

PRECOOKING – THE FUNCTION AND ROLE OF EXPERT GROUPS IN THE EUROPEAN UNION

(Paper to be presented at EUSA 8th Biennial International Conference March 27-29, 2003 Nashville, Tennessee.)

**Torbjörn Larsson
Department of Political Science
Stockholm University**

Acknowledgements

This is summary of a report to be published in April in Stockholm, sponsored by The Expert Group on Public Finance which is an ad hoc independent government commission attached to the Swedish Ministry of Finance. The full report can be ordered by fax 004686909191, phone 004686909190 or be downloaded from www.regeringen.se/eso

1. FORMALITY VERSUS INFORMALITY AND THE ROLE OF EXPERT GROUPS

1.1 Discrepancies between the map and reality

In every political system there is an inbuilt tension between how a government is supposed to be organised and operate and how it really functions. The official version of how a government is organised is always complemented and sometimes even contradicted by an informal version. How the informal structure or the shadow world of government is formatted and by whom, is of crucial importance for how power and influence is distributed in a political system. This study has carried out an analysis of one part of the informal structure of the EU and its relationship with the formal structure. Thus the focus of the study has been on expert groups and their primary instigator – the Commission.

In this framework three questions have been raised. Firstly, taking into account the Commission's right to set up expert groups, to what extent is this tool used and what type of expert groups are set up? Secondly, by what means does the Commission – in organisational terms – control the work of the expert groups? Thirdly, why are expert groups set up and in what way can expert groups be used to model the decision-making structure of the EU?

Our knowledge of how committees and groups are organised and operate inside the EU is limited since very little research has been done in this field and especially expert groups have hardly been studied at all. Therefore this study, to a large part, investigates new territory that has never been trod on before. Consequently, since there is not much previous research to build on, this study has an explorative character, focusing more on looking at the phenomenon of expert groups from different perspectives and discussing their role and function rather than finding generalised explanations.

Conquering new territory is never going to be easy and in this case the problems started already at the very first stage, i.e. identifying the research object, because to define an expert group is far from easy and it can of course be done in different ways. To complicate things further, different names are often used for more or less the same entities like working groups, working parties, committees, steering groups, high level groups, umbrella groups and so on. Consequently in this presentation an expert group is defined as a committee or group set up by and abolished by the Commission on its own accord or a committee/group that is regarded to be the Commission's expert group although it is not financed or chaired or originally was set up by the Commission. In other words, expert groups are entities, consisting of to the Commission external participants, that the Commission does not have to listen to or whose advice it need not take into account, in contrast to for example the comitology committees that are set up by the Council and the Parliament.

1.2 Number and types of expert groups

To begin with, the Commission seems to use its prerogative to set up expert groups extensively, judging by the statistics presented by the General Secretariat of the Commission. In 2000 official figures stated that between 800 and well over 1 000 expert groups are in operation. However, exactly how many groups are active at present is very difficult to determine. In fact, the most likely units to have an overview in this matter seem to be the units in the DGs but that overview is of course only sequential, and apparently nobody has conclusive information on the present status of individual expert groups. Furthermore, the estimated number of committees/groups given is not always based on facts, sometimes it is pure fiction, because the same set of people can appear in different configurations, often pretending to be a new group when in reality an old group has simply been given a new name. The numbers and percentages must therefore be treated with great care. To the insiders, lobbyists, stakeholders, national civil servants and the civil servants in the Commission, the status of specific expert groups is of course quite clear but not to the outsiders. In fact, there is no official list of who participates in what expert group, what time perspective a group has, or what kind of budget has been allocated to it. And since we also find expert groups which are not officially set up by the Commission, i.e. they are not financed under a budget line, but they are nevertheless closely connected to the Commission and can sometimes operate in almost the same way as any other official expert group, this makes the estimated number even more uncertain.

Taking into account these uncertainties, the number of expert groups still seems to be gradually increasing over time in spite of Commission efforts in trying to keep the numbers down. One reason why estimating the number of expert groups is basically impossible is because expert groups quite often set up sub-groups which are often more or less on equal footing with the original expert group. The sub-groups are even more likely to meet regularly than the main groups and to carry out most of the important ground work. Around 20% of all expert groups have sub-groups, sometimes several of them which means that besides the 851 expert groups that we found in this study some 501 sub-groups were also listed.

