decision on the legal act by ministers. Depending on the voting rule referred to in the relevant treaty article, the adoption of an act requires either a qualified majority of votes or a unanimous decision. If ministers reach no decision, the legislation falls¹². In contrast, the complete co-decision procedure consists of three readings by both the Parliament and the Council. In the case of the co-decision procedure, the Council can adopt the law at this stage only if either the EP has not made any amendments or if the Council approves all the amendments made by the EP. Without any co-ordinated efforts on the part of the EU institutions, the Council is unlikely to approve all EP amendments in its first reading. However, the EU institutions increased their attempts in recent years to reach more first and second reading agreements under the co-decision procedure. These efforts are part of a more general programme to increase the efficiency of EU legislative decision-making. In order to reach a first reading agreement, delegations from the Commission, the Parliament and the Council meet to negotiate a compromise solution. The EP subsequently adopts this compromise solution in the form of amendments to the Commission proposal. The Council is then in a position to accept all EP amendments in its first reading. First reading agreements are usually negotiated at the level of working parties and Coreper. The Presidency represents the Council in the negotiations with the other institutions. The Presidency often does not have a clear

¹² Of course, the procedure can also end through the failure of the proposal on lower levels of the Council hierarchy. The Presidency stops discussions on a dossier as soon as it becomes apparent that the necessary majority will not be reached.

mandate during first reading negotiations, because the Member States have not yet agreed on a common Council position.

If the institutions do not reach a first reading agreement, the Council adopts a common position. The Council's common position either confirms or, more commonly, amends the Commission proposal. In either way, the adoption of the common position requires a qualified majority of the votes¹³. The Council then communicates the common position to the EP for a second reading. The EP has three months time to act. If the Parliament does not act, the common position automatically becomes law. The common position also becomes law when the Parliament approves it by an absolute majority of its members. As in first reading agreements, the direct adoption of the common position by the EP is usually a result of conscious attempts by all three institutions to conclude the procedure early. In this case, the Council's common position contains in fact an inter-institutional compromise agreement and is therefore directly acceptable to the EP.

If the Council's common position does not constitute a compromise or is otherwise acceptable to the EP, the EP rejects or amends the common position. Again, the EP has to decide by an absolute majority of its members. If the EP rejects the common position, the proposal fails. If the EP makes amendments, it returns the amended common position to the Council and the Commission. The Commission then gives an opinion on the amendments. If the opinion by the Commission is favourable, the Council can adopt the amended common position in its second reading by a qualified majority of the votes. However, if the Commission issues a negative opinion on an EP amendment, the Council has to decide about this amendment by unanimity. The second reading in the Council constitutes the third opportunity to end the co-decision procedure early. The process is analogous to first reading agreements. If the institutions can agree on a compromise before the EP adopts its second reading amendments, the EP amendments to the Council's common position can be

¹³ Qualified majority voting is the standard rule in co-decision, but there are some policy areas for which unanimous decisions are required (e.g. Art. 151(5) of Consolidated Version of the Treaty Establishing the European Community, 24 December 2002, OJ C325, p. 100). If the Council introduces changes to the proposal against the opposition of the Commission, the Council has to adopt the amendments through a unanimous decision.

formulated accordingly. The Council can then directly adopt the common position as modified by the EP's compromise amendments.

If the institutions do not reach a second reading agreement, the Presidents of the Council and the EP have to convene the conciliation committee within six weeks to negotiate a joint text. The conciliation committee consists of an equal number of representatives of the Council and the European Parliament. The conciliation committee delegation of the Council makes decisions by a qualified majority of votes and the EP delegation by a simple majority of its members. The committee has six weeks time to agree on a joint text. If the committee does not reach an agreement, the proposal fails. If the committee manages to formulate a joint text, the text still has to be accepted by both the EP and the Council in their third readings. The ratification of the joint text has to occur within six weeks to enter into law. The adoption of the joint text requires the agreement of a qualified majority of the votes in the Council but only a simple majority of votes in Parliament. If either institution does not accept the joint text, the act fails.

In the consultation procedure, the Parliament can only make non-binding suggestions to the Council. In contrast, the Parliament is a real co-legislator under the co-decision procedure. The necessity for the Council to engage in negotiations with the EP under the co-decision procedure also affects the influence of Council committees in EU legislative decision-making. According to Bostock (2002), the co-decision procedure has further elevated the already central role of Coreper in the legislative process and the role of working groups supporting Coreper. After the Council has adopted its common position in the first reading, "... action on the Council side to complete the procedure has devolved almost entirely on Coreper (assisted as always by Council working groups)" (Bostock 2002: 219)¹⁴. A main indication of the increased importance of Council committees is that second reading agreements are almost invariably reached below the ministerial level. Ministers only formally confirm these inter-institutional agreements through the A-point procedure. In addition, the Council side of the conciliation committee consists almost always of

¹⁴ The data collected for this study confirm Bostock's view. Ministers discuss very few proposals after the adoption of the Council's common position.

members of Coreper¹⁵. Only the head of the Council delegation is often a minister or a junior minister from the country holding the Presidency. To sum up, Council committees seem to play a crucial role in ensuring the functioning of the Council machinery and the efficiency of the EU legislative process as a whole. Council committees were very involved already under the consultation procedure, but the co-decision procedure has further increased the reliance on committee work in the Council.

