

The Challenge of Being an “Active Observer” Some Experiences from Norway *¹



Tore Chr. Malterud

Head of Unit/Senior Expert, EIPA

Opening reflections

I would like to start by asking “what makes it so special for politicians and civil servants to work at an EU level?” How does it differ from working in other international organisations or in the public sector at home? There are some significant differences. In addition to the working-style, the roles and the interaction between the political and permanent administrative levels are different.

In a well-established democracy there is a clear division of power and distinction of roles between the government, the permanent public administration and the parliament. The government proposes and the parliament decides. Proposals are presented according to internal rules and procedures, and decisions are taken according to the constitution. Time is devoted to evaluating the consequences of different actions and defining the political implications. Here we clearly see the first main difference between EU and national politics: namely, that when working on EU matters Member States face an externally imposed timetable. Only to a limited extent is it possible to influence the tempo, the rules of procedure and the agendas of meetings. Unless, of course, a Member States is in the “lucky” situation of holding the Presidency.

The second specific EU context is the volume of business. It is overwhelming. During the last 10 years, not only has the Treaty been changed three times, but new pillars have been added to the construction and Economic and Monetary Union has become a reality. Efforts have also been made to improve the credibility, efficiency and transparency of the system. Nobody has a total overview of the new challenges facing representatives from the Member States, and available statistical information covers only bits and pieces of this mastodont. At a later stage figures from a Nordic survey² will illustrate how bureaucrats in this part of Europe evaluate their daily lives. Just a reminder – Denmark became a Member State 30 years ago, Sweden and Finland in 1995 and Norway is closely linked to the internal market of the EC.

The range of EU activity has increased dramatically and now cuts across ministries and departments in all Member States. In the good old days (meaning before the Single European Act and the White Paper on the Internal Market at the end of the 1980s) it was possible to follow the work without too much effort. It was also possible to foresee to a certain extent the outcome of negotiations in the Council and of European Summit

meetings. Not only have new policy areas been added.

But the Union’s competence goes now deeper and wider. This can seem a paradox, since new methods of creating European law were intended to make it easier and to give more freedom to Member States. The limitations were really only the principles of the Treaty and the spirit of integration. According to the survey referred to later, an remarkable large part of the public sector in the Nordic countries feels it is much more influenced by EU matters³ than four years before the survey was performed (for example, Sweden 52% and Finland 51%). Sweden and Finland were at that stage (1994) in the same situation as the 10 Acceding Countries are in now.

In broad terms, it is possible to divide the work of the EU into three different phases:

- the Policy Development Phase, where initiatives are taken by the Commission
- the Policy Decision Phase, where decisions are taken by the Council and the European Parliament
- the Policy Implementing Phase, where action is taken by the Commission and/or by the Member States themselves.

Here the Member States, and especially the new ones, face challenges. The keywords are priorities, coordination and building alliances. At the end of the day, the smaller states have exactly the same obligations as the bigger ones. New rules and regulations must be introduced, old ones must be changed and old routines which discriminate on grounds of nationality must be removed.

Already at this stage it becomes clear that the involvement of the public sector in the Member States is essential for the efficient functioning of the EU system.

The next question is, of course, “how do the Member States meet these obligations?” Here we see clear differences between the countries. It would not be correct, or even polite, to judge some countries for not reaching the optimal result in their European engagement. However, when performances are compared, it seems, that some characteristics of the internal decision-making process can be identified. First of all, there has to be a more or less centralised, unitary state structure. This goes both for the political and the administrative structure. Also, when it comes to political culture we can see the benefit of some systems. A consensual policy style, focusing on compromise and where decisions are taken after broad consultation of interest groups, seems

