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Committee Decision-Making in the European Union

Between Legitimacy and Efficiency

by Frank Häge

When picturing policy-making in the European Union (EU), we usually think of national ministers and commissioners bargaining over a proposal in the Council building in Brussels or Members of the European Parliament (EP) debating and voting in the plenary of the EP in Strasbourg. And indeed, these phenomena are essential parts of the EU policy-making process. However, a reduction of the process to these features risks missing other important characteristics. In particular, a focus on the voting and bargaining behavior of high-level players like Members of the EP, Commissioners, and Ministers in the Council overlooks the potential influence of the bodies in charge of most 'day-to-day' legislative work in the EU, namely committees. EU committees come in all sorts and shapes and play vital roles in all stages of the policy cycle. So-called 'comitology' committees assist the Commission in implementing EU policy and expert groups advise it in formulating legislative proposals. These legislative proposals are subsequently discussed and amended by the EP's standing committees and by the working parties in the Council. The influential roles of these committees pose important questions about the legitimacy and efficiency of EU policy-making.

In the case where the Commission adopts acts that implement legislation passed earlier by the Council and the EP, it is assisted by so-called 'comitology' committees. These committees are established by the Council and have the dual task of both advising and controlling the Commission in its implementing duties. They are made up of officials from national administrations and their powers and working procedures are formally regulated in secondary legislation. There are about 250 of them and, depending on the formal procedure prescribed, their prerogatives range from the obligation of being consulted by the Commission to a formal veto right. If a committee makes use of its veto right, the implementing measure is referred to the Council which has then the final say on the act in question. The EP only has to be informed about the way the implementing measure is handled by the committee. When the committee does not veto a Commission measure, it is not discussed by either of the two legislative institutions.

According to one interpretation, comitology committees are simply watchdogs of the Council. They make sure that the Commission does not overstep the degree of discretion granted to it by the Council and the EP to implement legislation. However, a reason for concern is the lack of representation of the EP in these committees, particularly in cases where the EP acted as a co-legislator in adopting the original legislation on which the implementing measure is based. Indeed, the EP frequently voices disconcert over this arrangement. However, another interpretation asserts that these committees foster deliberative processes. Composed mainly of officials with considerable knowledge and expertise in their policy area, an expert culture in which the justification of knowledge claims is more important than material resources and formal voting rights of member states is supposed to emerge. As a result, arguing is seen as the main mode of interaction in these committees and not voting or bargaining. Furthermore, such an interaction mode is usually associated with more favorable policy outcomes for the group as a whole: collectively best solutions rather than lowest-common-denominator results are supposed to be the consequences of arguing.

Even presidents and prime ministers can't be experts in everything.

The second type of committee assists the Commission in formulating proposals for legislation to be adopted by the Council and the EP. This type consists of a large variety of expert groups and advisory committees. Precise statistics are not available, but current estimates denote the number of these groups to be about 1350. They are usually made up of interest group representatives, officials from the member states' ministries and agencies or both types of actors. Consultation of these groups is not obligatory for the Commission and it establishes and abolishes them at will. In fact, the practice of consulting these committees varies widely across different Directorate Generals of the Commission. Thus, in formal terms, advisory committees have no constitutionally guaranteed right to be heard. However, it is often argued that the Commission and these groups exist in a symbiotic relationship. The Commission relies on the expertise and information provided by the interest groups and national ministries in order to improve the quality of its proposal. The latter, in turn, can influence the shape of the proposal in their favor before it even enters the formal decision-making process. In addition, the advisory groups composed of representatives of the member states act as 'early warning units', through which the Commission receives signals about whether certain provisions are acceptable to member states. In terms of efficiency, such an arrangement can greatly enhance the speed of subsequent deliberations in the Council, where often the same officials negotiate over the proposal.

> "Legislators cannot be experts in everything."