2.2 The organisational structure

In the preceding description of the role of Council committees in the legislative process, I strongly simplified the actual organisational structure of the Council's committee system. I referred only to the horizontal distinction along sectoral lines between different Council formations and the vertical division between ministerial meetings, senior committees and working parties. In this section, I describe the organisation of the Council's committee system in more detail. A closer inspection reveals further vertical divisions in the Council hierarchy, in particular within the level of working parties.

Besides the senior committees mentioned above, that is the SCA and the two formations of Coreper, a number of specialised bodies exist whose members are similarly high-ranking officials: the Economic and Financial Committee deals mostly with matters related to monetary union¹⁶, the Employment Committee is consulted by ministers on measures for the co-ordination of employment and labour market policy¹⁷, the Article 133 Committee assists the Commission in international trade negotiations and advises it in matters related to the Common Commercial Policy¹⁸, and the Social Protection Committee advises ministers on the co-operation in social

¹⁵ The co-decision procedure applies mainly to policy areas under the responsibility of Coreper I. Thus, the members of the Council delegation to the conciliation committee are mainly deputy permanent representatives (Bostock 2002: 219).

¹⁶ The Economic and Financial Committee was formally established by Art. 114(2) of the Treaty Establishing the European Community. 24 December 2002, OJ C325, p. 80.

¹⁷ The Employment Committee was formally established by Art. 130 of the Treaty Establishing the European Community. 24 December 2002, OJ C325, p. 89-90.

¹⁸ The Article 133 Committee was formally established by Art. 133(3) of the Treaty Establishing the European Community. 24 December 2002, OJ C325, p. 90-91.

protection policies¹⁹. All these committees deal with matters that are part of the classic Community policy areas. In addition, the Political and Security Committee (PSC) gives advice in the area of Common Foreign and Security Policy and exercises “...political control and strategic direction of crisis management operations”²⁰, and the Article 36 Committee advises ministers and co-ordinates policy in the field of Justice and Home Affairs²¹. The Member States established all these committees through treaty articles. Larsson (2003: 41) suggests that Coreper usually does not further discuss the issues handled by these committees. In this case, the approval of Coreper to put an item on a ministerial agenda would be a pure formality. While this suggestion seems plausible, no reliable empirical data exists on the extent to which Coreper interferes with the work of other relatively senior committees. In the absence of such data, the formal right of committees to prepare the agenda of ministerial meetings is the most straightforward criteria for the terminological distinction between senior committees and working parties. For the purposes of this study, I subsume all committees without the right to report directly to ministers under the heading of working parties. In cases where a distinction from ordinary working parties is necessary, I refer to higher-ranking groups as senior working parties.

The senior working parties are supported by several even more specialised committees set up by formal Council decisions: the PSC is supported by the Military Committee and the Committee for Civilian Aspects of Crisis Management. The Military Committee gives military advice and directs all military activity in the Union framework²²; the Committee for Civilian Aspects of Crisis Management reports officially to Coreper II but has also the task to advise the PSC²³. The Economic Policy

¹⁹ The Social Protection Committee was formally established by Art. 144 of the Treaty Establishing the European Community. 24 December 2002, OJ C325, p. 96-97.

²⁰ The Political and Security Committee was formally established by Art. 25 of the Treaty on European Union. 24 December 2002, OJ C325, p. 19.

²¹ The Article 36 Committee was formally established by Art. 36 of the Treaty on European Union. 24 December 2002, OJ C325, p. 25-26.

²² The Military Committee was formally established by the Council Decision 2001/79/CFSP of 22 January 2001 setting up the Military Committee of the European Union. 30 January 2001, OJ L27, pp. 4-6.

²³ The Committee for Civilian Aspects of Crisis Management was formally established by the Council Decision 2000/354/CFSP of 22 May 2000 setting up the Committee for Civilian Aspects of Crisis Management. 27 May 2000, OJ L127, p. 1.

