COUNCIL COMMITTEES IN THE GOVERNMENT OF THE EU :
CASE-STUDY COMPARISONS FROM THE 1ST AND 3RD PILLARS.

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Abstract: Based upon completed research into the way the Council committees operate in five first pillar policy sectors and an ongoing study of their counterparts in the field of internal security, this paper sets out to tackle two wider issues for studies of the European Union. The first concerns the methods of research used to study the involvement of national actors in a "European" mode of making and taking decisions. Whilst recognizing the value of other research methods, the paper defends an approach based upon representative case studies of the production of EU legislation. The second wider issue tackled here concerns the very aim of studying committees. If identifying their characteristics and impacts in different sectors is still more than necessary, we argue that research can be taken a stage further in order to highlight a number of recurrent features that mark the government of the EU as a single, albeit disjointed, form of government.

INTRODUCTION

Over the past five years, research on the European Union has at last begun to pay serious attention to the way the Council of Ministers functions (Lewis: 1998 & 2000; Beyers and Dierickx: 1997 & 1998; Trondal: 2001 a & b). Beforehand, publications on this institution had been dominated by useful but descriptive accounts of what the Council is and should be doing (Westlake: 1999 ; Hayes-Renshaw and Wallace: 1997; Sherrington: 2000). Supplementary information could also be gleaned in the form of by-products of European decision-making and public policy analysis (Peterson and Bomberg: 1999) or analysis of changes within the way national administrations cope with participating in such processes (Kassim et alii: 2001; Maurer et alii: 2001). Notwithstanding the quality of the basic information and insights generated by this initial work, few testable hypotheses were developed. Moreover, much of the Council -and in particular its working groups- were left as a virtually unexplored "black box".

The "new generation" of research on the Council has been much more attentive to the development of clear hypotheses and appropriate methodologies in examining the composition of, and relationship between, ministerial meetings, COREPER and working groups. Based upon completed research into the way Council committees participate in decision-making in five first pillar policy sectors[1] and an ongoing study of their homologues in the field of internal security[2], this paper first sets out the questions and methods of research currently being used to "open up the black box". In so doing, we make a case for a qualitative approach based upon representative case studies of the production of EU legislation.

The second part of the paper compares 1st and 3rd pillar Council committees around a set of questions and hypotheses covering a number of recurrent features that mark the government of the EU as a single, albeit disjointed, form of government. The central claim made here is that treaty provisions do make a difference, but these differences are not necessarily determinant factors, nor the most revealing characteristics of how the EU is governed. Instead of these "usual suspects", this paper suggests that a focus upon inter-institutional processes and relationships provides the most penetrative means of conducting research into the transgovernmental and transnational politics of the EU.

1. A NEW GENERATION OF RESEARCH ON THE COUNCIL: STRENGTHS AND GAPS

Much of the research recently conducted into the inner-workings of the Council constitutes an unquestioned contribution to the academic *acquis* of European Union studies. The "added value" of these studies lies not only in the new knowledge produced, but in the rigour applied to hypothesis-building, research design and methodology. Nevertheless, some significant empirical gaps still remain, many of which stem as much from theoretical and methodological choices as they do from lack of data.

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[1] This study was carried out between 2000 and 2002 as part of a wider project on "Committees in EU governance". Financed by the EU's 5th Research and Development Framework Programme, the project as a whole was led by Gunther Schaefer (EIPA, Maastricht). Our contribution on Council working groups was conducted with Eve Fouilleux whom we thank for her inimitable contribution (Fouilleux, De Maillard, Smith: 2002).

[2] Financed by the French *Institut des Hautes Etudes de Sécurité Intérieure*, this research has only just begun. Based upon the handful of interviews conducted to date, our findings are obviously tentative. Consequently, much of this paper is programmatic.

1.1 UNQUESTIONABLE STRENGTHS

The new generation of research on the Council shares a number of general premises and hypotheses, yet tends to differ over what methods are best suited for testing them. The significance of these similarities and differences becomes even more apparent when one looks at the results and conclusions produced by each study.

The central idea common to all this research is the neo-institutionalist claim that "institutions matter" because, as Steinmo and Thelen underline in general terms, they constitute and stabilize a range of "of state and societal" rules "that shape how political actors define their interests and structure their relations of power to other groups" (1992, 2). "In sum, institutions are not just another variable, and the institutionalist claim is more than just that 'institutions matter too'. By shaping not just actors' strategies (as in rational choice), but their goals as well, and by mediating their relations of cooperation and conflict, institutions structure political situations and leave their own imprint on political outcomes" (Steinmo and Thelen: 1992, 9). In transposing this theoretical starting point into research questions and strategies, members of the new generation of specialists of the Council have nevertheless developed slightly different approaches.

Jeffrey Lewis positions himself as a sociological institutionalist seeking to challenge the intergovernmentalist image of the Council as an arena for "hard bargaining" between self-interested nation states (1998; 2000). In qualitative research carried out on the COREPER but also on a number of other Council committees[3], Lewis makes a set of three arguments which he claims enable one to both complexify analysis of what goes on in these bodies yet still make rigorous analytical generalizations. First, arenas such as COREPER possess a degree of permanency which socialize their members into accepting certain modes of exchange and negotiation. In dealing regularly with their opposite numbers from other member states, Lewis claims that members of such bodies loosen their allegiance to their national and administrative origins and become more open to the quest for "supranational" solutions. This first argument about socialization spills over into a second, more constructivist, claim regarding the cognitive dimension of EU negotiations. Rather than considering that national delegates have clearcut and unalterable positions over each and every issue debated in Council, Lewis underlines how most negotiations at this level are best described as iterative processes during which interpretations of the issue in hand are frequently modified. Finally, and at greater length, Lewis underlines the importance of formal and informal rules in structuring "processes of collective rationality formation" (1998, 481). These "methods of Community" are reconceptualized by Lewis around five recurrent characteristics discovered in his case studies: "diffuse reciprocity", "thick trust", "mutual responsiveness", "the consensus-reflex" and "the culture of compromise" (2000, 268-274). Put succinctly, Lewis's brand of sociological institutionalism leads him to conclude that Council committees are indeed a vital part of EU collective decision-making. However, he also stresses that different processes and rules, as well as considerable administrative rivalries, tend to make each type of committee quite different or even unique.

