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**The anatomy of EU policy-making:  
Appointing the experts\***

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**Abstract:** At 38,000, the total number of staff at the European Commission is relatively small for a body representing half a billion citizens. Likewise, the 3,500 strong research and statistical team is modest in size given that it operates across the Directorates General and other services. In order to assist policy-makers, the Commission supplements this research base by using outside expertise to advise at all stages of the policy-making process. For many years, those who observe the European Union's institutions have recognised that this use of outside expertise to assist with the shaping of policy presents a potential democratic shortfall. The 2001 White Paper on Governance acknowledged that the line between expertise and political authority had become blurred and that, increasingly, the public questioned the independence of expert advice. The following year, the Commission published its first set of guidelines on the collection and use of expertise, listing 'openness' as one of three core principles.

Despite considerable changes that have occurred in the transparency landscape in the intervening period, the Commission's commitment to this core principle of expertise remains. This article investigates the measures the Commission introduced specifically to facilitate this openness. Applying a structure-agency approach, the article characterises an expert group as a 'community

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of knowledge' and contrasts the transparency of the Commission's formal appointment procedures with the less visible but frequently used informal measures through which individuals are identified and approached.

Based on a recent and highly relevant case, the article employs data gathered from the near contemporaneous accounts of expert group members and Commission officials. It finds that the reported appointment processes do not reflect the widespread incidence of individuals selected based on previous contact or personal recommendation and argues that this may undermine the integrity of the Commission's core principle of openness in the use of expertise and in its broader transparency measures. In terms of the motivation of those responding to the Commission's call for experts, the article finds that membership of an expert group confers a degree of professional prestige that directly benefits individual members and offers competitive advantage to their parent organisations.

**Keywords:** Agenda-setting; civil society; directives; expert committees; European Commission; European officials; governance; interest representation; knowledge; policy networks; pre-negotiation; transparency.

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## Introduction

This article employs a structure-agency approach to consider the role of the European Commission expert groups in the policy-making process. Whilst a significant body of literature has been established on the role of committees in policy-making, this has often focussed on the work of the comitology committees (Blom-Hansen and Brandsma 2009; Wessels 1998). Other scholars have looked more broadly at comitology, the council working groups and the expert committees (Egeberg et al. 2003), but relatively little work has looked solely at the work of the

expert groups; and still less has sought to examine the inner workings of such a group. Yet understanding how the important role they play is affected by the composition of the groups is essential in developing our understanding of the European Union (EU) policy process and, indeed, in broader questions of EU governance. The importance of expert groups certainly appears not to have been lost on lobbyists and other interest groups as evidenced by the promotional material on the website of the public affairs agency *The Brussels Office*, which offers specific training simulating the negotiations in expert groups (The Brussels Office 2013).

This article is in two parts. The first structural section focuses on the architecture and functionality of the expert groups. It examines their numbers, disparate nature, configurations and the varying roles they undertake within both the different directorates general (DGs) and, more broadly, through the policy-making process. The second section considers the role of agency within policy-making – looking within an expert group to examine the appointment process and experience of the individuals operating within that group as a single community of knowledge. As the Commission has nearly 800 such groups, with over 12,000 experts operating across 26 DGs, and advising in numerous policy areas of differing degrees of EU competence and political sensitivity, capturing the breadth and variety of experiences in such a complex field is outside the scope of this article. Rather, it presents richer data through an in-depth study of a particular case presented through the experience of the individuals that attended the relevant meetings.

Although little studied, the expert group is a key part of the EU policy-making process and, for this article, represents the structure-agency gap in microcosm. For example, the Commission establishes an expert group to provide it with expertise where none exists in-house and, whilst sometimes involved throughout the policy process, the formal remit of the majority of groups is to assist the Commission with the drafting of a proposition before it is submitted to Council. However, this formal mechanism may mask informal processes whereby the individuals within the expert group serve simultaneously on Council working parties, creating a *de facto* system where ‘basically, the same constellation of people [are used] throughout’ and where, *in extremis*, ‘groups of individuals have been known to meet twice in one day – firstly as an expert group and later as a comitology committee’ (Larsson 2003). This study explores the space between these formal and informal mechanisms – between the institutional structure and the role of agency within EU policy-making.