Phases in the Policy Cycle of the EU

<i>Phase</i>	<i>Institution</i>	<i>Type of Committee</i>	<i>Representatives from Member States⁴</i>
<i>1. Policy Development Phase</i>	<i>Commission</i>	<i>Expert</i>	<i>Committees/Experts from the Member States</i>
<i>2. Policy Decision Phase</i>	<i>Parliament</i>	<i>Standing Committees</i>	<i>Members of the European Parliament (MEPs)</i>
	<i>Council</i>	<i>(Council)</i>	<i>(National Ministers)</i>
		<i>COREPER (Permanents Representatives)</i>	<i>Ambassadors/Deputy Ambassadors</i>
		<i>Council Working Groups/parties etc.</i>	<i>Civil Servants from the Members States, Attachés</i>
<i>3. Policy Implementation Phase</i>	<i>Commission</i>	<i>Policy Implementation (Rule Making)</i>	<i>National Representatives</i>
		<i>Policy Application (Programmes and Money)</i>	<i>National Representatives</i>
		<i>Policy Evaluation</i>	<i>National Representatives</i>
<i>Members States implement EC Law – (Regulations, Directives and Decisions) according to national rules</i>			

to oil the machinery. It also helps achieve acceptance at home. Member States' administrative styles also play an important role. In my opinion, greater autonomy of individual ministries, together with a Prime Minister's Office (PMO) which acts as a *primus inter pares*, and an informal, ad hoc attitude towards problem-solving, together with a low degree of competitive behaviour and bureaucracy gives better results than a bureaucratic and strictly formalised system.

A Massive Task

The new Member States face formidable challenges⁵ and have a massive task in coping with the system. Only two factors will be mentioned here: the work in the committees and the work at home.

Each and every working day a large number of committees convene either in the Justus Lipsius building (the Council and its preparatory committees) or in the Centre Brochette (committees assisting the Commission). Nobody really knows the total number of committees, how they function or how often they meet. A rough estimate indicates⁶ that the EU has approximately 2000 committees, of which 2/3 are expert committees and the rest are equally divided between comitology committees and council committees. However, the actual committee meetings are only the tip of the iceberg: preparations, consultations, "coffee-breaks" and exchange of information take a considerable amount of

time outside the formal setting.

Some years ago a joint survey⁷ analysed the situation of Nordic bureaucrats working on EU⁸ matters. A large number (app. 1.300) of *units*⁹ were asked the same questions. The first question was whether the units were "to a great extent" influenced by EU-membership. An average 54% gave a positive answer. This was related to work on the internal market, and suggested that EC matters play a dominant role across central administrations in the northern part of Europe. The figures on Pillars Two and Three were lower. The next question was related to the use of time. Approximately 40%, on average, answered that the unit used "very much" or "much" time on EU matters. Differences between the four countries were limited.

Participants in the survey were also asked a question about contact points: the "Who are the telephone conversations with, where are the e-mails sent and where do the meetings take place?" The survey identified the percentage of units who had contact with EU institutions or participated in committees each month or more often.

The figures¹⁰ tell their own story:

<i>The Commission</i>	<i>Sweden</i>	<i>43%</i>
	<i>Denmark</i>	<i>41%</i>
	<i>Finland</i>	<i>40%</i>
<i>Expert committees</i>	<i>Sweden</i>	<i>31%</i>
	<i>Denmark</i>	<i>22%</i>
	<i>Finland</i>	<i>35%</i>

<i>Comitology committees</i>	<i>Sweden</i>	14%
	<i>Denmark</i>	8%
	<i>Finland</i>	15%
<i>Council/COREPER/CWG</i>	<i>Sweden</i>	24%
	<i>Denmark</i>	22%
	<i>Finland</i>	18%

Informal ways of communication play the dominant role, while formal, written contacts, being the traditional way of communicating in the public sector, play a more limited role for Nordic participants in the European context.

One can often get the impression from bureaucrats in the capitals that the work in Brussels is only a small (and pleasant) part of their work, and from “eurocrats” that the work in the institutions is overwhelming. The truth is, as usual, somewhere in between. Actually the “home-work” – launching new laws or changing old ones – takes exactly the same amount of time as co-ordination and negotiation. Information and contact with NGOs takes slightly less time.

Many of the Member States-in-waiting and my own country, Norway, have a lot in common. We are small countries, with a small civil service of limited capacity. We therefore have to manage the work efficiently. In terms of human resource management this means there is:

- a strong need for highly competent, linguistically skilled and committed civil servants
- a high level of responsibility and independence on the part of the individual civil servant
- a heavy workload for key players in European affairs on account of their participation in many working groups.