In research begun in the mid 1990s, Jan Beyers and Guido Dierickx have also set out to research and conceptualize the role of Council committees with reference to the

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[3] Namely the SCA, the Article 113 committee, the Budget Committee, the Monetary Committee, the Political Committee and the K-4 committee.

intergovernmentalist >< surpranationalist continuum (1997, 1998)[4]. More precisely, these researchers have sought to move beyond the Commission vs Council dichotomy to investigate "the possibility of supranationality within the Council" (1998, 292). By concentrating on the working groups of the Council, the central question developed is: "whether the communication behaviour in (these) groups, which results from both formal and informal rules, comes closer to a supranational co-operation style than to an intergovermental negotiation style" (1998, 293). In order to conduct research on this question, Beyers and Dierickx propose that these "styles" "should be reflected in the configuration of the communication networks established by and between the representatives in the working groups" (1998, 293). By conducting interviews with 117 members of 13 different working groups, and through statistical analysis of the data produced, this research thus set out to measure the "density of communication patterns" and to discover the "central focus" of each body. Four major conclusions were reached. First, the most dense communication takes place within three sets of member states: the south, the north and the three largest countries (France, Germany and the UK). Second, in absolute terms, the most communication takes place between member states and "non-state institutional actors" (Commission, Council secretariat, the Presidency) and with the large member states. Third, despite it's voting powers, delegates from Italy do not "punch their weight" in terms of communication. Fourth, between the working groups one cannot discern significant differences in communication behaviour. Nevertheless, working groups governed by QMV tend to necessitate slightly more intense communication than those operating under unanimity voting. More generally, the initial overall conclusion to this research is that nationality is the key explanatory variable for behaviour in working groups. However, Beyers and Dierickx openly admit their concern that the breadth of "nationality" may hide other more probing explanations (1998, 314).

Inspired more directly by organizational theory, Jarle Trondal comes at Council committees from the angle of "administrative integration", seen as a synonym for the Europeanization of national bureaucracies (2001a, 4)[5]. This form of integration is measured along three dimensions: institutional identification, role perceptions and co-ordination behaviour (2001a, 4). In comparing Commission-chaired Consultative committees and Council working groups, Trondal then proceeds to develop three hypotheses:
- Consultative committees are most likely to promote "sectoral ways of operating". In working groups, territorial and inter-sectoral role perceptions will have greater importance (2001a, 16);
- Time and the degree of seniority of committee participants are highly important. The more senior the officials involved, the more likely they are to be "re-socialized" into adding "supranational identities and role perceptions to pre-existing ones" (2001a, 19);
- The intensity of attending EU committees is more important than the length of time over which a national official has been working at the European level.

By conducting questionnaire-based surveys and interviews with officials from three states (Denmark, Sweden, Norway) and engaged in two sectors (environment, health and safety), Trondal's research brings him to four major conclusions. First, his analysis confirms the hypothesis that Consultative committees encourage national officials to take on the role of "independent expert", whereas in working groups they see themselves more clearly as "government representatives" (2001a, 231). Second, Trondal underlines that notwithstanding

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[4] We understand that this research has continued since 1998 but have not yet seen any further publications.

[5] It is important to note that Trondal conceptualizes "administrative integration" in a way quite different to Wolfgang Wessels's concept of "administrative fusion"(1998). Rather than assuming national and EU administrations are strongly integrated, Trondal sets out to show that the "embedding" of relationships between both sets of actors is conditioned by the intensity of each mode of exchange. As such, they are "imperfectly integrated orders" (2001a, 258).

some identification with one's committee or working group, the behaviour of the national officials studied continues to be structured by perceptions of their sectoral and territorial roles (2001a, 232). Third, "intensity" of membership of EU committees is indeed more important than the number of years an official has been involved in European decision-making (2001a, 230). Finally, on the basis of his findings, Trondal sets out two avenues for furture research: more direct and in-depth study of inter-sectoral similarities and differences (2001a, 258); the need to take into account and compare the effects of the carreer trajectories of the officials studied.

In summary, and despite slightly different positionings as regards "the three neo-institutionalisms" identified by Peter Hall and Rosemary Taylor (1996), each of these three sets of research asks similar questions about EU committees. Moreover, they are all driven by a central desire to use their respective research findings as a means of countering over-simplistic intergovernmentalist perceptions of European decision-making. The innovatory nature of this work must again be underlined. Building upon pre-existing but often over-general studies, we now know and better understand some of the processes which go on within the Council as a whole. Nevertheless, some of the theoretical and methodological choices which have driven this work sometimes also become impediments to filling serious gaps in accumulated knowledge of how the Council operates and how it fits with other components of the government of the EU.

1.2 INESCAPABLE GAPS AND THE CASE FOR CASE-STUDY RESEARCH

Having first set out a number of causes and consequences of these "gaps", this section then proceeds to argue in favour of a more systematically comparative approach to case-study research on the Council. More importantly, we begin to set out a research agenda that moves away from a rather sterile debate with intergovernmentalists and towards the production of new knowledge upon the intrinsically *transgovernmental* nature of EU politics.

FROM PROBLEMS OF THEORY AND METHOD TO EMPIRICAL OVERSIGHTS

In setting up our own research, two characteristics of the new generation of studies of the Council caused us to look elsewhere for additional theoretical and methodological inspiration: data production, aggregation and interpretation on the one hand, and the issue of the dynamics of the Council on the other.

The first problem is strongly linked to the choice of questionnaires as a means of testing hypotheses. Our critique here is definitely not simply a knee-jerk reaction against survey-based data. In other studies we have used questionnaires but raise doubts over their use in this subject area for two reasons.

First, the questionnaires used by both Beyers and Dierickx and Trondal rely upon members of Council committees answering general questions about their representations of Council committees that are totally divorced from the context of negotiating precise pieces of legislation. Rather than explaining in their own terms how they position themselves and act within such bodies, interviewees are asked to respond either to closed questions or to rank their response on a scale (eg. of 1 to 5). The methodological danger here is that for interviewees these questions are so abstract as to render their responses haphazard and thus

unreliable. Conceptualizing these committees as "communication networks" (Beyers and Diericks: 1998) provides a means of escaping from this problem. However, is quantitative research the best means of studying communication? Moreover, through such methodologies can one address fundamental issues related to negotiation and powering?