Although sharing some features, given the complexity and variety of their demography, conceptualising the expert group as a classic epistemic community is insufficient (Haas 1992, p3). Whilst some groups advising in certain policy areas may well be considered to meet Haas’ definition of ‘a network of professionals with recognized expertise and competence in a particular domain...’, this cannot be considered to apply to all groups, some of which have a very large membership representing a wide cross section of interests. Thus, in order to capture the broad nature of the expert groups and to acknowledge that they advise in areas with differing degrees of technical complexity, political sensitivity and legal competence, this article conceptualises the expert group as a community of knowledge: a group of individuals coming together under the auspices of the European Commission to share professional knowledge and experience in order to inform the policy-making process.

This article draws on the publicly available documentation published on the open electronic register of expert groups and a series of in-depth interviews with twelve individual expert members and four Commission officials conducted in Brussels and a number of other European

capitals during November and December of 2012. The article addresses three particular questions. Firstly, how are the nature and extent of the informal appointment mechanisms used to supplement the Commission's formal appointment process? Secondly, what are the motives and experiences of those who apply for membership of a group that, in advising the Commission at the agenda-setting phase of the process, is a largely invisible part of the anatomy of EU policy-making? Finally, where individuals are appointed in a personal capacity, how are the rules designed to promote a balanced representation of interests within the group applied?

The research for this article was undertaken in 2012 in the context of the largest financial crisis since the introduction of the single market and with serious questions over the long term future of the single currency. As such, a case study was identified which reflected these challenges. In addition to dealing with an area of high political salience, the selected group had finished its work recently, allowing members to speak freely but whilst memories of events were still fresh. Thus, the expert group advising on cross-border insolvency – a common legal remedy for addressing market failure – provides the case study discussed in the second section.

## **1. The structure of the expert groups**

### **1.1. Defining an expert group**

A number of scholars have noted that, within the EU, the overlap between European advisory groups, committees, working groups, and working parties leads to a situation where identifying an expert group is far from easy (Egeberg et al. 2003; Larsson 2003). Whilst this may be a feature of the EU's 'world of committees' (Larsson 2003: 27), the potential for confusion is magnified as the Commission may apply different labels to describe similar bodies creating a plethora of taskforces, high-level groups, working groups, working parties, and so forth. Nugent (2001: 243–46) sought to create a classification system through which advisory committees were distinguished by role: consultative, expert, and 'others'. Whilst this is a useful delineation for looking at the broad role of committees in the policy process, when applied specifically to the expert groups advising the Commission it does not classify them according to function – some groups act solely in an advisory capacity whilst others are involved in implementation and monitoring. It may be of some use, therefore, to determine how an expert group *formally* differs from a comitology committee both in the manner in which it is established and its role.

Article 202 of the Treaty Establishing the European Community (TEC) provided for the Council to 'impose certain requirements' when delegating implementing powers to the Commission. The comitology committee system is one means through which this is achieved. Members are appointed by the member states and, as such, the comitology committees are mandated to represent the interests of the members (Blom-Hansen and Brandsma 2009: 721). In terms solely of its formal remit, then, a comitology committee can be characterised as the means through which the Council scrutinises the Commission's exercise of its delegated powers. Its principal role is to offer formal opinions on the Commission's proposed legislation and, whilst it has no authority to amend or reject such proposals, article 290 of the Treaty on the Functioning of the

European Union (TFEU) provides the authority for it to refer such proposals to Council which may, in turn, opt to revoke the delegation (European Commission 2011a).

Expert groups, by contrast, are Commission entities. Defined by the Commission as a body established to provide it with advice and expertise consisting of at least six public and/or private sector members and meeting more than once (European Commission 2002), these groups are of two types. Formal expert groups are established directly by the Commission but the majority – those established by a department of the Commission – are informal. Significantly, notwithstanding the post-Lisbon reduction in its autonomy in this area, the Commission selects the individual members and thus determines the composition of the expert groups.