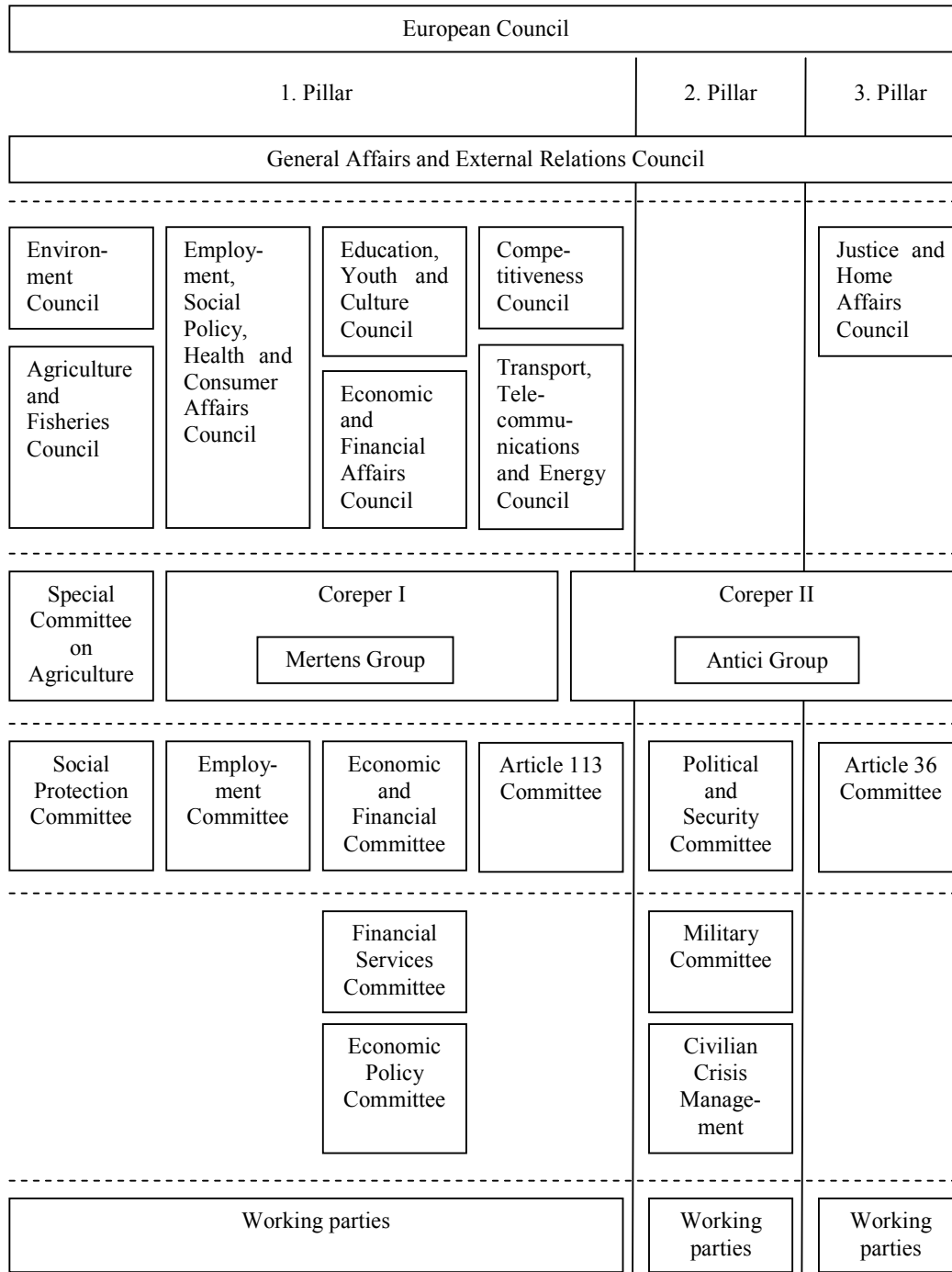
Committee and the Financial Services Committee assist the Economic and Financial Committee. The Economic Policy Committee is responsible for economic advice and the preparation of the Council's work on co-operation in economic policies of Member States²⁴; the Financial Services Committee provides advice on financial market issues²⁵. The Security Committee is somewhat different to other committees in that its tasks do not concern public policy, but rather the administration of the Council itself. The Security Committee is concerned with all issues of security related to the Council's proceedings and advises the General Secretariat on these matters²⁶. Besides the committees set up by a formal Council decision, a number of other higher-ranking working parties exist that were not established through a direct decision of ministers. These working parties stand out because they direct and co-ordinate the work of lower-ranking working parties in their field of responsibility. For example, in the field of Justice and Home Affairs, the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) oversees the work of the working parties on Asylum, Frontiers, Migration, and Visa; and in the field of Agriculture, the Working Party of Chief Veterinary Officers supervises the work of the different specialised working parties of Veterinary Experts.

²⁴ The Economic Policy Committee was formally established by the Council Decision 2000/604/EC of 29 September 2000 on the composition and the statutes of the Economic Policy Committee. 11 October 2000, OJ L257, p. 28.

²⁵ The Financial Services Committee was formally established by the Council Decision 2003/165/EC of 18 February 2003 concerning the establishment of the Financial Services Committee. 12 March 2003, OJ L67, p. 17.

²⁶ The Security Committee was formally established by the Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations. 11 April 2001, OJ L101, p. 10.

Figure 2.2 Organisational structure of the Council



Notes: The size of boxes does not correspond to the importance of bodies, the graphical structure corresponds to the actual hierarchy only for classes of bodies (demarcated by dashed lines) within each pillar, e.g. the military committee is at the same hierarchical level as the Civilian Crisis Management Committee and both directly advise the Political and Security Committee at the next higher level. Similarly, that the Social Protection Committee is presented below the Special Committee on Agriculture does not imply that it reports to the SCA, but only to one of the Committees at the next higher level, in this case to Coreper I. See the text for a more detailed description.

Three other groups of national officials also occupy a special position in the Council structure. The Mertens, Antici, and Friends of the Presidency Groups are referred to as groups “closely associated with Coreper”²⁷. The Mertens Group prepares the meetings of Coreper I and the Antici Group the meetings of Coreper II. These groups consist of close aids of the deputy permanent representatives and the permanent representatives, respectively. The Friends of the Presidency Group can be activated by the Presidency to solve a specific problem or conflict (Larsson 2003: 41). Finally, at the bottom of the hierarchy are the ordinary working parties, which form “...the Council's lifeblood” (Westlake & Galloway 2004: 200). Figure 2.2 summarise the hierarchical structure of the Council organisation.