The ideal situation is that the country and its representatives speak with one voice. At the end of the day, it is the country as such, being a member, which is solemnly responsible for fulfilling its obligations.

And now to the crucial and difficult question of how to involve the national parliament. A famous Norwegian writer (Henrik Ibsen) said “My task is not to answer, but to question”

There are five questions to be answered:

1. How can the national parliaments and NGOs be more strongly involved in EU¹¹ matters?
2. How can the national scrutiny system be made more effective?
3. How can a stronger dialogue between EU institutions and the national parliaments be fostered?
4. How can the role of national parliaments be strengthened inside the state legislatures?
5. How can local authorities/NGOs intervene in cases concerning their field of competence? (The competencies of the regions/NGOs in the EU varies considerably)

The involvement of national parliaments, NGOs and representatives of the regions is perhaps the area where differences between Member States most clearly appear.

Information

All the Member States face the same questions – namely, how to get information and how to treat it. Usually there are no problems related to formal information; it comes like a flood at springtime. The problem is related to informal documents – positions, working papers, drafts, “non-papers”, “room-documents” etc. To understand the situation at any particular stage of the game, it is necessary not only to have formal documentation, but also informal materials. But how can they be obtained? The answer is simply to have a network of contacts. “Today I inform you, tomorrow you inform me”, seems to be the thinking of many professional bureaucrats and lobbyists in the capitals and Brussels (not to forget Luxembourg and Strasbourg).

But what about received information from the institutions concerning EU matters? Can we keep it a secret, hoping nobody find out and starts asking impertinent questions? Here three elements have to be taken into consideration. First of all, one has to accept the tradition of the country. Many, especially northern countries, have a long tradition of letting the public (meaning the press) see nearly all documents circulating in the public sector. This is the political aspect. Secondly, the Union itself decided two years ago (during the Swedish Presidency) to adopt a Regulation on access to information¹² in EU matters, opening the files in the Commission, the Council and the European Parliament. This is the legal aspect. And thirdly, getting information in Brussels is not difficult: it is only a matter of time, energy and having the right contacts.

It takes years (five to seven in the best cases) between an idea being born and the Act being implemented. During this time, national civil servants have changed jobs, there have been elections for both national parliaments and the European Parliament, and you can be sure that the responsible person in the Commission has changed position. Establishing a sustainable national system for securing information is crucial. At every stage of the EU process and at the parallel national level, the status and the positions should be reflected in a “factual document” accessible to everybody involved. This document starts with the phlegmatic statement that the Commission has come up with a good idea, and is completed years later with a document describing the background, the story and the result. At every stage of the process, new information must be added.

Influence

I understand that it is a goal of many of the Acceding Countries to influence new EU legislation at an early stage. At the same time they must understand that the Union (at this stage meaning the 15) has its own internal agenda and decision-making structure.

The Acceding Countries will in the coming year have defined roles in the 10 organs mentioned in the Treaty. In some cases contact has been established and consultative systems set up. But there are limitations. Giving a country on its way in direct access to all the internal mechanisms of the Union and to all information,

as if it were an ordinary full member, would be in conflict with the basis of the Treaty.

Interest groups (NGOs) will try to make their voice heard in any administration or legislative body and try to gain influence by using more or less valid arguments. Such activities are totally legitimate and will be seen by many as a natural part of the screening process before a decision is taken. Influencing the EU system from outside must obviously be done in a different way from how it is done at national level. First of all the mechanisms for taking decisions are different. Secondly, the structures of power are different from what we are used to on the national level. Both the Economic and Social Committee (ESC) and the Committee of the Regions (CoR) have unique positions in the Union. They are not in the position of taking formal decisions, but gain power because they are the gathering-points of national groups with different agendas. Different points of view can therefore be known at an early stage of the process. The institutions of the Union, especially the Commission, listens to the statements. Often signals are given on what reactions might be expected later from the national level. For national public administrations it is not appropriate to openly nurse close contacts with the groups of the ESC and the CoR – that must be at the discretion of the politicians – but using other channels can be useful.