## 1.2. Architecture of the expert groups

At 38,000, the total number of staff at the European Commission is relatively small for a body representing half a billion citizens. Likewise, the 3,500 strong research and statistical team is modest in size given that it operates across the Directorates General (DGs) and other services (Vassalos 2010). In order to assist policy-makers, the Commission augments its knowledge base by the use of expert groups to advise at all stages of the policy-making process. A number of academics have sought to determine the number of groups and to quantify the source of expertise within a given group or parent DG (Gornitzka and Sverdrup 2008; 2011; Larsson 2003; Wessels 1998). Although comparing numerical data drawn from differing sources is clearly problematic, it seems apparent that the numbers of groups has increased significantly over time. Wessels (1998) found that, in 1990, there were 602 expert groups, a number that grew to 851 by 2000 (Larsson 2003). In 2005, the Commission undertook to increase the transparency of the groups through the publication of a Register of Expert Groups which, when published in 2007, contained 1237 entries (Gornitzka and Sverdrup 2008: 733), although a 2009 search by the Alliance for Lobbying Transparency and Ethics (ALTER-EU) revealed only 987 expert groups; a significant reduction that, for a somewhat sceptical ALTER-EU, reversed a 40 year trend and ‘coincided with the point where the Commission had to publish all the names of participants’ (Vassalos 2010).

At the time of research for this article (Spring 2013), the electronic register listed 828 expert groups of which 789 were active. These groups consist of experts representing national administrations, organisational interests, and those appointed in a personal capacity. According to the Commission’s expert register, nearly 80 per cent of these groups are composed of experts representing national administrations ( $n = 630$ ), whilst approximately 13 per cent are constituted from experts appointed in a personal capacity ( $n = 108$ ) and 7 per cent experts appointed to represent corporate bodies ( $n = 55$ ). However, whilst these headline figures may be correct, they do not accurately reflect the numbers of individual experts from the various sectors as the group size varies from as few as six members to more than fifty. Furthermore, in the case of corporate representation, appointees frequently represent an entire sector – such as the European Automobile Manufacturers Association – rather than individual companies. A number of Brussels based societal organisations, including Corporate Europe Observatory and the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), have sought to analyse the extent of corporate representation in the expert groups. In a 2012 publication, ALTER-EU claimed that

‘two thirds of DG ENTR’s expert groups with non-governmental participation are dominated by corporate interests’ (ALTER-EU 2012).

In terms of the meetings themselves, the frequency varies but they are generally held only two or three times each year. Meetings normally take place in Commission premises in Brussels and the Commission generally chairs the meeting and provides secretarial support. With the exception of those expert groups advising under the seventh research framework programme (FP7), group members are unpaid, although they may claim travel expenses for attendance on production of receipts. Given the reliance that the Commission places on the provision of expert advice, the fact that members are unpaid may initially be surprising, but calls for experts often result in more applications than needed (Interview 16 - Commission official). Where appointees represent an organisation or government, the rationale for applying for membership is fairly clear. It is, however, intriguing to consider the rationale for applying in the case of the 3920 individuals advising in a personal capacity, rather than as a representative of a particular body. At the time of research, such individuals were appointed to 103 different expert groups across a range of DGs and advising in numerous policy areas. This raises some pertinent questions concerning the motivations of the individuals concerned, an issue investigated in more detail later in this article.

In their 2008 study, Gornitzka and Sverdrup analysed the distribution of expert groups across the various DGs in order to establish whether they acted as loose networks of individuals sharing a common area of expertise or as well established consultative bodies with clear and common procedures. In order to analyse the distribution of groups across the directorates, they tested a series of hypotheses to establish a relationship between the incidence of expert groups and variables such as policy competence or a DG’s size and budget. Gornitzka and Sverdrup used the Commission’s Register of Expert Groups to create a database which classified the groups into policy areas and the participants within the groups into professional categories (representatives of NGOs, members of the academic community, and so forth). Whilst the authors state that the Commission’s register is a fairly reliable source of information ‘...underpinned by the formal rules of the register’ (Gornitzka and Sverdrup 2008: 732), others have been less convinced. ALTER-EU, which campaigns for increased transparency in this area, complain that the register – drawn up as a result of the 2004 commitment of Commission President Barroso – is not complete as it does not provide details of sub-groups nor complete membership details (Vassalos 2010: 76). However, post-Lisbon changes to the rules governing the register appear to provide for it to contain improved – although still incomplete – information concerning the expert groups.