Second, when aggregating and interpretating data from their surveys, the authors concerned cut themselves off from the rich possibilities offered by intersectoral comparisons of different working groups. To be fair, Beyers and Dierickx conducted some inter-working group comparisons and Trondal clearly believes this is an essential subject for future research. However, the questionnaire-based research conducted thus far has been almost entirely devoted to comparisons between or within sets of national civil servants involved in Council negotiations[6].

Although inter-national comparisons are of course worthwhile and important, an exclusive focus upon this question tends to exacerbate a second problem with this survey-based research: how little it tells us about the dynamics of the Council and of the EU as a form of government. Again, there are two dimensions to this problem.

The first, concerns what actually takes place within Council committees. Of course it is very important to see these, at least potentially, as arenas for socialization. But surely above all else they are structures within which issues which some actors consider merit "European" action are often shaped and institutionalized. We come back to this point below but simply underline here that for us Council committees also need to be studied from the angle of institutional learning. At least for the moment, we are sceptical as to whether questionnaire-based research can be stretched to cover this question.

The second dimension of existing research's blindspot on Council dynamics concerns the relationships between its committees and other actors, in particular representatives of the Commission and of the European Parliament (EP). Notwithstanding Beyers and Diericks's interest in what they call "institutional actors" (1998, 294), in the existing research representatives of these institutions are treated as though they are external influences upon the mind-sets and behaviour of national civil servants. This may be justifiable in the case of European Parliamentarians, but it certainly is not in the case of Commission officials. The latter clearly have different resources and constraints to their national counterparts who sit with them in working group meetings. Nevertheless, their perceptions and preferences are not necessarily so different. They therefore merit studying as part of each working group rather than as external appendages.

THE QUALITATIVE AND COMPARATIVE OPTION

It would be highly immodest and simply untrue to claim that we have found the perfect antidote to the problems we have just identified in the research on the Council conducted by our colleagues. Instead, the purpose of this section is to set out the theoretical arguments and methodological choices which underpin our own approach. In particular, we seek to show that rigour is just as necessary and possible in qualitative analysis as it is in survey-based research.

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[6] In contrast, Lewis's comparison between the COREPER and other Council committees (2000) provides a means of taking this point a stage further which is of evident interest for our own comparison of 1st and 3rd pillar bodies. Structured around the institutionalist hypothesis that both treaty-based and internal committee rules and norms matter, this author's initial findings will be returned to below.

As with much of the pre-cited work on Council committees, our starting point is the neo-institutional premiss that institutions both shape politics and are structured by power-relations. It follows that institutionalization can be defined as the processes through which institutions are not only created, but are consolidated over time into being a structuring, and generally accepted, part of a governmental configuration. What we have set out to do in our research on Council committees is to trace and compare the institutionalization of such arenas, whilst simultaneously discovering how they participate in the construction of "European problems" and EU policies. A fundamental building block in our approach is thus the argument that the shape and meaning of public problems are progressively defined through mediations between a wide-range of actors (Muller: 1995; Rochefort and Cobb: 1994). Our comparative examination of Council working groups has thus not been undertaken with the intention of identifying when, where or precisely by whom decisions are taken. Instead we have examined these groups as potential sites for the institutionalization of problems meriting EU intervention ("European problems"). In so doing committees from different sectors and "Pillars" thus become comparable and the quest for recurrently occuring determinant characteristics can begin. Put in more methodological terms, the decision to conduct case-study research was made as a means of generating thick descriptions of concrete political and social situations. Comparisons were then seen as a means of making analytical generalizations on the basis of empirical analysis (Yin: 1994).

From this initial standpoint, it then became necessary to develop an appropriate research design. This was particularly important because, at least for us, qualitative research is not just "going to see people for a chat and writing up what they say". In concrete terms, this has meant we have devoted considerable thought to the following four aspects of our research.

Case selection: The guiding principle for selecting the sectors chosen for study was developed from our central hypothesis: the institutional rules that matter most in Council committees are not necessarily those inscribed in EU treaties (voting arrangements, role of Commission, level of involvement of the EP). From this starting point we have not only put ourselves in a position to compare 1st and 3rd Pillar working groups. Within the intitial study of first pillar groups we had already selected a range of five sectors -telecommunications, environment, research, social affairs, culture- where there was QMV or unanimity voting, codecision or cooperation. Having established this range of issue areas, we then proceeded to identify up to three pieces of legislation based upon two critera: their acceptance by the Council in the last two years (so as to be able to find and interview as many protagonists as possible, whilst keeping within our budget); a certain degree of controversy either between member states or between their representatives and those of the Commission and the EP. In the case of working groups from the field of internal security, unanimity voting is a formal rule common to all the committees we are studying. However, some are staffed by officials from ministries of justice and others from ministries of the interior (see annex 1 for details). In total, we conducted fifty interviews with officials involved in negotiating the 1st pillar legislations and envisage conducting a further 40 for our 3rd pillar cases.

Interview preparation: In preparing our interviews we were faced with the following dilemma: we needed to obtain information on the decision-making process but were aware that this could deflect us away from our central questions regarding the importance of each working group's sociological composition and rules. Without enitrely resolving this problem, we have sought to attenuate it through the choice of actors interviewed and the format of our interview guide. For each piece of legislation, we sought to interview officials from at least

two large member states (France and the UK) as well as their counterparts who, by reputation, had a particular interest in the negotiation. The relevant Commission officials and represenatives of EP committees were also interviewed[7]. Given that we did not have the opportunity to interview representatives from interest groups or other administrations, we cannot claim to have fully process-traced each legislation. Instead, our objective during the interviews was to focus essentially upon how legislation was shaped within the different organs of the Council itself. Lasting between one and two and a half hours, our semi-structured interviews thus covered a series of five points in the following order:

- the institutional position and role of the interviewee;
- their involvement in Council working groups in general;
- his or her institution's initial position regarding each legislative process studied, as well as views on the positions of other protagonists;
- their interpretation of the negotiation as a whole and of its outcome;
- their representation of what working groups are and do.