According to the Commission's own classification about half of the expert groups are permanent and the rest are ad hoc – a stable figure it appears, even over time. An observation that allows us to draw the conclusion that many expert groups are not set up to solve just one specific issue but can exist for a long time and may be involved in different topics. As a matter of fact in many cases they can be seen as bodies for general policy advice to the DGs and their units. However, once again we find that a closer look at the statistics produced by the Commission does not really tell us the full story about the difference between permanent groups and ad hoc groups – many ad hoc groups have been operating for a long time and quite a number of permanent groups have not been operative in recent years. Interestingly enough the General Secretariat of the Commission also lists non-active (passive) expert groups which are still, formally speaking existing, in contrast to the abolished groups – for the period 1999/2000 almost 200 groups were of the passive type. Furthermore, 128 of the 'active' expert groups did not meet during this period.

The meeting frequency for the different types of expert groups varies of course. Some of the groups basically do not meet at all while others meet every second week or even more often. On average, however, a group will have three annual meetings, with ad hoc groups meeting slightly more often than the permanent ones.

There are also significant differences between the DGs and the Services in regard to what extent they set up expert groups. To the six DGs Enterprise, Employment, EAC, Environment, Research and InfoSo belong 58% of all groups, including sub-groups. A significant difference in average meeting frequency can also be found when breaking the statistics down on the different DGs and here we find that DG Research stands out in comparison to the others, its expert groups having on average almost 50% more meetings than the rest.

However, a closer look at how individual expert groups are organised shows that other ways of classifying them than by the statistics produced by the General Secretariat of the Commission are possible. Actually, an expert group can be organised in a number of different ways especially if one takes into account the number of participants and what type of knowledge and/or interests they may represent.

In the typical expert group we find, some highly specialised people often scientists or academics, meeting with the explicit purpose of solving or at least discussing a very specific topic – representing only themselves and their legitimacy being based on the accumulated knowledge in the field. At the other end of the spectrum we find expert groups with representatives from a number of interest groups and stakeholders in a certain policy area, negotiating conflicting issues and solutions. Thirdly, we have expert groups where representatives from the Member States are included. Here we often find civil servants who are supposed to play the dual roles of expert, i.e. knowledgeable in a certain field, and semi-independent representative for their respective government. The three categories, scientific experts, interest groups and stakeholders representatives, and Member States' civil servants can also be mixed into one and the same expert group.

Furthermore, an expert group can be inclusive or exclusive, which means that in some expert groups all the relevant experts, interest groups and Member States representatives are invited to participate, while in other cases just a few of them are given the privilege.

Expert groups can also be classified according to the status given to them by the participants' good name and prestige. A group can for example include persons which previously have held very high positions in society like prime ministers, ministers, general directors, business leader and trade union leaders, or acting civil servants on a high level. This type of group, typically called a high level group or sometimes a steering groups or an umbrella group, is usually given the responsibility of coordinating or scrutinising proposals and ideas from other groups or directly from the Commission. A high level group, especially a steering group, may set up many sub-groups but normally members of the high level group or the steering group do not participate in the work carried out by the sub-groups, in contrast to the expert groups' sub-groups which often include members from the main expert group.

In other words, behind the label of 'expert groups' we find very different things, which of course raises the question of how and to what extent the Commission can control and influence the work of its expert groups.

1.3 How the Commission controls the expert groups

Theoretically there are many ways for the Commission to control and influence its expert groups.

To start with, influence can be exercised by creating and abolishing a group. The Commission may e.g. set up an expert group just to find out whether the Member States and the interest groups are interested in trying to formulate a common policy. But should the Commission discover – after one or two meetings – that the support for a common approach is rather weak or that it seems to go in an unwanted direction, it can put the group on hold, waiting for the right moment to re-activate it. By using the stop and go technique the timing of the policy making process can be managed almost to perfection.

