AGENDA SETTING IN THE EUROPEAN COMMISSION

How the European Commission Structure and Influence the EU Agenda

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Introduction

Agenda setting theories claims that what happens in the early stages of the policy-making process have profound effect on the final output and that actors entering the agenda setting phase have a comparative advantage to those entering the later stages. In the European Union the European Commission plays a predominant agenda setting role, especially in matters falling under the first pillar, in initiating and preparing proposals for legal acts and non-legal decisions. In practice, in the EU decision-making cycle the agenda setting phase often overlaps with the decision-making and implementing processes. In 2001, for example, roughly 85 per cent of the EU legislation consisted of legislation delegated to the European Commission (McCormick 1999: 194-197; Van Schendelen and Scully 2003: 6).

This study analyses how the European Commission organises the agenda setting phase of the EU policy-making process by means of initiating and preparing legislative, budgetary and programme proposals. Special emphasis is put on how expert groups are being used and what role(s) they play. The study argues that a pivotal characteristic of the Commission agenda setting is the emergence of a community administration that spans levels of government (national government institutions and the European Commission). This community administration integrates decision-making agendas across levels of governance (see also Trondal in this volume). What is often conceptualised as Europeanisation of domestic government institutions by their intimate participation in expert groups[1] (Larsson 2003a, Trondal 2004a) is hereby pictured as the emergence of a community administration that *de facto* cut across the organisational borders of the Member States and the European Commission. Arguably, no other international executive body has a similar integrating function across levels of governance as the European Commission (Trondal, Marcussen and

Veggeland 2005). One notable cause of the emergence of such a community administration is the fact that the European Commission systematically organises territorial preferences, institutions and concerns out of its agenda setting processes. The European Commission integrates national civil servants into a multilevel community administration that largely transcends the territorial logic of the Westphalian normative nation-state order. Recent research on the European Commission and its agenda setting processes has paid scant attention to this community administration (Cini 1996; Hooghe 2001; Nugent 1997; Dimitrakopoulos 2004).

This chapter focuses particularly on group and committee decision-making within the Commission because arguably these groups and committees shed important light on the emerging community administration. The study demonstrates that the expert groups integrate domestic civil servants into the Commission agenda setting and that the Commission herewith integrates external expertise, upgrades its knowledge about national positions, as well as contribute to re-socialise domestic civil servants towards supranational loyalties (Trondal 2004b). Despite our focus on Commission expert and consultative group governance, the emerging multilevel community administration also encompasses the Commission agencies, domestic agencies, national seconded experts to the Commission, the Council working groups and the comitology committees.

Three theoretical approaches on agenda setting are outlined below, each emphasising different aspects of the agenda setting processes within the Commission. The first perspective is a rational organisation theory perspective focusing on the formal structuring and standardisation of agenda setting processes. This model claims that when new problems are identified it subsequently leads to a search for the best available (optimal) solution. In this

search process, the Commission's expert groups play a pivotal part collecting data and information. The second approach is a path-dependency approach stressing the historical inertia involved in public decision-making and that path-departures and path-dependencies are essential ingredients of the Commission's agenda setting. Neither Member State governments nor the European Commission tend to approach new initiatives with an impartial mind. Past experience tend to guide search for new actions, and old polices are often chosen as the answer to new problems. The European Commission sometimes prefer doing repair work instead of designing a new house. Arguably, the path-dependency logic may also be broken by external shocks as formative moments that fundamentally change the direction of present policy. The third model is the garbage can approach which advocates that agenda setting processes are non-routinised and discontinuous characterised by random flows of problems, solutions, participants and choice opportunities. Arguably, Commission agenda setting is less stabile, continuous and structured than assumed by the first two approaches.

Several data streams are used to illuminate the three theoretical approaches. First, primary survey data is utilised that originates from our own research projects on EU group and committee governance. Moreover, a vast and growing body of literature on different aspects of agenda setting and the functions of the Commission in general has also been utilised. Together, the stock of empirical observations presented below demonstrates that the Commission agenda setting by the use of small and large expert groups activate dynamics of instrumental rationality, path-dependency and garbage cans. The expert and consultative groups are used instrumentally as arenas for deliberation, brainstorming and intergovernmental conflict solving, as meeting places to solve complex technical problems, as well as transformative institutions that help upgrading shared belief system among the group participants. Domestic government officials who interact in EU groups or committees are

embedded into different government structures and face several institutional ambiguities. Consequently, these officials tend to evoke multiple behavioural patterns, roles and identities when participating in the Commission agenda setting process. The chapter is organised according to the three theoretical approaches suggested above.

A rational policy-making approach

An important ingredient in a rational decision-making process is that it is organised into distinct phases – for example an agenda setting phase, a decision-making phase and an implementation phase. The agenda setting phase is normally regarded as an important part of the decision-making process – perhaps the most important of them all – since the initial definition of new policies restrict what solutions to be ultimately voted upon (Premfors 1989). The Bachrach and Baratz thesis (1962) is often used in the analysis of agenda setting to emphasis the importance of the initial stages of government decision-making processes. According to Bachrach and Baratz (1962) power covers more than whether an actor make other actors do things they would otherwise not do (the first face of power). Power is also about who defines what issues to be decided upon and according to what rules (the second face of power). One way of interpreting the Bachrach and Baratz thesis (1962) is that there is one type of power struggle taking place *centre stage* while there is another one going on *back stage*. The centre stage battle takes place in the glaring spotlight, out in the public domain, where different actors strategically bargain to maximise their win-sets. The battle is fought before the very eyes of the media and the public. The centre-stage dimension of agenda setting stresses the element of open political debate. This is in stark contrast to the struggle going on back stage which is hidden from the eyes of the public. When agenda setting is pictured this way, it takes on a manipulative flavour with a hint of conspiracy and hypocrisy thrown in (Brunsson 1989).

Some scholars make a distinction between a systemic agenda, representing the sum total of all issues perceived legitimate within a political system, and a more specific institutional (formal) agenda (Peters 1996: 63; Hinnfors 1995: 66). At the end of the day, not all items on the systemic agenda will make it to the institutional agenda and trigger a policy-making process, and not every governmental decision-making process starts by a public debate. The agenda setting phase is often characterised by extensive bargains before an issue is forwarded to public scrutiny, which generates substantial momentum to the process by benefiting certain interests, values, actors and institutions above others. Accordingly, the earlier an actor enter the back stage policy-making arena, the better is his chances of influencing the centre stage output (Bachrach and Baratz 1962).