Interview "posture": It should be underlined that our interviewees were strongly encouraged to speak at length about their own working environment, their involvement in specific negotiations and, more generally, in the Council as a whole. For this reason we did not use the interview in order to apply a pre-set questionnaire[8]. Instead, we very deliberately used open ended questions and recorded the responses in extensive notes on each interview. Given that we were not necessarily seeking to identify key decisional moments, we could centre our attention upon the interviewee's representations of their own role and the composition and rules of each working group.

Writing up: This stance has had, of course, to be maintained when transforming our interview-generated data into working papers, reports and articles. As Patrick Hassenteufel has underlined for all forms of comparative analysis (2000: 116-7), the structure of such publications is crucial to maintaining one's focus right to the end of any research. In our Ist pillar study, we sought to deal with the dangers of slippage from our initial questions by producing two documents. Ultimately published as an annex to our final report, the first simply juxtaposed monographies of each legislative process studied. Structured around our central research questions -what Council working groups are and do- the second document compared data from different sectoral case studies in order to develop the hypotheses presented in the next part of this paper.

In summary, we have gone to some length to describe our methodology for two reasons. First, it is important to show that case study based reseach can be conducted with a high degree of self-awareness and rigour. Of course, this way of doing research is not perfect. Indeed, we would have liked to have gone much further by multiplying the number of interviews and conducting them over a longer period of time. Nevertheless, so long as one avoids the "decisionist trap", this way of studying the role of committees in government can generate questions and responses that other research techniques simply overlook.

The second reason for setting out our methodology is in order to clarify and justify our ontology. In focusing upon institutional roles, processes and relationships, the object of our research deliberately seeks to go beyond analysis of the Europeanization of national administrations in order to shed more light upon the dynamics of the government of the EU.

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[7] The parliamentarians and EP staff were studied by our colleague Christina Neuhold (2002).
[8] A technique which seems to be increasingly used in studies of the EU (ex. Hooghe: 2001), despite the methodological problems this can entail.

2. BEYOND "THE USUAL SUSPECTS":
1ST AND 3RD PILLAR WORKING GROUPS COMPARED

Formalists, intergovernmentalists and even supranationalists all insist that the EU has no government. Nevertheless, given the extent to which European integration now effects politics throughout Europe, and from an analytical point of view which defines government as a process more than as a precise set of actors and buildings (Lagroye: 1997, 25), there are a number of advantages in considering that:

1. a government of the EU does in fact exist and is best conceptualized as a configuration of power made up by all the actors who participate, effectively or ineffectively, in the definition of "European problems" and policy "solutions" ;

2. This government exists within a heavily fragmented political space, but where each fragment does not necessarily match the state institutions of the countries which formally make up the EU ;

3. For practioners, integrating both the government of the EU and European political spaces is a permanent challenge played out through intense political competition over not only the definition and treatment of public problems, but over the very legitimacy of the actors involved in this process.

This perspective is currently being developed and tested in a wider study through a series of inter-sectoral and longtitudinal comparisons (Smith: 2003). From the point of view of this paper on the dynamics of the Council, it provides the theoretical backdrop for our analysis of three sets of inter-institutional relationships which show Council committees to be at the heart of the government of the EU: their linkages to national administrations, COREPER and ministerial meetings, and the European Parliament and Commission. If treaty arrangements really are the key variables for explaining differences within the way the EU is governed, we should expect behaviour in Council committees from the 1st and 3rd pillars to diverge sharply. QMV, Codecision and the production of directives on the one hand, unanimity voting, Consultation and "framework decisions" on the other, should produce very different types of negotiating arenas. In reality, our comparative analysis strongly suggests that differences are not as clearcut as one might expect and that other, more subtle and sociological, explanations of difference are equally important.

Formal differences between the First and the Third Pillars

	1st Pillar	3rd Pillar
Initiative	Commission	Shared between the Commission and the MS
Rules of Voting	Mainly QMV	Unanimity
Role of the European Parliament	Codecision and Consultation	Consultation
Structuration of the decision-making within the Council	Three levels: Working groups, COREPER, Council	Four levels: Working groups, CATS (Committee of the Article Thirty-Six), COREPER, Council

More generally, rather than simply comparing the degree of Europeanization of committees from different sectors and pillars, this section's principal objective is to build hypotheses in order to explain the governmental coherence and incoherence encountered during our research.

2.1 COUNCIL COMMITTEES AND NATIONAL ADMINISTRATIONS

When interviewed, practioners tend to present working groups as bodies within which Council decisions are "prepared". During this process, the general expectation is that group members will follow instructions from their respective national capitals and threaten a ministerial-level vote or veto whenever they find themselves in difficulty. In short, actors consciously or unconsciously seek to perpetuate an image of working groups as diplomatic-type venues for the confrontation of nationally-set preferences and priorities. As with other students of the Council, one of our starting points is to consider the term "preparation" as a euphemism for a process where many decisions are taken during the definition of the "European problem" under discussion. Similarly, "receiving instructions" and "anticipating a ministerial vote or veto" are also a smokescreen behind which interviewees, at least initially, tend to hide their considerable scope for discretion and autonomy of action. Once into the part of the interview devoted to specific case studies, it is possible to test two hypotheses regarding what actually dominates the proceedings of working groups.