The Council's committee system does not only show a wide variation in terms of the seniority level of different groups, but also in terms of the sheer number of groups in different policy areas. In Table 2.1, I present the number of working parties in different Council formations between July 2000 and December 2005. The numbers are derived from the Council's list of preparatory bodies. Senior working parties established by treaty articles or by Council decisions are not included in the counts. The General Secretariat continually updates the list of preparatory bodies to reflect new developments. The list indicates working parties as well as sub-areas within the remit of a working party. In practice, sub-areas usually constitute separate groups themselves. Therefore, I present both the number of proper working parties as well as the number of sub-areas in the table. In addition, I indicate the total number of working parties and sub-areas in a certain Council formation. In the following discussion, I assume that sub-areas can be treated as separate groups and focus on the total number of working parties and sub-areas.

Regarding temporal changes, a considerable decrease in the overall number of working parties from 298 in the year 2000 to 254 in the year 2005 is apparent. This decline is mainly due to efforts to rationalise the working party system. Besides changes in mandates of individual groups, these rationalisation efforts led to abolitions and to mergers of groups. For example, the working party system in the Environment formation was reformed in spring 2001. Coreper decided to incorporate the Working Parties on Biodiversity, Biosafety, and Persistent Organic Pollutants into

²⁷ For example, see Council (2000): List of committees and working parties involved in the Council's preparatory work. 5 July 2000, 9872/00, p. 3.

the Working Party on International Environment Issues and to dissolve the High-Level Working Party on Environment and Development²⁸. Later in the same year, the Council rationalised the working party structure in the Agriculture formation. Although Coreper formally agreed to abolish eight working parties, six of them were just degraded to sub-areas of other working parties²⁹. In the year 2002, Coreper decided to merge two working parties and to discontinue four more working parties as part of the re-structuring of the Justice and Home Affairs formation³⁰.

The latest and largest reform step took place in spring 2003. Among other things, this reform sought to bring the working party system in line with the reduced number of Council formations agreed to by Member States at the Seville European Council in June 2002. The reform affected working parties in the fields of General Affairs, External Relations and Development, Economic and Financial Affairs, Agriculture and Fisheries, Competitiveness, and Transport, Telecommunications and Energy. The reform reduced the overall number of working parties by 21 groups. Coreper decided to abolish twelve groups, to newly establish six groups, to subsume six groups into other groups, and to merge 16 groups into seven new groups³¹. Overall, the rationalisation efforts to prepare the Council structure for the accession of ten new Member States in the year 2004 explain most of the variation in the number of working parties over time. However, the changes in the Council's list of preparatory bodies also indicate that Coreper establishes and dissolves individual working parties and sub-areas in response to short- and medium-term needs to deal with specific policy issues.

²⁸ Council (2001): List of committees and working parties involved in the Council's preparatory work. 22 June 2001, 10279/01, p. 12, fn. 8.

²⁹ Council (2001): Council preparatory bodies. 30 October 2001, 13204/01.

³⁰ Council (2002): Council preparatory bodies. 15 July 2002, 10183/02; and Council (2002): Structure and number of Justice and Home Affairs working parties and activities other than legislative work (reports, evaluations, etc.). 1 March 2002, 6582/02.

³¹ Council (2003): List of Council preparatory bodies. 4 March 2003, 7003/03, pp. 1-3.

Table 2.1 Working parties and sub-areas by Council formation

<i>Council formation (pre-Seville reform)</i>	July 2000			October 2001			July 2002			March 2003			February 2004			December 2005			<i>Formation (post-Seville reform)</i>
	WP	SA	Tot	WP	SA	Tot	WP	SA	Tot	WP	SA	Tot	WP	SA	Tot	WP	SA	Tot	
General Affairs	16	0	16	16	1	17	17	1	18	18	1	19	16	1	17	17	2	19	General Affairs
External Relations	41	0	41	37	0	37	37	1	38	35	1	36	37	1	38	36	2	38	External Relations, Development
Budget	3	0	3	3	0	3	3	0	3	9	9	18	8	8	16	8	8	16	Economic and Financial Affairs
Economic and Finance	8	9	17	8	12	20	9	12	21	21	7	28	21	7	28	22	0	22	Justice and Home Affairs
Justice and Home Affairs	26	7	33	26	7	33	21	7	28	25	78	103	26	78	104	26	80	106	Agriculture and Fisheries
Agriculture	37	67	104	29	73	102	29	73	102	16	19	35	17	17	34	14	14	28	Competitiveness (Internal Market, Industry, Research)
Fisheries	3	0	3	3	0	3	3	0	3	7	7	14	7	0	7	7	0	7	Transport, Telecommunications, Energy
Industry	4	3	7	4	3	7	4	3	7	34	34	34	4	0	4	4	0	4	Employment, Social Policy, Health and Consumer Affairs
Internal Market	13	28	41	14	20	34	14	20	34	2	2	4	2	2	4	2	3	5	Environment
Research	3	0	3	3	0	3	3	0	3	4	4	8	4	4	8	4	4	8	Education, Youth and Culture
Telecommunications	2	0	2	2	0	2	2	0	2	2	2	4	2	2	4	2	0	2	Total
Transport	4	0	4	4	0	4	4	0	4	160	120	280	141	118	259	142	115	257	
Energy	2	0	2	2	0	2	2	0	2	160	120	280	141	118	259	142	115	257	
Information Society	1	0	1	1	0	1	1	0	1	4	0	4	4	0	4	4	0	4	
Labour and Social Affairs	2	0	2	2	0	2	2	0	2	4	0	4	4	0	4	4	0	4	
Health and Consumer Affairs	2	0	2	2	0	2	2	0	2	164	118	282	164	118	282	164	118	282	
Environment	5	3	8	2	2	4	2	3	5	2	3	5	2	3	5	2	3	5	
Education, Culture, Youth	4	2	6	4	0	4	4	0	4	4	0	4	4	0	4	4	0	4	
Total	179	119	298	164	118	282	160	120	280	141	118	259	142	115	257	142	112	254	

Note: WP = working party, SA = sub-area, Tot = Total.