After the Commission has transmitted a proposal to the Council and the EP, the bulk of negotiations and discussions take place in committees as well. The EP currently has 20 standing committees, each with authority over a specific policy field. A standing committee is basically made up of a subset of legislators specialized in the policy area in question. The rationale here is obvious. Legislators cannot be experts in everything, so a division of labor is called for. While the composition of the standing committees might not be completely representative of the EP as a whole, the members of these committees are elected representatives and the EP has mechanisms in place to assure an allocation of committee seats that is more or less proportional to the size of its party groups. Furthermore, although the committee proposes the text for a decision by the EP, the parliament has the right to amend the text in any way it sees fit and indeed makes use of this right quite frequently in practice. In this respect, the EP's standing committees warrant only relatively minor concerns about the legitimacy of EU policy-making.

At the same time as the standing groups of the EP discuss a Commission proposal, the dossier is also dealt with by committees in the Council. Officially, there are about 140 working groups, made up of bureaucrats from national ministries and agencies. They are either posted with permanent representations in Brussels or flown in for meetings from the capitals. The work of these groups is coordinated and overseen by a number of senior committees. Most prominent among them is the committee of permanent representatives, which is also responsible for preparing the agendas of the meetings of ministers. As its name indicates, it is composed of the permanent representatives of the member states to the EU and their deputies. Due to its central position in the Council structure, it plays a key role in coordinating the day-to-day work of the institution.

Prime Minister Jean Claude Jünker speaks in the European Parlement during the EU-presidency of Luxembourg.

On the one hand, the division of labour in the Council assures that the institution can cope with the legislative workload. Ministers have only a limited number of Council meetings per year in which they can only deal with a restricted number of proposals. Thus, the system of working groups assures a smooth and efficient 'functioning' of the Council in that the groups resolve most issues within a proposal before it reaches the level of ministers. Indeed, a considerable proportion of dossiers is 'de facto' decided in working parties without any direct involvement of ministers. More important, about half of all EU legislation is not discussed on the ministerial level at all. Again, while such an arrangement keeps the Council machinery running, it raises concerns about the legitimacy of its decisions. Of course, bureaucrats are responsible to their ministers and ministers are responsible to the national legislature, whose members are in turn responsible to the voter. But this chain of accountability is rather long. In addition, it is questionable in

how far ministers are willing and able to control their bureaucrats. If a proposal does not relate to the ministers' policy priorities or it has no impact on the welfare of their constituency, they might simply have no interest in it. And even if they have the incentives to oversee the work of their inferiors, they may simply lack the resources in terms of time or expertise to do so.

Practitioners often argue that there is no need for concern because the working groups deal only with 'technical' issues, while any really 'political' questions are dealt with by ministers. However, it is usually hard to classify issues as being inherently technical or political. What seems to be a rather technical question is often cause for long, protracted negotiations among ministers. It is more plausible that political conflict between member states determines what is regarded to be a 'political' issue and what not. And political conflict in turn is likely to be a product of divergent member state interests and the importance attached to these positions. The linkage between intensely held interests and the degree of bureaucratic discretion points to the important question of how the 'national' interest is generated in the domestic arena of member states. It could be the case that strongly organized interest groups with institutionalized links to government institutions and political parties are more effective in ascertaining that their concerns are properly heard in Brussels than less well organized interests or even the public at large.

In sum, there seems to be a general trade-off between efficiency and legitimacy concerning the reliance on committees of bureaucrats in EU legislative decision-making. Given current institutional structures, this trade-off seems also unavoidable. While this situation is acknowledged by most observers of the EU, opinions diverge on just how big this trade-off is and therefore whether or not it constitutes a real problem. Research on what role committees of national officials play in EU policy-making, i.e. what kind of issues they resolve, how they influence decisions made by other actors, and how their behaviour is linked to the intentions of their political superiors in the government at home, should greatly enhance our understanding about how policies are made in Brussels. Only such an understanding can form the basis for evaluating the normative question about the existence and the extent of an efficiency/legitimacy trade-off resulting from the reliance on committees in EU legislative decision-making.

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