H1. *Instructions from national capitals are usually far from clear. Consequently, members of working groups have considerable leeway to interpret and translate their respective instructions. Moreover, the longer a negotiation goes on, the more national positions tend to lose their initial coherence and working group members can increase their autonomy of action.*

Our research on Ist pillar working groups confirms the conclusion reached by Lewis and many others that national officials in these arenas rarely "simply follow instructions". The temporality of negotiations provides one explanation of this trait. As a Spanish RP told us, *"La RP doit parfois décider très vite. Mais ce n'est la plupart du temps pas difficile de convaincre Madrid, car ils sont loin. Il suffit de prendre son téléphone. En fait le boulot politique pour décider, on le fait ici"*[9]. Indeed, in mentioning the notion of distance, this citation also contains a more fundamental explanation of the relative autonomy of national officials who sit in working groups. This distance is much less one of kilometres and much more one of being in tune with the intricacies of the negotiation in hand. Indeed, in many instances working groups are arenas within and around which national negotiation positions continue to be formulated in parallel to EU-level discussions. The longer the negotiation goes on, the more the attaché who sits in working group meetings becomes a specialist of the issues involved. In getting to know the piece of legislation under discussion, this gives him or her more autonomy. In some cases, the attaché can even change the initial national position by convincing ministries and ministers that it is un-negotiable. An example here is the 1998 drinking water directive where the French RP managed to convince their colleagues in Paris that a reduction to 10 mg per litre of lead in water was inevitable. Instead this civil servant argued that 'Paris' should concentrate its energies upon obtaining a delay for implementation of the directive.

In the 3rd Pillar committees we have examined, the growing numbers of pieces of legislation being negotiated at the same time have considerably reinforced the role of the RPs. Multi-layered negotiations (both bilateral and multilateral) are taking place in Brussels, thus making information a key resource. RPs have continuous relations with their counterparts from other

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[9] Interview, January 2001

member states, thus informing ministers of the state of forces in Brussels: "La RP est au contact des autres délégations, et peut nous mettre en garde contre d'éventuels problèmes d'isolement pour la France"[10]. Informal meetings which only involve JAI Counsellors from the RPs are organised where discussions concern potential changes in national positions. If RPs have no formal power (because they depend on national instructions), they speak "in the name of" their national authorities. Such a process can even provoke a certain degree of anxiety amongst national officials: "C'est tellement mouvant qu'à l'instant t, je ne sais pas où on en est de la négociation de tel texte..."[11].

However, according to our interviewees it seems that voting procedures do have an impact in the way national positions are elaborated and compromises are found. But it does not work as directly as a legalistic analyst of the European Union would suggest. Unanimity never applies totally. A member state that is completely isolated cannot block negotiations over a long period (and/or on several pieces of legislation) because of the political pressures and the continuous deals made by institutional actors. In fact, one of the main tasks of a negotiator is to avoid being isolated... even when operating under unanimity voting. From this point of view, it is hardly disputable that the "culture of compromise" is one of the main features of the government of the EU. In other words, voting rules have no direct effects, but they contribute to influence the nature of compromises. As was rightly said by one of our interviewees: "In the Third Pillar, with unanimity voting, our recurrent question is: 'do we block or not?"... in the First Pillar, with QMV, our question is: "can the legislation be voted without us?".

H2. *The sociological composition of each Council committee is of prime importance. Groups dominated by "national experts" who only work "part-time" in Brussels tend to rely more heavily upon clearing compromises with their respective head offices.*

Our Ist pillar research shows that officials from the Permanent representations (RPs) can often increase their autonomy the most by using their capacity to identify and engineer intra-sectoral trade-offs and their mastery of procedural rules. However, in some cases they are simply "marked out of the game" by "national experts" who travel to Brussels specifically to negotiate precise pieces of legislation. Given where they sit, it is not surprising that many of these officials have a prime allegiance to the hierarchy of their respective ministry. However, many others simply find themselves out of their depths in the multilingual and EU law-driven context of working group negotiations. As a comparision of different telecommunications working groups serves to illustrate, the sociographical composition of each working group is therefore of considerable importance[12]. Indeed, the population of RPs needs breaking down into those who are carreer diplomats and others who are in Brussels on secondments from line ministries.

An example: different telecommunications working groups

Working group	Composition and dynamics	Council
Telecommunications	Young, RPs, more	Telecoms

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[10] Interview, March 2003

[11] Interview, march 2003

[12] One ex-RP turned Commission official underlined the potential impact of these differences "*RPs are more willing to compromise than officials from ministries. The pressure to agree is much greater here than in London or Bonn, etc. As an RP, you are not an expert – you can be more 'objective' (the RPs term) or more 'cavalier' (what the ministries say).*" "Interview, January 2001. As Lewis concludes, this socialization is important but this is not a matter of "wholesale change of identities and interests" (1998, 274).

	familiar, more stable	
Information society	Experts and RP's, less 'family-like'	Internal Market
Data protection	Senior officials, coming from capitals	Internal Market

Our study of 3rd pillar committees confirms the central idea within this hypothesis and has allowed us to push the final point on the sociology of RPs even further. At least in the French Permanent Representation, all the RPs in the Justice and Home Affairs Division have been recruited from the Ministry of the Interior or the Ministry of Justice. More precisely still, this means that a policeman is the RP for police affairs and a magistrate is the RP for judicial questions. Diplomats only intervene at the level of COREPER and above (see 2.2). As one national expert put it to us "this facilitates our contact with him"[13]. Nevertheless, RPs have considerable autonomy because they are the permanent interface with their opposite numbers from other national delegations. At least in the French case, this characteristic has recently been accentuated since the French presidency when the then Prime Minister decided that even in the 3rd Pillar, RPs should be the sole national delegate to actually speak in working groups.

In summary, in terms of process and interdependance we do not find marked differences between working groups governed by 1st or 3rd Pillar treaty provisions. Unanimity voting does indeed introduce the possibility that a negotiation can become completely blocked (eg. the ongoing attempt to adopt a Framework Decision on the penal pursuit of drug trafficers). But in other instances member state representatives prefer to alter their initial positions in order to avoid being isolated within working groups, let alone COREPER and ministerial meetings. This characteristic of the government of the EU is based in part upon the informal rules and "methods of community" identified by Lewis (1998). But it is also necessary to conceptualize Council committees as genuine sociological *groups* within which cognitive change regarding the nature of European problems frequently takes place.

2.2 COREPER, MINISTERS AND THE TECHNICAL-POLITICAL DIVIDE

Council working groups do not exist and operate in a vacuum. Rather they can only be fully understood by taking into account how behaviour within such bodies is conditioned by the relationship each group has to COREPER and ministerial meetings. Again, treaty-based reasoning would lead one to think that these relationships are quite different for 1st or for 3rd Pillar working groups. Unanimity voting "should" mean more issues are "passed upwards" for ambassaders or ministers to take positions upon. More generally practioners, but also many academic commentators, frequently consider that working groups deal with "technical" matters whilst ministers make "political" decisions. On the basis of our own research, we question such determinist thinking and instead attempt to delve deeper into the forms of mediation which in reality constitute the interface between these working groups, COREPER and ministerial meetings. Before presenting our findings to date, however, it is necessary to underline two theory-driven points.