Sources: Own calculations based on the following Council documents: Council (2000): List of committees and working parties involved in the Council's preparatory work. 5 July 2000, 9872/00; Council (2001): Council preparatory bodies. 30 October 2001, 13204/01; Council (2002): Council preparatory bodies. 15 July 2002, 10183/02; Council (2003): List of Council preparatory bodies. 4 March 2003, 7003/03; Council (2004): List of Council preparatory bodies. 23 February 2004, 6124/04; Council (2005): List of Council preparatory bodies. 5 December 2005, 15180/05 + Corr. 1.

Regarding cross-sectoral differences, the Agriculture and Fisheries formation stands out for having by far the highest number of working parties. At the end of 2005, 106 working parties prepare the work of Agriculture and Fisheries ministers. Most of the remaining working parties are concentrated in only four other formations. The meetings of foreign ministers are prepared by 19 working parties dealing with General Affairs and 38 working parties dealing with External Relations. Decisions in the field of Economic and Financial Affairs are prepared by 16 working parties and 22 working parties support Justice and Home Affairs ministers. Finally, 28 working parties deal with dossiers in the Competitiveness formation. In contrast, the number of working parties in the remaining four Council formations ranges only between four and seven groups. A clear explanation for these cross-sectoral differences in the number of working parties is not apparent. However, both the breadth and the complexity of the policy issues dealt with in different Council formations vary considerably. Divergent functional requirements of the policy area are likely to be at least in part responsible for differences in the number of working parties across Council formations. However, the Council formations also exhibit quite different histories in terms of their institutional development. Thus, path-dependencies are also likely to play a role in explaining the continued differences in the organisation of the working party system in different Council formations.

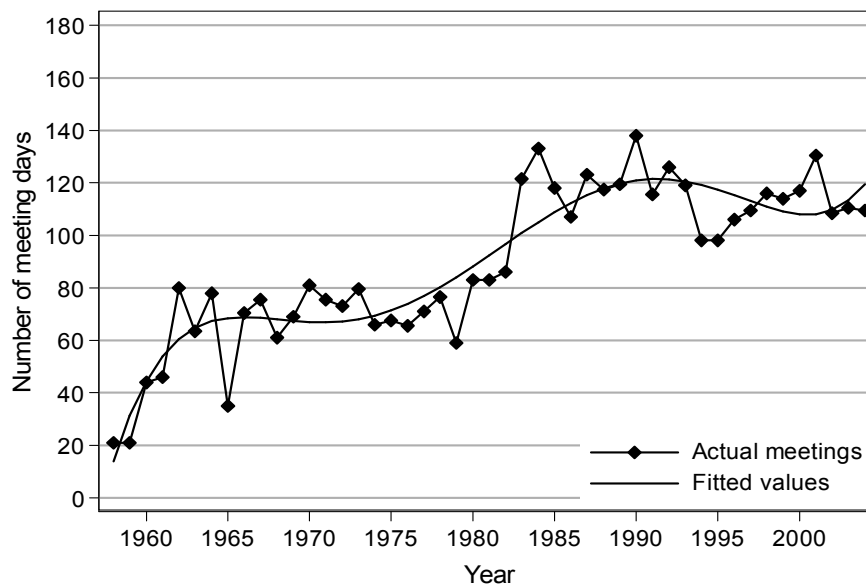
2.3 Long-term trends in Council committee activity

Up to this point, I have discussed the current organisational structure of the Council's committee system as well as developments in its recent history. Detailed information on the long-term development of the committee system is generally lacking. However, the Council secretariat keeps track of the number of days different types of Council bodies met per year since 1958, the year following the establishment of the European Communities³⁶. These statistics trace the involvement of different Council levels over time and allow for a comparison of their relative importance in managing the Council's workload. The figures show strong increases in the number of meeting days of all Council bodies. However, the pattern and the extent of growth in the activity of working parties, Coreper and ministers still exhibit significant differences. Figure 2.3

³⁶ General Secretariat of the Council of the European Union (1996): Review of the Council's work. Luxembourg: Office for Official Publications of the European Communities.

illustrates the development of the number of ministerial meeting days per year. The plot indicates two periods of strong growth. The first period of growth occurred soon after the foundation of the European Communities: between 1959 and 1962, the number of ministerial meeting days increased almost four-fold from 21 to 80 per year. The second major increase occurred in the period between 1982 and 1984. In just two years, the number of ministerial meeting days jumped from 86 to 133 per year³⁷. Although the number of meeting days varied considerably between and after these two growth periods, a clear positive or negative trend is not identifiable.