The right to appoint the chairman gives the Commission a powerful instrument, allowing it to decide just how closely it wants to associate itself with the work of a group – the scale ranges from very intimately to keeping it at an arms length. Most of the time, however, the Commission keeps a close watch on what is going on in a group either through the chairman or by providing the secretariat. The Commission often seems to be everywhere in the expert groups.

How the participants are selected is of course very important. The Commission can choose between letting the Member States participate in the discussions with the experts, the interest groups and other stakeholders or keeping them on the outside, instead holding separate discussion with one Member State at the time. Inclusiveness or exclusiveness are other important instruments for Commission control; by letting just a few experts, interest groups or Member States representatives be part of a group or involved in the preparations of setting up an expert group is of course a strategic decision that may affect the result and the functioning of an expert group profoundly.

In addition the Commission may choose to set up or delegate to several expert groups to work with the same issue. Steering groups or high level groups are often supported by sub-groups or other types of expert groups; consequently what sub-group(s) are set up and what the relationship is between the different groups (who is reporting to whom) also affects the final outcome of the preparation process.

The Commission can therefore – by means of its prerogative to set up committees and groups - couple and decouple the policy-making process and the participants (actors with different sets of interests) in several ways. The Commission can, for example, closely connect the implementation process to the decision-making process by allowing the same committee/group to be the provider of proposals to the different arenas.

However, it is also worth pointing out that not all expert groups are strictly controlled by the Commission, and this is particularly noticeable when the issues or topics deliberated are outside the first pillar, or when the group has been set up by a request of the Council and/or when the expert group is not primarily financed by the Commission. In these cases it is not uncommon to find that the Commission plays a more subtle role, sometimes being described as the role of the sixteenth member, exerting influence in a more discrete way, for example by having the final say on the agenda before each meeting.

Nevertheless, in the end it is up to the Commission to single-handedly decide – with the exception of the cases when the Council has requested the Commission to set up an expert group – to set up an expert group, how it should be organised and what internal procedures should be applied. Few official rules govern this part of the EU decision-making process even if there are some practical restrictions, the Commission is, e.g. expected to work through the Permanent Representations when recruiting representatives from the Member States to expert

groups and the final reports (green papers) from the expert groups are often published on the Commissions web site. To summarise, the Commission has been given quite a free hand in setting up expert groups and in most cases the groups' work can be tightly controlled. But why then are expert groups set up and how do they effect the wider policy processes and policy-making process of the EU?

1.4 Why expert groups are set up and the effect on the decision-making process of the EU

It is often argued that the Commission, due to its small administration and limited competence in many areas, needs Member States' assistance as well as the assistance of other experts and interests groups representatives when drafting its proposals for new EU legislation. However, as this study shows, expert groups are clearly set up for a number of reasons, not just to provide the Commission with the expertise it needs in order to prepare new legislations. For example, even in the area of agriculture where the Commission supposedly has extensive internal knowledge, quite a few expert groups are active.

Expert groups are also used throughout the policy-making process – from the preparation (initiation) phase, through the decision-making phase and even extensively in the implementation phase. Furthermore, a number of all the Commission's duties do not concern law-making and implementation – representing the EU in international organisations, negotiations with third countries, supervising the internal market, running the administration of EU programmes – also fall on the Commission and for all these functions expert groups are being used.

This being said, it is nevertheless a fact that the visibility of the expert groups reaches its highest level during the policy-making process, as does the ability to influence. The policy-making process and its three phases can be regarded as three different arenas for policy making where what is achieved on one arena has consequences for what will happen in the other ones. Much of the work is carried out by different groups and committees and the report – like in a relay race – is transferred from one committee/groups to another, until the final results is put into practise. In the preparation phase, the expert groups assist the Commission in formulating the draft legislation and in the decision-making phase the working parties, COREPER and other Council committees, together with the standing committees of the Parliament help to formulate the final decision for the two law-making institutions, and finally, comitology committees, are instrumental in implementing all the decisions.

This study shows there are four main reasons as to why expert groups are set up:

- agenda setting
- preparing initiative
- mobilising support and building consensus
- fig-leaf.