In the case of the expert group selected for the case study in this article, the publicly available information on the electronic register was accurate, but it was not complete. Whilst the names of the individual group members were available, as was the group’s terms of reference and the agenda of the initial meeting, subsequent agendas and minutes of meetings were not posted on the website in accordance with the Commission’s guidelines (European Commission 2002; 2010).

By far the most detailed study of expert groups to date is Larsson’s 2003 study undertaken on behalf of the *Expertgruppen för studier i offentlig ekonomi* (ESO) – an independent body of researchers established by, and reporting to, the Swedish Ministry of Finance. Given the difficulty in distinguishing an expert group from a working group or steering committee, Larsson approached the problem by identifying a number of the features he expected to find in a group. He showed that although those groups established by the Commission as a result of treaty changes or directives are generally referred to as ‘committees’, and less official bodies are

usually termed ‘expert groups’, this terminology is far from consistent. Given this lack of consistency, Larsson started from the position that expert groups consist of individuals with a common specialism (i.e. ‘experts’) rather than individuals representing national interests. However he found that, in many cases, ‘the “experts” in question are in fact officials sent out from ministries and government agencies of the Member States’ (Larsson 2003: 57). Although Larsson’s data is some years old, Gornitzka and Sverdrup’s more recent work supports this proposition – they found that over 80 per cent of groups include national administration officials amongst the membership and that:

‘If you happen to open a door at any randomly selected expert group meeting, there is about a 50 per cent chance that you will find *only* national officials seated around the table’ (Gornitzka and Sverdrup 2011: 54, emphasis added).

Research for this paper confirms that this tendency towards including a high proportion of national officials within the groups continues. Whilst approximately 80 per cent of active groups have some national officials within the membership ( $n = 630$ ), more than half of these have only national officials ( $n = 332$ ) representing 42 per cent of all expert groups.

Having identified the challenge of identifying a group, Larsson considered ordering them with reference to the Commission’s own data. The available information proved to be far from complete, however, as the ‘shape’ of the expert group structure varied between policy areas and DGs – a finding that predates but reinforces both Gornitzka and Sverdrup’s findings and the breakdown of groups undertaken for this study. Analysis of the expert groups by DG shows that those with senior officials may be classified as either ‘high level group’ or ‘senior expert group’, depending on the DG involved. Similarly, some DGs use the term ‘umbrella groups’ to describe an arrangement where a number of member states have a particular interest in a given policy area and therefore ensure high level representation which, in turn, leads to the establishment of a number of ‘sub groups’ reporting to the umbrella group. Confusingly, the membership of these often overlaps – a member of the umbrella group may also belong to one or more of the sub-groups. Nor is this confined to individuals. Larsson’s earlier study found examples of sets of people appearing in different configurations and of old groups retaining their functions but being given a new name. Further, sub-groups are employed by other DGs as working groups to assist a regular expert group and also with overlapping membership. Whilst the inclusion of such detail may appear of little direct consequence to developing an understanding of expertise as part of the policy process, it is included here in order to illustrate how lines of authority may be blurred and hierarchical relationships rendered indistinct. Section two will demonstrate that, within the narrow confines of the expert group community, this blurring of authority is particularly stark: individual experts from this community of knowledge have often had previous professional dealings both with each other and with the relevant Commission officials.

### **1.3. Commission’s control of expert groups**

It is difficult to address the question of how the Commission controls the work of the groups, without first exploring the motives behind a decision to establish such a group. Given that the remit of an expert group is to provide expertise and advice to the Commission, this may seem a

somewhat redundant question but Larsson identified a number of purposes of an expert group – an issue that will be revisited in this article’s case study.

Firstly, a group may set the agenda by agreeing that a particular issue requires a common European response. Secondly, it may be used to ‘de-politicise’ an issue by transforming it from the political to the legal or technical one. Thirdly, it may be a means of building or mobilising support for a particular policy issue. Here, interested parties become involved in the policy process through their involvement in an expert group which, in reality, is simply a means through which ‘pre-negotiation’ is conducted, ensuring that the selection of a particular policy is a mere formality. Finally, groups are formed to reduce the pressure for action on a particular issue by creating an *impression* of activity: the expert group as a fig-leaf (Larsson 2003: 20– 3).