Focus in this study is not on the centre stage dimension of agenda setting but on the back stage structuring of institutional agendas that frames civil servants' perceptions of appropriate problems, possible solutions and efficient procedures for decision-making. In other words, political entrepreneurs needs not only to put items on the systemic agenda but also to keep it there and to control how they are defined and framed (Hogwood 1987). With public agendas constantly on the increase - both in terms of size and complexity - political leadership increasingly concerns the organisation of the policy process; it is no longer enough to make substantive policy choices. Good executive governance concerns organising systematic attention to certain policy areas, societal conflicts, actors, solutions and consequences. Political leaders are increasingly called upon to be organisational designers (Egeberg 2003; Hammond 1986; Olsen 1983). The struggle over an agenda is not just about systematically uploading preferred problems, solutions and consequences to parliamentary voting or of framing these problems, solutions and consequences in specific ways in advance. It is also

about systematically removing items from the agenda (Hogwood 1987, March and Olsen 1989).

In a democratic polity the government has limited control over what items enter the government agenda. One of the most precious and scarce resources of governments is the availability of attention. Governments are usually only capable of managing a limited number of items at the same time (Mayntz and Scharph 1975). In an open society events exogenous to the government often call for attention. Anything from an earthquake to the miscarriage of justice may call for immediate governmental reaction (Olsen 1983). Many scholars picture executive institutions as essentially reactive institutions (Jacobsson 1999, Skjeie 2001). This is also the case in many EU Intergovernmental Conferences where the agenda is to a lesser extent predetermined, stabile and fixed than within domestic governments (Sverdrup 2000). Neo-corporatist literature also advocates that the governmental agendas are penetrated by external non-governmental organisations by design (e.g. Mazey and Richardson 2001). A long tradition of establishing governmental boards and committees for external actors have systematically organised a host of external actors, problems and solutions into the government agenda setting phase, including local and regional administrations, interest groups and individual stakeholders. By systematically and intentionally organising external institutions into agenda setting processes the government is made aware of, sensitive to and reactive towards the problems, solutions and consequences of concern to the external actors. Finally, governments systematically integrate external advice to supply the legitimacy of upcoming decisions (Hogwood 1987). However, the invited external actors may also activate problems, solutions and consequences that are deemed unwanted by the government. This is the reason why the government establishes formal rules and codified strategies of access to prevent unwanted items from entering the agenda as well as to safeguard that other items have a fair

chance of being uploaded on the agenda. In other words, not all centre stage government initiatives are intended to 'rig' or start a back stage decision-making process. Sometimes back stage initiatives aim to take an issue which is potentially difficult to handle off the agenda and deal with it back stage (Hogwood 1987: 46).

Studies stress what is called the 'gate-keeping' or 'boundary policing' function of government systems, highlighting those organisational structures whose main function is to keep issues which are difficult for the political system to handle off the government agenda (Easton 1979). One example of a formal gate-keeping rule is the article in some constitutions, codifying that only the government can initiate proposals to the parliament and that the individual parliamentarians have no right to put forward proposals to amend the governmental bills (Carey and Shugart 1998: 5-9). However, a growing body of literature stresses how domestic governments find it increasingly difficult to control their own agenda because this serves as an integral part of the agenda setting processes within the multilevel community administration (e.g. Gamble 2000). Setting up different types of committees of inquiry is one governmental technique often used for handling and structuring the agenda setting phase, giving the government ample opportunity to precook proposals before they reach the formal decision-making phase. The European Commission has at present over 1000 registered expert or consultative groups for this purpose (Larsson 2003a).

The rational decision-making approach and agenda setting in the EU

A formal description of the EU policy-making as a rational process may be part of a strategy to generate legitimacy for upcoming decisions (see Larsson and Schaefer in this book). Public organisations tend to present themselves as rational organisations where the nuts and bolts of

the organisation are logically interlinked by means of hierarchies or other forms of coordination, in order to create an image of being effective and efficient (Brunsson 1989).

According to the rational model of decision-making the EU policy-making process may be portrayed as sequenced into three stages. First, the agenda setting phase (initiating and preparing policy), secondly, the formal policy-making phase, followed by implementation and administration of policy (including running of EU programmes). This sequential model portrays the Euro-level game as sliced into one bureaucratic (within the Commission services and within the Council Secretariat, the Council working groups and COREPER) and one political level (at the Commissioner level, the Minister level and within the European Parliament). The latter ultimately decides over the former. This depiction of the EU decision-making game fits into a dichotomous conception of bureaucracy and politics (Beyers and Trondal 2004).

According to this rational account, different EU institutions have different roles to play in the three decision-making phases. In the initiating and preparatory phase the bureaucratic level of the European Commission has the leading and active role, especially regarding dossiers falling under the first pillar. The role of the Commission during the formal decision-making phase in the Council and the Parliament is assumed to be less active and primarily aimed at defending its original proposal. The leading institutions during the formal decision-making phase is played by the Council and, especially under the co-decision procedure, by the Parliament,. Next, in the implementing and administrative phase, the Commission is back in the driving seat while the Council in practise, through the so called comitology procedures, plays a passive and more supervising role. Finally, when the rules and regulations are put into practise the European Court of Justice is assumed to be activated and influence the final

outcome (Winscott 2001). According to this model, the European Parliament plays a negligible role in the first phase, a passive one in the implementation and administrative phases – where it is even less important than the Council – and plays an active role primarily in the formal policy-making phase (Cini 2003). The Parliament has an important role in the second phase interacting increasingly with the Council through the co-decision procedure (Scully 2003). The interaction between the Parliament and the Council is also organised within the conciliation committee if mutual agreements are not reached after the second reading by the Parliament. In later years, the role of the European Council has also become more prominent, especially in the agenda setting phase (see below).

The three decision-making phases differ in terms of how they are structured and regulated. The formal policy-making and implementation/administration phases are more strongly organised and regulated than the agenda setting phase. The recent Treaty reforms have established new Treaty provisions to enhance openness and transparencies on how the Council makes decisions and how comitology is set up and work. It also seems fair to say that Member States have focused most of their ambitions to control and influence the policy-making process on the two last phases of the process (Larsson 2003a). Thus, the initiating and preparation phase seems less regulated by Treaty provisions, codified standards and less controlled by the Council and the Parliament than is the case for the implementation and decision-making stages.