An important part of any policy process is the initiation or agenda setting phase. It is often highlighted in classical decision-making theory how crucial the role is of those who are in charge of setting the agenda – how to formulate the issues on which decisions are going to be taken. Or, in other word what is happening up-stream is very important for what takes place down-stream in the policy process. In this part of the process expert groups are used in order to put an issue on the European agenda, i.e. to reach an agreement that a certain problem

needs a common response from the Member States even if it is outside the Treaties. Another way of expressing it is an attempt to enlarge the competences of the EU. Brain storming or very informal discussions are typical features in this type of expert group. But issues falling under the EU Treaties are also affected by the agenda setting phase not least because decisions regarding under what article an issue is to be handled determine what decision-making procedures should be used, with a varying degree of influence of the EU institutions. A proposal can of course be challenged later on in the policy-making process and there are cases when the Commission has switch its own agenda completely and accepted the one proposed by the Parliament, but the original proposal usually has the supreme advantage of already being on the table, because insisting on an alternative definition of a topic often means restarting the entire policy process – with further delays.

The setting up of an expert group is also a signal that an official policy-making process has been started by the Commission – an initiative has been taken. During this part of the process the issue has normally already been put on the agenda, or the Commission has a pretty good idea of what it wants to achieve, but now the best arguments have to found and the necessary means to achieve what has been set out. Experts and other knowledgeable persons are called in to help the Commission to find the right arguments and counter arguments given a specific solution. A well known technique is to ‘de-politicise’ the policy making process by transforming the political issues into legal or technical (scientific) problems as far as possible. “Salami tactics” is therefore often used, i.e. slicing the policy areas into smaller and smaller units, every cut producing a new sub-committee or sub-group, often at the same time separating politically controversial issues from less controversial ones. In the end this often leads to solutions so technically advanced or complex that other actors in the decision-making and implementation phases of the process will find it difficult to challenge them.

Furthermore, setting up an expert group can be used as a means of building consensus and mobilising support for a specific topic or a solution to a certain problem. By inviting all the relevant interests early in the policy process on the pretext of being an expert group but in reality conducting (pre)-negotiations, much can be solved thus transforming the other phases of the policy process into an exercise of formality. In some cases it may not even be necessary to invite all the interests to participate, it will be enough if an agreement is reached between the dominating interest groups to preclude the discussions and negotiations during the formal decision-making phase and the implementation phase.

Finally, expert groups can be used as an instrument to canalise pressure from the outside. It is a well known fact that many of the official initiatives taken by the Commission do not originate from within its own organisations but is a response to outside pressure. In some cases this kind of pressure is welcomed and even encouraged by the Commission but sometimes it is not. However, strong demands can be made on the Commission to become active in areas where it believes it has no competences or where success looks improbable. Setting up an expert group may therefore be the answer to this kind of pressure because at least it gives the impression that action is being taken.

However, the Commission uses expert groups not only as a tool to generate support for later on in the policy making process, it is also an instrument used in the internal battle between the DGs. Issues are often interrelated but treated separately by the different parts of the bureaucratic structure of the Commission, which can generate a degree of tension, even conflicts, between the DGs and in this struggle expert groups can be used to mobilise external support.

But expert groups may also influence the formal decision-making and the implementation phases more directly not only indirectly by what has happened in the policy development phase. Basically this can be done in four different ways. One: a group is set up which is not only consulted during the preparatory and initiating phases but also during the decision-making and implementation phases. Two: separate expert groups are set up to assist other committees or groups active in the formal policy-making and implementation phases. Three: an expert group can be set up in order to allow the participants to take part at an early stage of the policy making process, thereby trying to generate consensus and support, so that later on this could influence the other stages of the policy process, when more or less the same people will meet again. Bringing people together so that they can get acquainted has always been an important tool in finding solutions to difficult problems and setting up expert groups is a very good way of doing just that. Four: sometimes the Commission uses groups that are officially set up for other purposes such as comitology committees or working parties in the Council as expert groups.

To summarise; expert groups can be used for any number of reasons and most expert groups are not set up for just one reason – in essence they are the lubricant of the policy-making and administrative machinery of the EU, where formal and informal structures are constantly shifting with the help of these groups. This technique is well known from national governments but it has perhaps been used more extensively in the EU where the character of the system makes consensual solutions necessary and where power is diffused among many actors.