The situation created by a steadily closer degree of European integration demands more systematic and targeted bilateral contacts on the political level. This is done in different ways. The Nordic countries, since they have over time established well-functioning institutions between themselves, have kept this line of communication open also on EU matters. Many of the Acceding Countries are thinking along the same lines, and are now establishing bilateral contacts with other (both old and new) members of the Union.

Relations between Member States and the Presidency are of crucial importance. But believing that such contacts can be established and influence used at the point when a country takes up its position is erroneous. Planning for the tough half-year period of the Presidency starts early, often one to two years beforehand and it dominates the central administration during the period. From the top political level clear signals are given both on the agenda, ways of working and not least the goals for the period. And all presidencies know that they will be evaluated by the success of their term. External influence toward the Presidency of the Union must be done in a systematic way and at an early stage. A more ad hoc approach during the period seldom creates a change of course or gets new points on the agenda.

It is false to see the Union's decision-making structure as following a straight line. The process has at least two other dimensions – the national one and the processes conducted in political groups. National processes differ from country to country. In some countries the elected national representatives are involved at an early stage, when suggestions are presented by the Commission and forwarded to the Council. In other countries it seems that only after the Council/European Parliament has taken

a decision, is a document sent to the national assembly informing them about what has happened.

Co-ordination

Co-ordination is a key word for the success of a Member State dealing with European matters. Successful co-ordination fosters smooth European policy decision-making and implementation. The purpose of co-ordination is:

- to optimally defend the national interests and
- to strengthen the performance in the EU decision-making process.

It has therefore both an offensive (positive) and a defensive (negative) purpose. In operational terms it can be strategic (aiming at overarching objectives), selective (aiming at a precise result at a specific stage of the policy cycle) or simply procedural (oiling the machinery).

Let me stress that “co-ordination” has a much broader meaning than just calling some colleagues from other ministries for a short meeting a few hours before the plane leaves for Brussels. It is a systematic approach, trying to establish common views, which can be presented in all fora and towards all institutions, independent of which national body is involved.

The main characteristics of the many levels of co-ordination are that it is:

- between ministries at home
- with “other” national actors (national parliaments, regions, lobbies, NGOs)
- with European Parliament, European NGOs and lobbies
- considers the interests of social partners
- a way of interacting with other Member States and the Commission.

Clearly one can see that civil servants are given new roles and that there are increasingly close contacts between civil servants nationally and between the European actors. Co-ordination is a domestic operation, but it functions at the EU level. The purpose is to shape the EU policy agenda with the final goal being to foster a smooth and quick implementation of EU legislation.

Co-ordination is not only about structures and institutions, but also about attitudes. It must be based on a coherent long-term government strategy for the EU, and finally includes a ‘European reflex’ of all officials in all ministries. It is also based on good co-operation between generalists and specialists, between the travellers and those based at home.

Different factors determine the co-ordination approach. The political-administrative structure and the political culture play an important role, as do the traditional administrative style of the country concerned and the size of its civil service.

Many northern countries, including my own, have taken a decentralised approach to the co-ordination of EU affairs. A central point here is the distribution of roles between the different players:

- there is no specially-created co-ordination body,

but there is a consultative co-ordination committee, with one representative from each ministry, which meets at least once a month

- the Ministry of Foreign Affairs (MFA), assisted by the Permanent Representation, has a crucial role in supervising and channelling information between Brussels and the capital
- the responsibility for preparing, deciding on and implementing EU dossiers lies with the competent ministries (often assisted by specialised sub-committees).

Co-ordination systems are shaped to a large extent by the different domestic situations. Variety is still the main feature of national co-ordination systems and there is no trend towards a dominant model. Transposing a system from one country to another is not recommended.

A period for trying and failing

All “newcomers” in the European integration process have been forced to review their administrative routines and capacities. In organisational terms this means establishing flat hierarchies and short communication channels within ministries (and with ministers). When it comes to working style, this has in general become more flexible and pragmatic with a strong focus on co-ordination structures. The new situation is characterised by its ad-hoc and problem-oriented nature. The organisational philosophy is based on the conviction that it is more in the interests of the country to agree on a negotiated solution than to block a national decision unnecessarily by stirring interministerial rivalries.

The interim period is a phase during which a country participates almost as a Member State, but does not carry the heavy burden of taking decisions. In the minds of the politicians and civil servants lies the thought that one day EU membership will become a reality and that the new legal Act decided upon now will be relevant in their home country in the future.