First, as is well known, the relationship between politics and technocratic expertise has been a longstanding concern for students of the European Union. In general, those who address this question use ideal-type definitions from normative democratic theory in order to define, *a*

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[13] Interview, French Ministry of Interior, March 2003.

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priori, "the technocratic" and "the political". They then seek though empirical study to ascertain to what degree the practices of the EU fit these categories[14]. If this approach to the politics-technocracy divide reveals that actors within the EU regularly oscillate between behaviour that in abstract terms can be named "political" or "technocratic", used on its own such an approach fails to grasp how these actors consciously or unconsciously deploy the lexicons of politics and technocracy for strategic reasons. Making such a theoretical "sidestep" is particuarly important when studying and comparing politics and technocracy within Council working groups. Instead of taking the adjectives "political" and "technical" used by our interviewees at face value, we have sought instead to better understand processes of "politicization" and "technicization" that are frequently played out within and between the different arenas which make up the Council.

The second point concerns the infra-organizational composition of the Council. Like Lewis (2000), we have begun our research on this point from the premiss that there is considerable rivalry between different parts of the Council in general, and between COREPER and working groups in particular. From this perspective, two hypotheses can be developed and tested.

H3. *Entirely new proposals for EU legislation are more politicized than draft legislation which renews existing directives or regulations.*

In our research on 1st Pillar working groups, this hypothesis was only partially confirmed. In some cases such as the racial discrimination and the e-commerce directives, new legislation provoked a good deal more debate within working groups whereas ministers (and even the European Council) were keen to reach rapid agreement. For example, for the racial discrimination directive, there was intense conflict at working group level between the UK and the Netherlands on the one hand, and France, Spain and Sweden on the other, about how "discrimination" should be defined[15]. A solution was eventually found by putting the offending article in the directive's recital and thereby sidelining for the time being an EU-definition of discrimination[16]. What is of interest to us is that when discussing this issue with an attaché, he began by telling us: "*It was political... so it must have been solved in COREPER*", before recognising (having reread his notes) that a solution had in fact been reached within the group. In comparing this case with many other 1st Pillar negotiations, the key discriminating variable seems to be the nature of the mediations which precede the moment draft legislation is put to a working group. In certain cases RPs and national experts participate in different "forums" of experts which often take the form of Consultative Committees run by the Commission (Larsson: 2003). The research question that stems from this observation therefore concerns the locus of European problem definition.

Because of the amount of activity generated since the Maastricht and Amsterdam treaties, 3rd Pillar working groups provide an ideal test-bed for a question on the impact of the "newness" of EU draft legislation. Contrary to the first pillar, normative production within the Third Pillar is recent, and, as it was put by one of our interviewee, "there is no jurisprudence". Therefore, to make their compromises, the protagonists of working groups are unlikely to be influenced by previous compromises.

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[14] For Claudio Radaelli (1999), for example, three criteria in particular are put forward: the way actors are recruited, promoted or nominated to their posts (political competition), the degree of publicity (or publicness) given to their activity and the types of decision-making used within the Commission (decision-making based on values or on the opinion of "experts").

[15] Put succinctly, iff the first category of representatives considered discrimination could be proven by statistics, representatives from other countries considered that this was a "dangerous" way of demonstrating "racial discrimination".

[16] In this recital it was stated that statistical evidence could be one means among many others to define discrimination.

H4. *Representatives of small states strive the most to keep issues off the COREPER negotiating table. For them, COREPER is a zone of great uncertainty which needs to be avoided wherever possible.*

Interviewees from small member states involved in Ist Pillar negotiations indeed tend to be particularly anti-COREPER because they consider that its proximity to the relative voting capacity of ministers always returns power to the big member states[17]. More generally, however, working group members from all member states who have often spent weeks if not months mastering the complexities of an issue and piecing together a compromise live in fear that underinformed ambassadors in COREPER will make hasty decisions that unravel all the work done previously. Ministerial meetings are generally perceived as even greater zones of uncertainty. Rather than the simple bureaucratic politics of inter-committee rivalry, however, a key factor here is the distinction between policy-specialists and carreer diplomats. As we have seen earlier, RPs may fall into one or the other of these categories. What is important to study is how each type of actors tends to engage in the Council using quite different logics of action.

In the case of the 3rd Pillar, the relationship between working groups and COREPER is effected by the existence of a committee between these two tiers of negotiation: the "Comité de l'Article Trente-Six" (CATS: ex. Committee K4). Composed of senior officials from each regalian Ministry (Interior and Justice mainly) and by senior representatives of the RP, this Committee plays an intermediary role between working groups and the COREPER. Practitioners consider it as a central arena, authorizing transversal exchange (but within the Third Pillar) and favoring the making of agreements at a more "political level". The existence of such a Committee tends to limit the role played by COREPER, because there isanother filter between working groups and the Council of ministers. In future, we also need to take into account that there appear to be fewer consultative or expert committees in the 3rd pillar than in the Ist.

Once again, our comparison between Ist and 3rd Pillar Council committees shows that institutional rules and organigrammes do make a difference. However, this difference is not as great as many practioners and commentators make out. In particular the political-technical divide is played out in much the same way in both pillars. Studying processes of "politicization" or "technicization" is a much more fruitiful avenue for research than continuing to perpetuate the myth that "politics is what politicians do", whereas "technocrats deal with technical questions" (Joana and Smith: 2002, chap. 3).

2.3 THE COUNCIL, THE PARLIAMENT AND THE COMMISSION

Studying different forms of politicization within the government of the EU is particularly important when adressing the question of the relationship between members of Council committees and their opposite numbers within the EP and the Commission.

2.3.1 A PARLIAMENT THAT CAN EXCEED ITS FORMAL POWERS

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[17] To cite a Belgian RP, 'COREPER is where the big countries can come to the fore (...) we are small. In the working group we are more equal' (June 2001).