Hence, the agenda setting phase is perhaps the most open-ended part of the EU decision-making process. Several analyses have stressed the importance of the agenda setting process within the Commission for the final outcome (Egeberg 2003). Some scholars also point to the fact that agenda setting is much easier in presidential systems than in parliamentary systems

(Peters 1996). In presidential systems or in power sharing systems, more actors, preferences, veto-points and potential stalemates make their presence at the same time in the agenda setting process. Still, Peters (1996) has labelled the EU 'a paradise of agenda setting'. EU agenda setting is characterised by the linking of twenty-five national agendas where each government's control over the final EU agenda is limited by the agenda setting powers of the Commission, the bargaining processes among the Member States within the Council as well as the inter-institutional turf-battles between the Commission, the Council and the Parliament. Also, interest organisations, local governments and governmental agencies which have not been successful in projecting their agendas on the national arena often try to influence the agenda setting process within the European Commission (Jacobsson, Lægreid and Pedersen 2004).

Peters (1996) also contrasts the openness and flexibility of the Commission agenda setting process with that of the implementation process, which, according to him, is more hierarchical and rigid than anywhere else in national government. So, paradoxically, the Commission's agenda setting phase generates decisions that may be difficult to implement. Fouilleux et al. (2002) concluded in their study of the Council working parties that sometimes the discussions during the Commission preparation phases, as in the case of the Working time directive, turn into something that looks more like negotiations between the social partners, leaving little room for changes in the proposal put on the Council's table. Consequently, one should expect the gate-keeping function of the Commission to be of essential importance.

To structure the agenda setting phase the Commission has adopted a set of rules and guidelines. To begin with, the Formal Rules of Procedure adopted by the Commission in 2000 claim that the Commission shall act collectively and adopt annual work programs that set

clear priorities for action. On the basis of these annual work programs the Commision President formally sets the agenda for the Commission. However, if a proposal involves significant expenditures it must be presented in agreement with the Budget Commissioner. A meeting-document shall be circulated in advance of meetings but on the proposal of the President the Commission any question may be discussed. On the other hand, if the President agrees to it, the discussion of an item on the agenda can be postponed until the next meeting, should one Commissioner so demand, or the Commission may decide by majority vote not to discuss an item on the agenda. The Commission shall, as a general rule, meet at least once a week (Commission COM(2000) 3614).

The Commission has also published core principles and guidelines, applicable whenever the Commission departments collect and use expert advice from outside the responsible department. The ambition is to provide for accountability, plurality and integrity of the expertise being used in context of more general principles for better governance such as openness, participation, effectiveness, coherence, proportionality and subsidiarity. In the end, according to the Commission, it all boils down to three core principles – quality, openness and effectiveness. Regarding quality, three determinants are mentioned as especially important: excellence; the extent to which experts act in an independent capacity; and pluralism. However, the Commission points out that excellence do not necessarily mean picking the best scholars in a certain academic discipline. Sometimes actors may be consulted because of their practical knowledge or knowledge they hold by virtue of their affiliation or nationality. The ambition is to minimise the risk of vested interest distorting the advisory process and to promote a process characterised by integrity. Finally, pluralism means that whenever possible a diversity of viewpoints should be assembled (Commission COM(2002) 713).

The second core principle, openness, stands for the ambition of being transparent towards the public when seeking advice from experts. Effectiveness, the third core principle, highlights the importance of departments striving to use limited resources effectively by weighing short-term costs (e.g. staff time) against anticipated longer-terms gains (e.g. smoother implementation of robust policies an ensuring that methods for collecting data and using expert advice are both effective and proportionate (Commission COM(2002) 713).

What impact and practical effect these guidelines and principles will have on the actual agenda setting processes within the Commission is to early to tell, but they clearly indicate the Commission's ambition to formalise the agenda setting phases.

Rational decision-making with the help of the Commission expert groups

Faced with an increasing agenda overload, one strategy available to the Commission is to import a large number of external specialists and experts in preparing initiatives and drafting new legislation. One risk with this strategy is that expertise may become dominant over politics, as expressed in the Commission's White Paper on European Governance,

> *'It is often unclear who is actually deciding – experts or those with political authority. At the same time, when the public is well informed it tends to increasingly question the content and independency of the expert advice that is given. These issues become more acute whenever the Union is required to apply the precautionary principle and play its role in risk assessment and risk-management'* (Commission COM(2001) 428).

Importing external expertise may take many forms, and according to the Commission (COM(2000) 713) it means,

> '...including both scientific knowledge and that derived from practical experience. It may also relate to specific national or regional situations. Expertise may be brought to bear at any stage in the policy-making cycle, although different forms of expertise may be needed at different stages. Sometimes experts and representatives of interested partiers are brought together in single groups. Sometimes they interact by way of workshops or other deliberative mechanisms. In addition, complementary expertise may be gathered during open consultation such as the publication of green and white papers' (Commission COM(2002) 713).

Nevertheless, assisting the Commission in initiating and drafting proposals we find nothing short of a whole army of expert groups, although the exact numbers is difficult to estimate. A rough estimate is between 800-1300 groups depending on how the concept 'group' is defined. Moreover, despite the Commission's rules of procedure the Commission has limited knowledge concerning its expert groups and not even individual Commissioners knows how many exert groups are at work and what they are doing – a knowledge that seems to rest with the lower levels in each DG (Larsson 2003a).