Figure 2.3 Yearly meeting days of ministers, 1958-2004

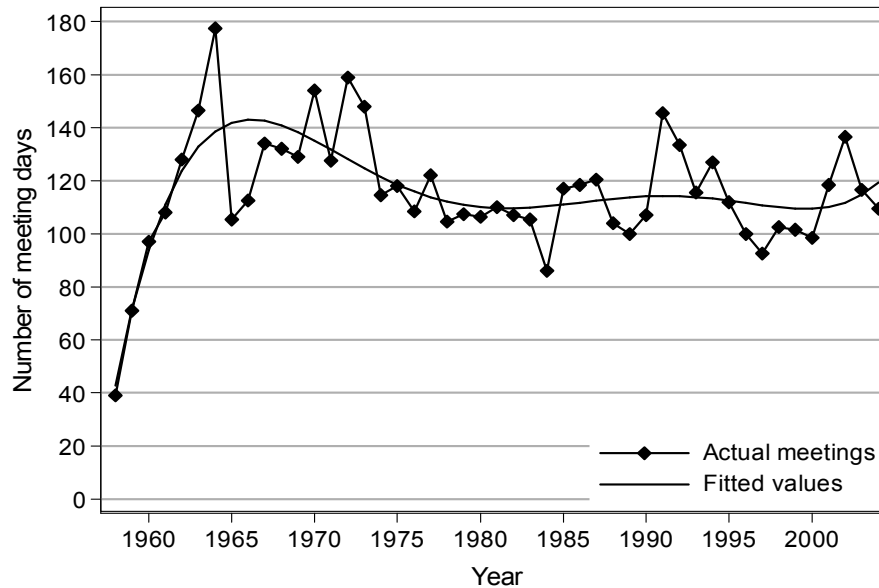


Note: The fitted values are based on a fifth order polynomial regression of the number of meeting days (Y) against time (X): $Y = b_1X + b_2X^2 + b_3X^3 + b_4X^4 + b_5X^5$.

Sources: Table 0.2 in Kassim (2003: 20) for the years 1958-1996 (several corrections were made on the basis of the original tables in various issues of the 'Review of the Council's Work', which was published yearly by the Council secretariat until 1996); Table 3.2 in Hayes-Renshaw and Wallace (2006: 98) for the years 1997-2004.

³⁷ As far as possible, I checked the most extreme changes in this time-series with information on the number of meetings from other sources. I could not find any indications that the numbers are affected by serious measurement problems.

Figure 2.4 Yearly meeting days of Coreper, 1958-2004

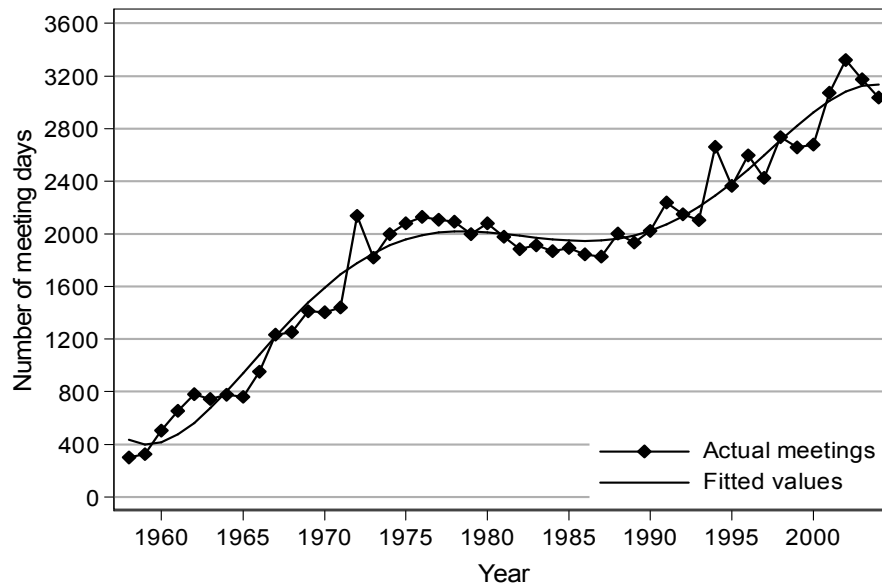


Note: See note to Figure 2.3

Sources: See sources of Figure 2.3

Compared to the step-wise growth of ministerial meeting days, the number of Coreper meeting days plotted in Figure 2.4 shows quite a different development over time. The number of meeting days of the permanent representatives and their deputies increased very strongly in the early years of the European Communities. Within six years after the establishment of the European Communities, the number of Coreper meeting days grew from 39 in 1958 to an all-time high of 177.5 in 1964. During the remainder of the time-period, the number of Coreper meeting days fluctuated considerably but stayed mostly within a bandwidth of 100 to 140 meeting days per year. The figure does not show a clear upward or downward tendency after the extreme growth in the early days of the European Communities. This horizontal trend is similar to the pattern of stagnation observed in the number of ministerial meeting days since the early 1980s.

Figure 2.5 Yearly meeting days of working parties, 1958-2004



Note: See note to Figure 2.3

Sources: See sources of Figure 2.3

As illustrated in Figure 2.5, the growth in the number of working party meeting days indicates a step-wise growth over time. In this respect, the pattern is somewhat similar to the growth in the ministerial meeting days. However, the steps in the working party time series are much less abrupt than in the ministerial meeting days data. The steps in the number of meeting days of the ministers and the working parties also do not correspond in time. The number of working party meeting days first increased steadily from 302 in 1958 to 1439 in 1971; then a relatively large jump to 2135 meeting days occurred in the year 1972, after which the number of meeting days remained relatively constant over the subsequent twenty years. However, the number of meeting days resumed its growth in the early 1990s and continues to do so until the end of the observed time period in 2004. Apart from the stagnation in the 1970s and 1980s, the number of working party meeting days shows a relatively clear increasing trend over the last half a century. Whether the slight decreases in 2003 and 2004 are signs of a renewed consolidation remains to be seen.