At least until the mid-1990s, specialists of the European Union scarcely bothered to investigate the importance of the interdependencies between the Council, the Commission and the EP. Given the formal weakness of the latter, it was possible to take at face value the contempt with which national government and Commission officials treated MEPs. Of course, the Maastricht Treaty's invention of "Codecision" has been a major force for changing the relationship between the EP and its institutional partners. More importantly still, EP committees have frequently developed a capacitiy to intervene in the legislative process which surpasses what was envisaged in the Treaties. Even before Maastricht, specialists of the EP had underlined the importance of its committees as the vehicles through which most parliamentary influence takes place (Abélès: 1992; Costa: 2001). We have set out to take this research a stage further by testing the following hypotheses:

H5. *Council working groups have become increasingly entangled with EP committees, both prior to COREPER and ministerial meetings as well as during the comitology stage.*

In our research on Ist Pillar committees, some legislative processes fell under Codecision whereas others involved Consultation. In reality, the impact of Codecision upon working group activity must however be qualified for at least two reasons. Firstly, and despite a lack of clear rules on consultation over draft directives that undergo a second-reading in the EP[18], in an increasing number of issues, negotiations take place between the parliament's committees and members of a working group to reach an agreement before the conciliation procedure. This trend shows that European-level actors have sought to adapt their respective institutional logics to new procedures. For example, in preparing the Vibration and Scaffolding (*Travail en hauteur*) directives, lengthy negotiations took place between members of the social affairs working group and parliamentary committees in order to avoid conciliation. In the case of Scaffolding, members of these bodies even sought an agreement that would get the legislation accepted in the EP's first reading. In the field of telecommunications, members of the French presidency team began their work by meeting representatives of the parliament in order to set a common agenda (and to get agreements on the first reading). Secondly, the growing importance of interinstitutional 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...) and their ability to make agreements. The rotating presidency of the Council can often pose problems here. This role is particularly difficult for EP committee chairs to take on because their authority and that of their committee can constantly be undermined by the Parliament's plenary sessions. More generally, a shortage of clear rules mean that relations between Council working groups and EP Committees are often highly unpredictable and thus are treated as a risk by many of the protagonists involved.

To date, the tendency for the EP to involve itself more fully in the EU's legislative process is much less evident in the 3rd Pillar issues and working groups we have studied. In most legislation, the amendments proposed by the EP are rejected because they come too late (after an political agreement has been found within the council). Despite the activism of the EP on some themes related to the Third Pillar, the functioning of working groups doesn't seem to be much affected. The situation is very close to the "pre-codecision" period known in the 1st Pillar. In the Third Pillar, the role played by national parliaments must however be noted:

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[18] A Commission official sums this position up in the following way: 'En conciliation – une forme de troisème lecture- la règle du jeu est très précis. Mais la deuxième lecture n'est consacré par rien du tout à part le savoir faire du président du groupe et la DG de la Commission (...) Donc il n'y a pas de filet de sécurité. Il suffit qu'une personne soit de mauvaise humeur pour tout faire capoter' (Interview, January 2002). More precisely, as another Commission official mentioned with reference to the UMTS Decision, the EP's rapporteur but also members of its secretariat can often play a pivotal role which can speed up or block the passage of a directive under co-decision (Interview, January 2002).

parliamentary groups are often very much involved in negotiations and seek to be informed of the positions taken on by their respective governments.

2.3.2 A COMMISSION THAT REMAINS CENTRAL TO THE GOVERNMENT OF THE EU

A third and final inter-institutional relationship looked at in our research concerns Council working groups and officials from the European Commission. The existing literature on the Council recognizes that the representatives of the Commission who sit in these groups are not just passive presentors of draft legislation but active members of the group itself. However, one is often left with the impression that in such arenas Commission officials are not as assertive as they used to be. Indeed, the weakening of their influence "post Maastricht" is often ascribed to "the new inter-institutional context" within which "the Commission is a shadow of its former self". The fact that in the second and third pillars Commission officials do not formally have a clear role is also seen as a sign of weakness and weakening.

On the basis of our case-studies, we consider that these general statements about Commission influence on the Council need substantial revision from two angles. First, rather than start from the premiss that Commission influence has waned, it is more useful to consider that the production of EU legislation takes place in a highly competitive inter-institutional environment, and has always done so. Second, it is important to go beyond practioner analyses which tend to ascribe any "success" for the Commission to the "quality" or the "personality" of its negotiators. Without wishing to eliminate such criteria completely, the skills of its officials are better conceptualized when reforumlated as some of the numerous resources the Commission can activate within Council committees. From this point of view, our comparative analysis has sought to test the following three hypotheses:

H6. *The responsibility to initiate legislative proposals is just as strong in the 3rd pillar as it is in the 1st.*

Many years of public-policy making research have shown that the Commission's duty to initiate proposals for EU law and policy has constituted a major resource for this institution (Peterson and Bomberg: 1999). Our research on Ist Pillar working group confirms this general hypothesis. In addition, it has enabled us to highlight a much neglected aspect of the work of Commission officials: how they operate within Council.

Comparing this work with that carried out by Commission officials in 3rd Pillar working groups is useful because within such groups, at least formally, the right and duty to initiatve legislation is shared between the member states and the Commission. When looked at superficially, this difference from "the Community method" has important effects because it has led to a plethora of policy proposals from national administrations. In reality, however, many of these proposals are made by the member state at the beginning of their respective presidencies of the EU. In working groups, many of these proposals are rapidly dismissed as impracticable, most often with the full consent of the national officials who were instructed to make the proposal in the first place! More fundamentally, most of the legislative proposals given full consideration by working groups are those that have been prepared and formulated by the Commission. It seems that the Commission has the skills (particularly in comparative law) that most member states lack: "La Commission peut faire du droit comparé bien préparé. Je compare avec par exemple la présidence danoise qui a fait une proposition au GMB qui n'avait aucun intérêt pour le niveau européen. Ce genre de chose, en utilisant un langage

diplomatique, on refuse en se disant que de toute façon c'est peanuts "[19]. This point also serves to highlight the importance of mediations which take place in and around the Commission services and the College of Commissioners (Joana and Smith: 2002).