In reality how these expert groups are composed and what their mission is differ enormously (Larsson 2003a). To begin with, some expert groups are of an ad-hoc nature while others are permanent, some are focused on a specific issue and others have more general mandates. The number of participants and how they are categorised also vary. In some committees we only find the independent experts/scientist, in other committees civil servants from the Member

States and/or representatives from interest groups are invited. We even find groups where the three categories are mixed. In some committees university professors are in fact assigned the role as government representatives. A group can be inclusive or exclusive, i.e. including all or just a few of all relevant participants and interests in a certain area (Larsson 2003a). Furthermore, some groups have an agenda setting role (often called high level groups), while others have coordinating functions vis-à-vis other groups, and a large number of sub-groups exists beneath the expert groups. In fact it is not uncommon to find that a Commission proposal has involved not only one expert/consultative group but several, sometimes even a whole army of groups. The procedures and structures used before a proposal enters the public domain may in other words be quite complex and extensive. The Commission is in charge of organising these expert/consultative groups, although the Council may ask the Commission to set up groups. The Commission selects the chairperson, secretary and other participants. It is also worth noticing that expert/consultative groups can be activated when the Commission is drafting a measure to be taken by a comitology committee or a proposition for a position to be taken by the EU in negotiations with third countries or international organisations. The Commission has many duties to fulfil and in basically all of them expert groups are used, not only when creating proposals for new legislation (Larsson 2003a).

Many of the items that make their way to the Commission agenda are not new ones. The Commission agenda need to be adjusted - almost on an daily basis - to changes in society, and many of the permanent groups are set up to review existing EU policy and legislation in different areas and, when necessary, taking initiatives to change it. In other words, a large proportion of the Commission agenda is reflecting societal pressures and demands.

A path-dependency approach

Already in the late 1950s Charles Lindblom (1959) criticized the rational decision-making perspective. According to Lindblom (1959) decisions are not reached as the result of rational means-end calculations of optimal solutions to perceived problems. Instead the decisions of today are usually just piecemeal adjustments of yesterdays' decisions. Consequently, the decisions made yesterday have potentially massive influence on the decision-making options available today, and therefore long-term policy developments are rather predictable. Policy change unfolds through incremental steps locking in potential future policy tracks. This logic of step-by-step change is shared by the neo-functionalist and the historical institutionalist approach of European integration (Haas 1958; Knill 1998). Lindblom (1959) made seminal analyses on the hidden and opaque aspects of the policy-making process by characterising it as muddling through. In what seems to be a contradiction Lindblom (1959) on the one hand argues that new decisions usually deviates only marginally from previous decisions; on the other hand he also points out that gradual and 'secret piecemeal steps' suddenly can lead to a drastic changes of the present policy as the mole suddenly surfaces again. Nevertheless, the muddling trough and piecemeal decision-making theory has some distinctive flavour of conservatism which links it to contemporary historical institutionalist ideas of how policy-making is contingent on historical paths, and that decisions may have unintended consequences. According to Kiewiet et al. (2002: 4), "the long history of the U.S. Congress reveals that many of its features are the unintended and unanticipated consequences of early choices".

Several studies have demonstrated the importance of historical events that determinate the directions of present policies. One strand of research from the Stanford institutionalist school have demonstrated that governments basically tend to continue established policy paths even when they give the impression of reforming policy by using new phrases and concepts to

frame policy changes. Policy-making tends to be primarily about image making and manipulation of symbols (Feldman and March 1981). However, whereas Lindblom (1959) stresses the idea of piecemeal decision-making contributing to gradual changes of policy, the path-dependency approach also emphasises relative stability through incremental change. According to the logic of recency, policy change may involve policy repetition as the policy-makers continue to do joinery on the same old house (March 1994: 70).

However, the path-dependency approach also stresses that dramatic changes are indeed possible. Whereas Lindblom (1959) argues that drastic changes of policy is the result of conscious action of bounded rational actors, the path-dependency approach also stresses the role of external and uncontrollable forces (chocks) that fundamentally transform present policy. In this way both approaches are close to the Kuhnian understanding of how big leaps occur in science. According to Kuhn (1962) one could distinguish between normal science and paradigmatic shifts (revolutions). Usually, policy developments occur through puzzle solving within a shared paradigm providing an agreed-upon conceptual framework among the decision-makers. Politicians, civil servants, interest organisations and other stakeholders often share a common philosophy of how problems in society should be defined and what are good solutions to these problems, and the degree of criticism of existing policy is rather low. Groups that share the same ontological conceptions of politics and society have been described as policy communities (e.g. Atkinson and Coleman 1992). Small groups of actors representing different constituencies who frequently interact are likely to develop a shared set of believe systems over time. They may disagree on details but on the fundamental issues they agree (Biddle 1986). Under certain conditions such groups develop into epistemic communities of like minded experts and into normative communities that share collections of norms, identities and beliefs (Checkel 2004; Haas 1992). However, changes in society may

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occasionally lead to situations when the present policy frame is perceived as insufficient and a redefinition of the present policy is needed – a formative moment has occurred. Perspectives and solutions that previously were believe to be impossible or unthinkable may suddenly be highly preferable, a policy window opens and the new policy may be redirected in radically new directions (Kingdom 1984).

The path-dependency approach describes a circular policy-making process, consisting of three phases that are mutually integrated. The agenda setting or policy development phase is followed by a formal decision-making phase which in the end leads over to the implementation or administrative phase during which additional problems are discovered and fed back into new government initiatives. However, contrary to the rational approach outlined above, the different stages (phases) in circular decision-making processes are mutually integrated and therefore it is difficult to clearly disguise agenda setting from decision-making and implementation. Regular policy-making (puzzle solving) may take place in all three phases (Premfors 1989). Accordingly, agenda setting is about continuously and gradually shaping future policy by generating cumulated knowledge and extensive feed back on how the present policy is working. Also, initiating, maintaining and gardening close and intimate policy networks is important in order to influence the agenda setting.

Path dependency and agenda setting in the EU

In a policy-making system where issues are put on the agenda with little effort, a heavy burden is put on executive institutions to structure, control and filter what enters the policy-making machinery. In the European Union a large part of that responsibility rests with the European Commission. Its exclusive right to take initiatives on matters under the first pillar potentially gives the Commission a pivotal role to play as 'gate-keeper' in the preparation

phase, before issues reach the public stages of the policy-making process of the Parliament. This gate-keeping role entitles the Commission to close gates to external institutions, to open such gates or to keep them only half open. This is where the Commission really has a say, as Rometsch and Wessels concluded in 1997 (226):

'The Commission controls the game in this phase and its basic strategy is one of 'engrenage' (Coombes 1970, p. 86), i.e. to include relevant national civil servants and representatives of lobby groups early enough in its work to get additional information and insights/ and also to establish a solid network of influence (Poullet and Deprez 1977). From the point of view of national civil servants, there is an expectation that their input will be taken seriously by the Commission and that its later proposals will not include unpleasant surprises for them. Thus 'engrenage' is a two-way process for establishing a set of mutually rewarding interactions.'