Being an active observer means having full status in all committees, including the right to speak (and suggest), but not to vote. Since formal voting rarely takes place, this is not a crucial point. It is always possible to express one’s standpoint without raising one’s hand.

In this period participants will receive all documents. Not one per week, but hundreds. Europe’s problem is not the volume of paper, but the complexity and the secret codes used to identify the sender, receiver, the status and at which stage the “file” has reached. For the accession countries the interim phase is also a training period. New routines must be established and language skills developed for many thousands of participants. The new routines cover the internal life of a ministry, and relations between ministries and towards the PMO, MFA, the Permanent Representation etc.

In future, negotiators are expected to come up with clear positions and they are expected to have the necessary mandates to negotiate. The aim, together with

their new partners, is to reach a common result. An interim period should ideally be a period for testing, trying and failing these routines. It is therefore a period for learning by doing and, on the home front, for implementing existing legal Acts and participating (observing) in the creation of new ones.

Conclusions

The question “Is there an example of best practice in meeting the European challenge?” has already been answered with a clear NO. There are, however, some general trends.

First, the trend of similarities. All EU Member States have put into place specific mechanisms, processes and bodies for meeting the challenges. The individual ministries have adapted their internal mechanisms, organisations and procedures. At the same time the position of the MFA has been steadily weakened as regards topics on European integration (but not in general or in matters related to Inter Governmental Conferences and Pillars Two and Three). The Ministry for Foreign Affairs and the Permanent Representation are often responsible for maintaining the formal link between the capital and Brussels.

When it comes to differences, it seems clear that there are a variety of interpretations of the words “interaction” and “co-ordination” in the Member States and that the countries have different ambitions and strategies. Also, the operational roles of the MFA ministries vary and no common trend can be found, particularly when it comes to dealing with EU business.

New routines, structures, relations, ways of working and co-ordination systems are shaped to a large extent by the different domestic situations. Transposition of a system from one country to another is not recommended.

In summary, the following five mistakes are often made:

- the workload is underestimated
- players in the game forget there is an externally imposed timetable
- necessary administrative changes come too late and are not adequate
- well functioning internal routines are transposed to work on EU matters
- new relations are not established and lessons from others are not learned (making this a “one-man-show” or inventing the wheel again).

NOTES

- * This article is based on a speech given in Cyprus on 9 May 2003.
- ¹ Norway has twice been a candidate country, once before the referendum of 25. September 1972 and once before the referendum of 28. November 1994. It is now closely linked to the internal market through the Agreement on the European Economic Area.
- ² Dated 1998.
- ³ Page 83 in "Europaveje" by Bengt Jacobsen, Per Lægred & Ove K. Pedersen (red).
- ⁴ Usually appointed by the Member States after invitation from the Commission or the Council.
- ⁵ See Dr. Adriaan Schout's and Dr. Kees Bastmeijer's article "The next Phase in the Europeanisation of National Ministries: Preparing EU Dialogues" Eipascope nr. 2003/1.
- ⁶ "Precooking in the European Union – The World of Expert Groups" by Torbjørn Larsson. An ESO report from Regjeringskansellet, Ministry of Finance in Sweden.
- ⁷ See page 146 in "EU i forvaltningen" by Ove K. Pedersen, Jurist- og Økonomiforbundets Forlag, København 2002.
- ⁸ For Norway this means the European Economic Area.
- ⁹ Meaning office, section or department, but not the Ministry as a whole.
- ¹⁰ See page 109 in "Europaveje" by Bengt Jacobsen, Per Lægred & Ove K. Pedersen (red).
- ¹¹ In Denmark, Folketinget has the ability to formulate its own political positions, while in Sweden, Austria and Finland there is a less binding scrutiny system. In Germany and the Netherlands the parliament is able to give the government a mandate, but rarely does so. On the other hand, the parliaments in France and the UK have no legal ability to change the government's position. In the four southern countries plus Ireland, Luxembourg and Belgium there is limited scrutiny of legislation.
- ¹² Regulation (EC) No. 1049/2001 of 30 May 2001. □



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