H7. In Council working groups, Commission officials often broker deals between member states but they are never entirely neutral.

Our research on 1st pillar confirms this hypothesis and raises two further avenues for investigation. The first concerns the hierarchical position of the officials involved. Below the grade of Head of Unit, officials are often considered too junior by their peers from national administrations. However, officials above this grade (such as Directors) often lack the necessary grasp of detail to become and remain respected members of a working group. Secondly, a Commission official can only obtain lasting influence in Council working groups when a high degree of inter-service and intra-college consensus has been reached. Dragooning draft legislation through the services and the cabinets invariably renders a Commission official vulnerable within any working group. This is because the external and internal networks (Joana and Smith: 2002) which criss-cross the DGs, the cabinets and the college will soon alert working group members to any potential weakness in the Commission's proposals and negotiating strategy.

Despite what one may read in much of the EU studies literature, Commission officials are just as central in 3rd Pillar committees as they are in ones from the 1st. In addition, theroking role of Council Secretariat is also of importance (Christiansen: 2001). One may even say that, concerning the third Pillar, the role of the General Secretariat is gaining importance, especially with the presence of national experts. This reinforcement of the Council Secretariat is even criticized by some representatives of member states: "On s'est rendu compte pendant la dernière présidence que le SGC commence à avoir un vrai rôle. Comme actuellement sous la présidence de la Grèce, le SGC est très en avant et on peut se poser des questions de sa légitimité. Notamment sur une négociation actuelle sur les coopérations avec les pays tiers. C'est le SGC qui prend le truc et c'est quand même un domaine sensible "[20].

In summary, when undertaking research upon Council working groups, it is vitally important to take into account both how Commission officials behave within such arenas and how all their members relate to the members of the relevant EP committee. Focusing exclusively upon Council committees as isolated entities is therefore futile.

CONCLUSION

This paper is ultimately little more than a prelimnary step in our attempts to discover how and why the Council operates as it does. A great deal of empirical research is still to be done. Nevertheless, the work already carried out leads us to conclude with three claims:

First, our research has underlined the importance of Council working groups within the government of the European Union. It is important not to see working groups just as sites for intergovernmental rational choice-type bargaining on the basis of fixed positions where the key resource for any national delegation is information on other member state positions.

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[19] Interview with a French ministerial official, March 2003.
[20] Interview with a French ministerial official, March 2003.

Instead, working group members most often have to deal with negotiating situations marked by uncertainties that are as much to do with defining the problem the EU is to address than with the strategies and tactics of their colleagues from other national delegations. Supranationalist interpretations of how working groups operate are not convincing either. When allied to the resource of voting arrangements in the Council, the perceptions and preferences of national actors clearly do still matter a great deal in EU decision-making. Although the dynamics of each working group have an important influence, there is little evidence of the emergence of an all-powerful European identity that trumps national affiliations. Similarly, although Commission and, to a lesser extent, Council Secretariat, officials play key roles in working groups, they never dominate them. Nevertheless, differences in the mind sets and behaviour of officials in the permanent representations and those who come to working group meetings from national ministries, does appear to confirm Christiansen's hypothesis that a process of 'Brusselsisation' is an important part of European decision-making (2001). Indeed, our research tends strongly to suggest that permanent representatives are often closer to Commission and Council secretariat officials in their approach to public action than they are to their colleagues in the national ministries. Defined as an iterative process of discussion and exchange engendering shared meanings of issues and policy solutions, the term " mediation " (Muller, 1995; Rochefort and Cobb, 1994) better captures what goes on in working groups and, therefore, enables us to grasp how they matter and why this is analytically and normatively important.

Second, although we have come across considerable variation between working groups, these differences cannot simply be ascribed to treaty provisions regarding QMV, Codecision and the status of the Commission. Instead, explanations for similarities and differences between working groups need tracing to the precise sets of rules and expectations engendered over time by each Council committee. Carfully defined generalizations can then be made upon the basis of the recurrences observed.

Third, although case-study research is at the heart of our own methodology, this paper recognizes the complementary light that quantitative anlysis could bring to bear upon working groups. However, rather than use questionnaires uniquely to survey the opinions of working group members, the principal challenge for the future is to deepen sociographical analysis of the members of these bodies and link it to case-driven studies of each committee's internal and external dynamics.

ANNEX 1: THE CASES STUDIED

Ist Pillar Cases

Télécommunications
Open network provision for voice telephony (Directive 98/10)
Third Generation mobile communications systems-UMTS (Decision 99/128)
E-commerce (Directive 2000/31)

Environnement
Landfill of waste (Directive 99/31)
Protection of drinking water (Directive 98/83)
End of vehicle life (Directive 2000/53)

Social affairs
Working time for seafarers (Directive 99/63)
Working time (Directive 2000/34)
Racial discrimination (Directive 00/43)
Scaffolding (currently being processed, modifies Directive 89/655)
Vibrations (currently being processed)

Research and development
The 5th R & D Framework Programme (Council decision, 22.12.98)

Culture
Leonardo Da Vinci programme on vocational training (Decision 99/382)
The Socrates programme on training and education (Decision 98/576)
Media + (Decision 2000/821)
Culture 2000 (Decision 2000/508)

3rd Pillar Cases

The European search warrant (2002)
Penal pursuit of drug trafficers (still blocked in Council)
Penal pursuit of racial discrimination

ANNEX 2: THE COUNCIL COMMITTEES STUDIED

Policy Sector/directive	Working group
Telecommunications (e-commerce)	The Information Society working group
Telecommunications (ONP framework, UMTS)	The Telecommunications working group
Research	The Research working group
Social Affairs	The 'Questions sociales' working group
Environment	The Environment working group
Culture (MEDIA +)	The Audovisuel working group
Culture (LEONARDO)	Ad hoc Education working group
Culture (SOCRATES)	The Education working group
Justice and home affairs	The "material law" working group (*droit matériel*)
Justice and home affairs	The "groupe multidisciplinaire" (GMD)
Justice and home affairs	The Judicial procedures working group

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