On the other hand we also find researchers downplaying and questioning the agenda setting power of the Commission, arguing that this power is shared with the Parliament and the Member State holding the Presidency (e.g. Moravcsik 1998). According to Haas (1958:481), "[i]n areas where High Authority action is contingent upon the approval of the Council … the tendency is to wait for the evolution of unanimous consensus in the Council…" (Haas 1958: 481). Joana and Smith (2004) also demonstrate that agenda setting within the Cabinet and among the Commissioners is contingent upon solid networks with national institutions and actors. However, the agenda setting power of the Commission varies a great deal depending on what type of decision-making procedure being used towards the Parliament. Formally, this power is strong when the consultation procedure is used and weaker within the co-decision procedure. After the advent of the co-decision procedure an increased share of the EU

legislation is produced by this procedure (Shackleton 2002: 104) and as a result the Commission may have lost some of its agenda setting power. Some scholars argue that in the last decade the European Council has emerged as an important agenda setting actor that has gradually taken over the Commission's previous role in highly politicises dossiers (Devuyt 2004; Tallberg 2003).

Most initiatives do not emerge spontaneously within the Commission. Most of the initiatives are the result of some kind of external pressure from domestic governments, single initiatives from MEPs, the consequence of existing *aquis* or programme obligations, obligations emanating from international treaties, etcetera. Several observers have tried to estimate the number of initiatives emanating from within the Commission with results varying from five to twenty percent of all initiatives (e.g. Peters 1996). Thus, it is not uncommon to describe the Commission primarily as a reactive institution, responding to pressure from actors external to the Commission. This is particularly argued by intergovernmental scholars (Moravscik 1998). There are also examples of important policy initiatives clearly emanating from within the Commission, as in the case of the establishment of the single market programme, the policy of EU media ownership as well as in several IGC processes (Armstrong and Bulmer 1998; Sverdrup 2000). Furthermore, the Commission also plays an important role in areas where the right to take initiative is shared with the other EU institutions. Since the formal power of the Commission is not constant but varies from issue area to issue area, the Commission sometimes redefine issues or re-categorise them towards areas where it yields Treaty power. Questions about the organisation of domestic retail monopolies (Ugland 2002) as well as issues of recruitment of female professors to tenure positions at European universities (Trondal 2002) are cases were the Commission re-categorised alcohol policy and equality

policy, respectively, towards the competition *aquis* in order to enhance its own Treaty powers.

It is often claimed that the Commission is a small bureaucracy considering its assigned portfolio and number of civil servants, and therefore needs assistance from outside expertise in order to prepare dossiers to the Council and the Parliament (e.g. Stevens and Stevens 2000). Even if the picture of the Commission as a small administrative apparatus heavily dependent on outside knowledge and resources is accurate, the Commission occasionally has sufficient internal knowledge to modulate proposals without the help of external expertise. However, superior knowledge to solve identified problems is usually not enough to get proposals through the later stages of the policy-making cycle; equally important is information on how the Member States and important interest groups may react. For that reason the Commission usually needs to disentangle in advance what kind of resistance the Member States and different interest groups may potentially mobilise (Larsson 2003a). In other words, the Commission is not only dependent upon external expertise in a certain area but also to assess the likely obstacles that lie ahead in terms of competing preferences represented by the Member States and societal interests. Therefore the Commission has developed several techniques (procedures) to import expert advises during early stages of the policy-making process.

Officially, the Commission strongly supports the development towards a reinforced culture of consultation and dialogue achieved by general principles and minimum standards for consultation of interested parties. Treaty obligations also encourage the Commission to consult the civil society and any interests affected by its decisions. In the white paper on governance as well as in other communications the Commission argues that it is already

relying on extensive networks with interested parties, linking them to the decision-making process (Commission COM(2001) 428). The Commission's long term ambition is to be more proactive in its external contacts, extending the process and making it more inclusive, as well as opening up the consultation process as such. On the other hand, the Commission also admits the existence of and need for more focused consultation procedures in certain cases, giving privileged access to the Commission's policy-shaping process, but even in these cases at least a modicum of transparency is arguably needed to shed more lights on the consultation mechanisms (Commission COM(2002) 277).

Although the Commission by some standards is a rather small administration it is big enough to contain competing administrative sub-units. The Commission is horizontally organised into 24 DGs and several hundred units that compete over influence and resources, have developed idiosyncratic sub-cultures, *esprit de corps* and institutionalised perceptions of appropriate problems, solutions, and expertise (McDonald 1997; Shore 2000). Consequently, the perceptions of pertinent problems, good solutions and valid toolkits for salvation within DG Competition are likely to deviate from the perceptions within DG Education and Culture. Moreover, decision-making processes in the Commission are shown to be strongly biased by the horizontal organisational structures of the Commission, where poor co-ordination is evident between the different DGs (Stevens and Stevens 2000). Consequently, different DGs are likely to apply different procedures and techniques to import external expertise and advice from the Member States (Larsson 2003a). One should therefore expect the Commission's horizontal DG and unit structure to affect how the different DGs integrate external information and advice and that every DG and unit develop idiosyncratic informal standard bureaucratic procedures – 'rule of thumb' – on how to link external interests and actors to the Commission's agenda setting phase. It is worth mentioning that the whole comitology system

originates from within the realm of the current DG Agruculture. Larsson (2003a:16) demonstrates that DG Research has by far the most active expert groups. It is also worth noticing that the Commission has a rather free hand in deciding how it will structure and organise its initiating and drafting activities during the agenda setting phase and in theory it has a free choice regarding which external participants to invites. This ranges from fairly loosely structured procedures where few actors are contacted informally by the Commission on a bilateral basis, to the setting up of organised and formal expert groups (Larsson 2003a).

Keeping the footpath open with the help of expert groups

Expert groups are not only an instrument to promote rational and optimal decisions, they also help to navigate a path-dependent policy process. More than half of the EU expert groups are of a permanent character (consultative groups) (Larson 2003a). Expert groups are used as means to stimulate and support the creation of networks or specialized departmental decision-making structures. Inviting a small set of actors for a meeting which later is formalised into a permanent group for regular exchange of information is a often used technique to generate policy networks (Trondal 2001). However, expert groups can also be used to clean the path to formal decision-making, not only indirectly in the policy development phase (Christiansen, Følesdal and Piattoni 2003). Basically this is done in four different ways (Larsson 2003a). 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 that may influence the other stages of the policy process. Bringing people together has always been an important tool in finding solutions to difficult problems.