The comparison of the development of the number of meeting days of the different Council bodies suggests at least two conclusions. First, the Council committees play important roles in keeping the Council machinery running. In the case of working parties, this conclusion can be directly drawn from a comparison of

the total number of meeting days of different Council levels. From the establishment of the European Communities, the number of working party meeting days was always more than ten times larger than the number of ministerial meeting days. In the year 2004, the last year of the time-series, national officials spent 3037.5 days in working party meetings, while the number of Coreper and ministerial meeting days amounted only to 109.5 each. Thus, working parties were and are responsible for dealing with a vast part of the Council's work.

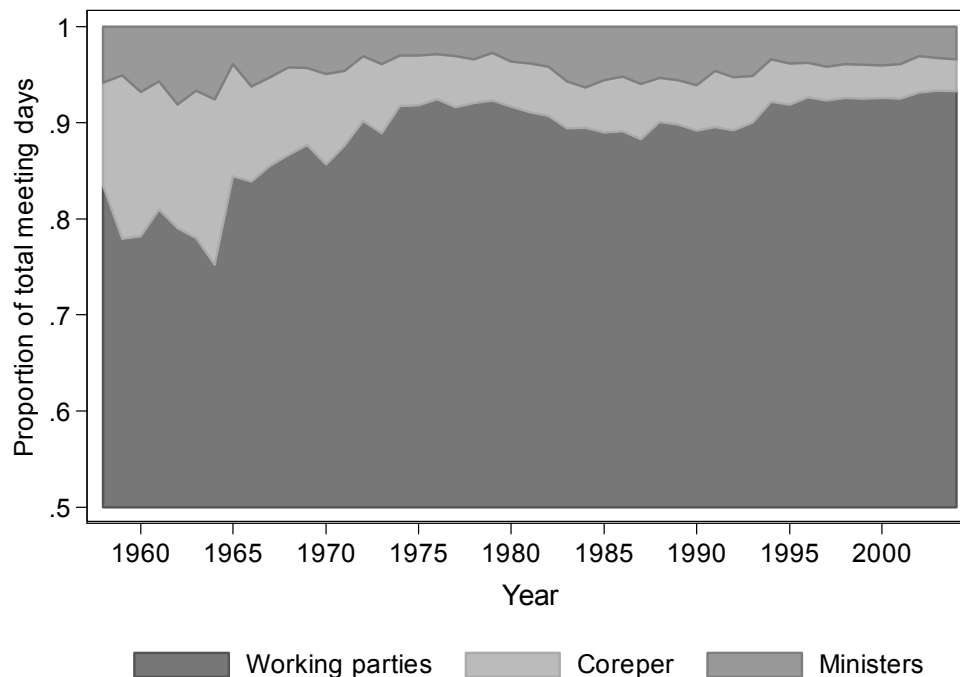
But beside the working parties, Coreper also plays an important role in coping with the Council's workload. In absolute terms, the number of Coreper meeting days is considerably smaller than the number of working party meeting days and is often not much larger than the number of ministerial meeting days. However, in relative terms, the two Coreper formations are the most involved decision-making bodies in the Council. The numbers of ministerial and working party meeting days both aggregate the meeting days of several groups, while the total number of Coreper meetings is only the sum of the meetings of its two formations. For example, the 109.5 meeting days of ministers in 2004 were accumulated by nine different ministerial formations, while the same number of meeting days of Coreper was accumulated only by the two groups of permanent representatives and their deputies. Due to their involvement in virtually all Council business, the two formations of Coreper are likely to play a central co-ordination function in the Council structure. In contrast, the ministers concern themselves only with the peak of the iceberg that constitutes the Council's work.

Another conclusion that can be drawn from these statistics is that the reliance on working parties in the Council has not only continually increased in absolute terms, but also in comparison to the reliance on other Council bodies. The number of Coreper meetings seemed to have already reached a natural upper limit early in the integration process. The permanent representatives and their deputies can spend only a finite amount of time in Council meetings. In contrast, the number of ministerial meetings was only partially affected by these natural boundaries. With the coverage of new policy areas in European legislation, the Council established additional formations involving different groups of ministers (Steunenberg 2004)³⁸. However, to

³⁸ The number of active Council formations increased from eight to twenty between 1971 and 1988 (Steunenberg 2004: 141).

the extent that European legislative activity became more about consolidating and intensifying regulation in existing policy areas rather than about establishing European regulation in new policy areas, coping with increased ministerial workload by involving additional ministers also ceased to be an option. Thus, the number of ministerial meeting days reached a plateau in the early 1990s, while the number of working party meeting days continued its growth path at that time. Overall, the numbers presented in the figures above lend themselves to the interpretation that ministers and Coreper members have responded to the increased workload over time by relegating more and more of the Council's work to working parties, the lowest level in the Council hierarchy.