Expert groups are one way of doing just that. This was a technique frequently used by Jean Monnet him self during his career outside as well as inside the High Authority (Fontaine 1991:56). Four: sometimes the Commission uses expert groups that are officially set up for other purposes such as comitiology committees or working parties in the Council. Another way of creating a fast track for the proposal is to set up a joint committee, i.e. an entity which is at the same time a Commission expert group and a Council working party – also resulting in the compacting of the three phases into one (Larsson 2003a).

According to the path-dependency approach national officials attending EU committees are likely to re-evoke existing preferences, behavioural patterns, roles and loyalties when entering the EU committees. Recent empirical research partly supports this assumption. Counter-intuitively, behavioural and role changes are observed more within the Council working groups than within the Commission expert groups and the comitology committees. Processes of re-socialization are particularly observed among permanent representatives on temporary re-location in Brussels, and particularly among those who interact within COREPER I and II (Haas 1958: 281; Lewis 1998). Intensive face-to-face interaction results in a club-like atmosphere, an *esprit de corps* if you like, and a consensus-reflex among the participants (Lewis 1998). Moreover, national officials on meetings in EU committees develop allegiances towards the EU committees more extensively than towards the EU as a whole (Lewis 1998; Verdun 2000: 140). We thus witness the emergence of several small supranational 'clubs' within and around the EU committees – particularly COREPER and the approximately 250 Council working groups (Fouilleux et al. 2002: 66). Somewhat contra-intuitively, supranational dynamics are revealed to be stronger in the Council working groups than in the agenda setting Commission expert groups (Egeberg, Schaefer and Trondal 2003). This observation was also made by Haas (1958). In fact, "the Council pattern of compromise is far

more federal in nature than would be indicated by the customary practices of intergovernmental conferences" (Haas 1958: 524).

"The members of COREPER [and the Council working groups], … have dual tugs of loyalty" that are quite unusual in international organisations (Hayes-Renshaw and Wallace 1997: 81). As indicated, national officials that take part in the agenda setting of the Commission are Janus-faced: they are representatives of their Member State in addition to being ambassadors of the EU to their country (Lewis 1998: 483). This is a continuous tension felt by many domestic 'Eurocrats'. This tension reflects their dual institutional embeddedness in the domestic *and* the EU arena. According to Lewis (1998: 484), COREPER is a site where Member States internalise and endogenise new ways of articulating, defending, and representing their self-interests. Despite the Council being primarily an intergovernmental institution, some segments of the Council are more supranationally oriented than others (the 'clubs'). This is particularly the case among permanent representatives, especially those chairing the Presidency and those who interact frequently among other nationalities than their own (Hayes-Renshaw and Wallace 1997: 236; Lewis 1998). We can thereby talk about a cognitive shift among some national civil servants where 'the cognitive boundaries between the two levels have become blurred' (Lewis 1998: 500). A similar supranational shift is observed among civil servants attending the Council working groups and the Commission expert groups, although more in the former than in the latter (Egeberg 1999). EU committees thus serve an important function in the construction of a multilevel community administration in Europe, however, contingent on the conservative logic of the path-dependency approach.

Studies also indicate stronger cognitive than affective changes towards supranationalism among European elites (Kerr 1973). Actors, for example, acquire greater knowledge about

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EU institutions and decision-making processes without developing a greater sense of loyalty to it. Changes in cognitive orientations, however, may be a prerequisite for future changes in affective orientations (Egeberg 1999: 466). These changes are mostly due to the intensity of interaction in the EU institutions. Less support is lent to the effect of length of participation at the EU level (Trondal 2004b).

According to Mitrany, functional loyalties would arise from experiences from international cooperation generally. Research indicates that this is not a universal truth, but an insight that is valid for international and supranational organizations that are organised by purpose and process rather than territory (as for example the Commission expert groups). Ernie Haas (1958) also assumed that elite interaction within the Community institutions would accompany elite learning and re-socialisation into a community spirit at the expense of national loyalties. In accordance with the path-dependency approach, this chapter indicates that the emergence of supranational allegiances does not come at the expense of existing national loyalties. The emerging community administration thus integrates several conflicting governance dynamics, generating new role conflicts for national civil servants (Larsson 2003b)

Relevant to ask is if supranationalism is the result of *pre*-socialization at the domestic level, and thus evidence of path-dependent domestic institutional 'pre-packing' more than of *re*-socialization at the EU level. Examples of self-selected supranationalists are observed mostly in the COREPER (Lewis 1998). In the Commission expert groups there are fewer indications of self-selection that may indicate pre-socialization at the domestic level. This does not mean, however, that supranationalism may not have domestic origins (Trondal 2004b). Solid empirical conclusions to this puzzle are yet to be made.

The above observations illustrate the so-called third face of power, introduced by Lukes (1974), namely the transformation of people's preferences, roles and identities (Ham and Hill 1997: 67). Under the influence of re-socialisation, newcomers join established networks and over time come to share the policy ideologies in the network by walking in the footsteps in their predecessors. In other words, expert groups are often an instrument for integrating the different phases of the decision-making process and generating stability and predictability to the process.

A garbage can approach

It would be a mistake to believe that policy-making processes are always perfect rational processes or resembling a logic flow of events where every piece of legislation starts with a definition of a problem, followed by an identification of and discussion of the full range of solutions that satisfy the production of Pareto optimal solutions (Simon 1957). The garbage can model has been presented as a more realistic description of how decisions sometimes *happen* when faced with problematic preferences, unclear technology and fluid participation (Cohen, March and Olsen 1972). According to this model government decisions are taken by decision-makers with limited cognitive and computational capacities in "anarchistic" situations, e.g. sometimes solutions are identified before the problem is discovered and the policy-making process can best be descried as flows of problems, solutions, participants and choice opportunities. Agenda setting processes are pictured as non-standardised, fluid, discontinuous and loosely organised processes where sudden windows of opportunity or external chocks activate certain problems, initiatives, solutions and participants and pack them together (Heimer and Stinchcombe 1999:28). External chocks frequently open up the opportunity to change agendas within policy areas that were perceived deadlocked. In garbage

can situations the processes is less organised and thus open to creative decision-making, policy innovations and sudden turns that were not intended beforehand. Garbage can-like situations hence open the leeway for policy entrepreneurship (Pollack 1997). Ambiguities are pictured as a central part of the decision-making process in such situations. Policy-making processes characterised by garbage can elements are centred on matching constant flows of decision opportunities, solutions, problems and constantly shifting participant. Agenda setting processes are typically pictured as ad-hoc happenings that need a high degree of standby capacity for attention in order to grab choice opportunities in rapidly changing situations.

The garbage can approach and agenda setting in the EU

Although several scholars have pointed at the unpredictability and ambiguous character of EU decision-making processes, surprisingly few studies have systematically analysed the anarchistic elements of it (e.g. Richardson 2001). No domestic government system, whether federal or parliamentarian, is exactly alike the European Union system of governance. With several unsettled institutional ambiguities between the three pillars, the rotating Presidency, with a strong indirectly elected legislator (the Council), and a growing multilevel community administration, the EU governance system is largely built on institutional innovation rather than institutional imitation from national governments. Moreover, it is not uncommon to find those who stress that the EU should be regarded as a system in its own right – *sui generis* (e.g. Kohler-Koch and Eising 1999: 3).

One *sui generis* aspect of the EU polity, compared to other international organisations, is indeed the multilevel community administration. The multilevel governance approach emphasises the integration and meshing of national and EU decision-making processes and logics, and how formal and informal authority is dispersed between levels of government and

actors (Christiansen, Føllesdal and Piattoni 2003 ; Hooghe and Marks 2001). National governments no longer monopolise interaction between domestic actors, the EU institutions and other EU Member States (Hooghe and Marks 2001: 4; Wessels 1998). Policy-making is formed in an environment of 'a horizontally as well as vertically asymmetrical negotiating system' (Christiansen 1997:65). The multilevel aspect of the EU decision-making process contributes directly to the anarchic picture of EU governance (Richardson 2001: 20). Rosamond (2000: 111) goes so far as describing multilevel governance as being 'about fluidity, the permanence of uncertainty and multi modalities of authority – suggesting an association with post-modernity'.

Faced with a high degree of uncertainty and complexity in this multilevel policy-making system the European Commission needs institutionalised instruments to handle and grab opportunities when a 'policy widow' opens. However, the garbage can logic of informal governance, which is not codified or publicly sanctioned, may arguably be formalised through expert groups.

Institutionalising the garbage cans with the help of expert groups

Heimer and Stinchcombe (1999) argue that the randomness of organisational decision-making processes was overstated in the original version of the model of Cohen, March and Olsen (1972). In our context, expert groups are functional in remedying garbage can situations, for example when groups are put on ice (passive groups) in waiting for the right moment to be reactivated – with or without the old crew. Active expert groups help systematising, arranging, and grouping together actors, schedules, problems and solutions than would otherwise not have been paired.

It happens that groups/committees change hats (authority) almost at a moments notice in a truly fascinating way (Larsson 2003a). When they do, they may look the same but under a different name, and the participants may even be the same. In reality, however, substantial changes in the organization and character of the groups/committees tend to occur. In other circumstances, expert groups may temporarily fade from the scene due to lack of progress on a particular issue or where an issue has turned cold. In such circumstances the whole issue can simply be put on the shelf waiting for the moment when perhaps another step forward is possible. What is essentially the same expert group can then resume its work again, although not necessarily with the same participants. On other occasions the Commission can propose a suggestion by an expert group, claiming that the issue has been discussed in an expert group. In the implementation phase, a comitology committee often has a duplicate, an expert group with more or less the same crew as the committee and in some cases a comitology committee can switch hats quickly, taking on the guise of an expert group during a meeting, if difficult issues arise which need more informal discussions. In other words, formal structures are constantly complemented and supported by informal ones in organising garbage can-like situations (Larsson 2003a).

In other cases different types of expert groups are established in the same area. In fact it is not usual to find a whole mosaic of expert groups, some called senior or high level groups, other umbrella or coordinating groups, or just named expert groups and additional subgroups serving the expert groups or high level groups, all working on the same issues but with more or less oversight (Larsson 2003a). Hence, ambiguities in the agenda setting process of the EU result from the sheer number, complexity and opaque of the committee system.

Moreover, the ambiguities of the agenda setting powers of EU expert groups are also conditioned by the Member State institutions serving them. EU committees have multiple roles to play in the EU agenda setting processes – aggregating Member State preferences, collecting technical and functional information, as well as deliberating and arguing towards a common solution. EU committees are intergovernmental, functional and supranational institutions. This complex mix of decision-making dynamics among these committees creates garbage can-like situations, for example when national officials attend EU expert group meetings serving several masters – notably their independent expertise, the policy area or portfolio within which they are embedded, their ministry and government, as well as the European Commission.

Beyers and Trondal (2004) compare Belgian and Swedish civil servants attending the Council working groups and demonstrate how diverse domestic institutional constellations accompany different degrees of supranationalist orientation among these officials. Arguably, supranational role orientations are associated with institutional ambiguities. The Beyers and Trondal study reveals empirically that Belgian officials are more supranationally oriented than Swedish officials because of, 1) the vertically and horizontally (sector) specialized Belgian government apparatus, 2) the federal state structure, 3) the large number of competing veto-points in the Belgian polity, 4) the great number of actors involved in domestic coordination that challenge the role of the Belgian Foreign Ministry, and 5) the lack of trust in the Belgian federal government paralleled with a high degree of trust in the EU. The Belgian federal system is more ambiguous and garbage can-like than the Swedish state, accompanying stronger supranational orientations among Belgian officials than among Swedish civil servants.