Figure 2.6 Distribution of meeting days across Council levels, 1958-2004



Note: The y-axis does not start at zero but at 0.5. Focusing the plot on the region above 0.5 on the y-axis allows for a closer inspection of the changes in the proportions of Coreper and ministerial meeting days, but the resulting figure strongly understates the proportion of working party meeting days.

Sources: See sources of Figure 2.3

This trend is more clearly illustrated in Figure 2.6, which shows the number of meeting days of different hierarchical levels as a proportion of the total number of meeting days in the Council. With the exception of the period between the early 1980s and the early 1990s, in which the number of ministerial meeting days increased while

the number of working party meeting days remained relatively stable, the proportion of Council meeting days grew continuously over time at the expense of the proportion of ministerial and Coreper meeting days.

2.4 The role, organisation and activities of Council committees

In this chapter, I first discussed the role of committees in Council decision-making within the wider context of the EU legislative process. According to textbook accounts, Council committees take care of the details of legislative proposals presented to the Council by the Commission. The collective aim of committee members is to reach agreement on as many issues as possible, supposedly to minimise the need to personally involve the ministers. First, the members of the relevant working party exchange their views on the Commission proposal. The relevant Coreper formation or the SCA only becomes involved if the members of the working party cannot reach a complete agreement. Similarly, the senior committee members refer the proposal to ministers for deliberation only if they cannot resolve all of the outstanding issues themselves. Thus, committees may well play an important function in ensuring the efficiency and the technical quality of the output of Council decision-making.

Although these stylised textbook accounts of the role of committees in the Council give us an idea about their functions and importance, the extent to which these accounts represent the reality of committee decision-making in the Council is uncertain. These accounts are usually not based on systematic empirical studies but on common wisdom and the subjective perceptions of few informed insiders. More importantly, they do not tell us much about the causal mechanisms underlying committee decision-making. What makes some proposals ‘technical’ enough to make an agreement at the committee level possible and others so ‘political’ that the involvement of ministers is required for their adoption? A major goal of this study is to shed more light on the question of why committees are able to reach an agreement in some instances but not in others.

In the second section, I described the organisation of the Council’s committee system in more detail. The description showed significant differences in the organisational structure of different Council formations. Notably, the number of working parties varies considerably across policy sectors. For example, only a handful of working parties deal with Environmental policy, while the number of working

parties concerned with Agricultural policy reaches more than a hundred. Beside the overall number of working parties, the hierarchical structure among different types of committees varies across Council formations. In most cases, the Council structure is characterised by three layers, the ministers on the top, Coreper in the middle, and the working parties at the bottom. However, significant exceptions exist to this pattern. First, much of the Council business in the field of Agriculture is not managed by one of the Coreper formations, but by the SCA. Thus, the SCA replaces Coreper to a large extent in preparing the meetings of ministers in this policy field. Second, a number of committees exist in certain formations that take a hierarchical position between the normal working parties and the senior committees that directly prepare the ministerial meetings. For example, the Justice and Home Affairs area is almost entirely characterised by a four-layered hierarchy: the SCIFA co-ordinates the work of the specialised working parties concerned with migration, asylum and external borders, while the Article 36 Committee co-ordinates the work of the working parties concerned with judicial co-operation in criminal matters and with policy co-operation. Both the SCIFA and the Article 36 Committee in turn report to Coreper II, which prepares the meetings of the Justice and Home Affairs ministers. This discussion indicates that treating the Council as a monolithic actor might not be warranted. Decision-making dynamics in the Council might not only differ across different hierarchical levels but could also be influenced by differences in the organisational structure of Council formations.

Finally, I compared the absolute and relative involvement of different hierarchical levels in the Council's work through a discussion of time-series data on the number of yearly meeting days of different Council bodies. The comparison clearly illustrated the vast reliance on working parties to manage the Council's workload. The development over time also showed that this reliance increased continuously not only in absolute but also in relative terms. The latter finding is of large significance, since it indicates that the higher Council levels cope with an increased workload by relegating more and more work to the working parties. Taken together, the discussion in this chapter suggests that Council committees play a vital role in sustaining the Council as a decision-making institution and that this role, at least with respect to working parties, is becoming more rather than less important over time.

Note, however, that the functional importance of Council committees cannot necessarily be equated with political importance. While large numbers of committees and committee meetings might be necessary to guarantee the efficient operation of the Council, these large numbers do not automatically imply that committees also have the power and influence to significantly determine the outcome of Council decision-making. Received wisdom and aggregate statistics suggest that committee members are potentially influential decision-makers, but such indirect indications cannot substitute for systematic empirical evidence. Like the stylised accounts of committee decision-making discussed earlier, aggregate statistics about the number of committees and their meetings also do not inform us about the extent or the conditions under which committees rather than ministers make decisions in the Council.

Knowledge about the factors influencing committee decision-making is not only important for a better understanding of how the Council works, but also for the normative evaluation of its decisions. The reliance on committees of diplomats and national experts might indeed have advantages by ensuring the efficiency and technical quality of Council decision-making, but do these advantages come without costs? To what extent does committee decision-making undermine the democratic legitimacy of Council acts? Do the advantages outweigh the losses in terms of direct accountability of ministers to their national parliaments? Do organisational differences exist across Council formations that move this trade-off in one or the other direction? The answers to these questions depend strongly on what types of issues committees decide, how they decide them, and which factors influence the decision-making behaviour of their members. In the next chapter, I discuss the extent to which the existing research has examined these questions.