Also the seminal study of Scheinman and Feld (1972: 133) supported the causal importance of domestic institutions as to mould the identities of domestic EU committee participants. However, only recently have scholars begun investigating systematically the many ambiguous faces of EU committee decision-making (Egeberg, Schaefer and Trondal 2003). A comparative study of civil servants from the transport ministries of five small EU Member States highlights the importance of domestic institutions as the primary locus of identification and role orientation (Egeberg 1999). Trondal (2001) also demonstrates that the vertical organization of the domestic bureaucracy matter in this respect. Officials employed at the agency level, beneath the ministry level, adopt stronger sectoral allegiances than officials at the ministry level. A similar conclusion is drawn with respect to officials in top-level positions when compared to civil servants in lower level positions in the domestic administrative fabric (Trondal 2001). These studies also demonstrate, as mentioned before, that officials attending the Council working groups evoke a national role orientation more strongly than those attending the Commission expert groups. This observation partly reflects the fact that the Council working group-participants are more closely coordinated from the domestic Foreign Office providing them with written mandates and instructions than the participants to the Commission expert groups (Beyers and Trondal 2004). National officials attending the Commission expert groups seem to be entrusted with ambiguous mandates from different constituencies.

A growing literature on processes of Europeanisation of domestic policies and institutions argue that the degree of institutional or policy fit and mis-fit affects the degrees of institutional ambiguities across levels of governance (Cowles, Caporaso and Risse 2001). Illustrating institutional misfit, Egeberg (1999) demonstrates that civil servants from domestic sector ministries, particularly those attending the Council working groups and the comitology

committees, face ambiguous situations that challenge them to evoke new territorial roles. This observation is also supported by Jacobsson (1999), who observes that Swedish civil servants from sector ministries became increasingly aware of their national role after entering the Council system. The Swedish EU membership spurred a demand for coordinated Swedish positions among sector-experts, and thereby challenged their pre-existing (sectoral) role orientations. Substantiating institutional fit, Trondal (2001) reveals that officials from the domestic Foreign Office and from the Permanent Representations attending the Council working groups and the COREPER primarily evoke a national role orientation. Due to institutional fit between the Foreign Office/Permanent Representation and the Council structure, the officials are *not* challenged to shift roles, but to sustain and strengthen existing national roles. All these studies seem to support the claim that institutional ambiguities foster behavioural changes and role shifts among national EU decision-makers attending EU committees.

The sheer impact of the Commission expert groups on the agenda setting of the Commission render it likely that national officials attending the same Commission expert groups evoke similar role perceptions in their agenda setting activities. For example, Trondal and Veggeland (2003) show that Norwegian and Swedish national officials attending the Commission expert groups evoke fairly *similar* roles – national, functional and supranational roles (ordered by importance). The expert groups, however, have a stronger functional or sectoral dynamic than both the Council working groups and the comitology committees. Egeberg (1999) shows that Council working groups are mainly intergovernmental institutions, inducing officials to evoke national roles and identities more than functional and supranational roles and identities. Similar observations are made for the comitology committees (Egeberg, Schaefer and Trondal 2003). The Commission expert groups, by

contrast, are revealed to have a stronger functional dynamic, accompanying independent expert roles among the national officials (Egeberg 1999). Moreover, the fact that all three classes of EU committees embody institutional ambiguities by organising several principles of horizontal specialisation into each committee accompanies conflicting decision-making cues within each committee.

Over-simplistic pictures of EU committee decision-making, provided for example by approaches like Wessels' fusion thesis (1998), are hereby rejected empirically. Moreover, whereas Joerges and Neyer (1997) locate deliberative supranationalism within the comitology committees, this chapter underscores the many faces of EU committee decision-making. The comitology committees and the Council working groups are primarily intergovernmental institutions promoting territorial roles and allegiances among the participants. The emphasis on expert knowledge and the promotion of the "common European good" is stronger among officials participating in the agenda setting endeavours of the Commission expert groups (see also Christiansen and Kirchner 2000: 8).

Conclusions

No present international organizations have established a multilevel community administration that integrates national executive institutions into its orbit of agenda setting to the same extent as the European Commission. The emerging multi-level community administration centred in the European Commission is characterized by several institutional ambiguities, notably a mix of national, functional and supranational governance dynamics. International organisations are typically organized according to a territorial principle of organisation with a fairly weak secretariat and a parliamentary assembly without an independent supranational mandate. However, few contemporary international organisations

have institutionalized a committee system that integrates external expertise and national civil servants to the same extent as the European Commission. Accordingly, the degree of interaction between the EU Commission and the Member States' administrations is likely to be stronger than in the case of traditional international organizations. And the agenda setting power of the Commission exercised by its expert groups are main instruments in promoting this integration.

This chapter has illustrated different faces of the agenda setting processes within the European Commission from three theoretical perspectives. Particular emphasis has been put on how the Commission controls and policies expert groups in order to influence and manage the EU policy-making agenda. Commission agenda setting by the use of small and large expert groups is revealed to activate dynamics of instrumental rationality, path-dependency and garbage cans. The expert groups are used instrumentally as arenas for deliberation, brainstorming and intergovernmental conflict solving, as meeting places to solve complex technical problems, as well as transformative institutions that help upgrading shared belief system among the group participants.

This chapter challenges the current intergovernmental – neo-functionalist divide in European integration scholarship by studying the integration of domestic and EU institutions in the agenda setting phases of EU decision-making process. Domestic government officials who interact in EU committees are embedded into different government structures and face several subsequent institutional ambiguities. Consequently, these officials tend to evoke multiple behavioural patterns, roles and identities when participating in the Commission agenda setting process. Because several roles and identities crosscut each other they are activated under different institutional conditions. Functional roles and identities are evoked primarily among

national officials attending the Commission expert groups. Supranational roles and allegiances are evoked primarily among national officials working in the Permanent Representation in Brussels due to their intensity of participation in the EU committees. Behavioural change and role shifts are also observed among those officials facing institutional ambiguities fostered by the complex EU committee machinery illustrated above.

Acknowledgements

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[1] A distinction is sometimes upheld between expert groups/committees and consultative groups/committees. Expert groups consist of national officials, experts and various specialist nominated by national governments, while consultative groups consist of representatives of sectional interests, organised and funded by the Commission. (Nugent 2003: 129-30). However, in reality the distinction between the two types is difficult to uphold and so is the distinction between groups and committees – there seems to be no logical reason given for when something is called a group instead of a committee (Larsson 2003: 125-26). We will therefore in this chapter use the concept expert group as a common denominator for all types of groups and committees set up by the Commission, while committee will be used as a common denominator for all kinds of committees and groups set up by the European institutions, including working parties in the Council and the so called commitology committees.