This characterisation, whilst adequate as an explanatory tool for showing differing rationales for the creation of an expert group, lacks a certain refinement. For example, this article's case study could be considered to have an overlap of purpose, with the expert group in question providing a common European response and a means through which the selection of a policy is de-politicised or at least non-controversial. This is discussed in more detail later in this article.

Although the regulatory framework through which the Commission controls the work of the expert groups has been subject to a number of recent – post-Lisbon – changes, it remains lightly regulated with few formal rules governing the process. In Larsson’s study, he remarked on the Commission’s ‘unlimited possibilities to...influence the outcome of the committee’ (2003: 75) and it remains the case that the Commission exercises control through its capacity to establish or abolish a particular group, through choosing to invite certain participants over others, and in exercising its privilege to appoint a group chair.

Furthermore, the Commission typically approves an expert group meeting agenda and provides both the premises and secretarial services to facilitate this meeting, a feature Larsson amplified by observing that ‘the one holding the pen has far more influence than most other members of a committee’ (2003: 74). More recently, Gornitzka and Sverdrup also remarked on the Commission committee structure’s lack of ‘a well-articulated set of rules to regulate its operations’ (2008: 728). That notwithstanding, following the adoption of the 2010 framework agreement between the Parliament and Commission which was introduced after ratification of the Lisbon Treaty, some *formal* regulation of expert groups has been introduced. Article 3a of this agreement states:

‘The Commission will apply the basic principle of equal treatment for Parliament and the Council, especially as regards access to meetings and the provision of contributions or other information, in particular on legislative and budgetary matters’.

In late 2010, a communication from the President of the European Commission established a set of rules governing the expert groups. This document contained provisions on the creation and scope of an expert group, together with guidance on ensuring a balance of gender and geographical representation, as well as a commitment to adopt an open call for applications where practicable (European Commission 2011b). Individuals within the groups are deemed to belong to one of three categories: individuals appointed in a personal capacity, representatives of organisations, and representatives of national administrations.

It appears, then, that since earlier studies, guidance concerning the expert groups has been introduced, although, to date, no analysis of its effectiveness appears to have been made.



Likewise, the role of individual actors within these groups has, to date, been overlooked – a point reinforced in an earlier study:

Our data do not allow us to examine the *dynamics within* these groups, the frequency of meetings, or the *relative influence* of the advice provided by the expert groups on policy-making and implementation (Gornitzka and Sverdrup 2011: 51, emphasis added).

The next section makes a contribution to understanding these dynamics by analysing the experience and motivations of individual members appointed to expert groups.

#### **1.4. Inside an expert group**

This section considers the extent to which the official documentation concerning the appointment process and the procedures of expert group meetings reflects individuals' experience and to understand the motivations of those who apply for membership of a Commission expert group. It shows that DGs often maintain databases of previously used experts, and these form the basis for informal approaches drawing individuals' attention to particular calls for experts. As this article discusses in the introduction, however, there are over 12,000 individual experts operating across nearly eight hundred active expert groups. As such, capturing the breadth and variety of experiences of any individual - or any set of individuals – is beyond the scope of this article. By definition, any individual appointed to an expert group has a specific area of expertise and a unique set of experiences, rendering efforts to identify the 'typical' member of an expert group largely nugatory. In terms of representativeness, therefore, the selection of any single group – or even any small number of groups – is highly problematic. Rather, a case was sought which provides a contemporary example of the anatomy of policy-making by gaining access to a situation previously inaccessible: a 'revelatory case study' (Yin 2003: 43). Further to this, the group needed to consist of individuals appointed in a personal capacity as identifying the motivations for applying for membership was one of the central questions. At the time of research, 108 active groups (14 per cent) contained such experts appointed in a personal capacity.

The research for this article was undertaken in 2012 in the context of the largest financial crisis since the introduction of the single market and the apparently very real possibility of the collapse of the single currency. A case study was chosen to reflect this context. Beyond dealing with an area of such high political salience, however, the group was selected because it had recently completed its work, allowing members to speak freely but whilst memories of events were still fresh. Thus, the expert group advising on the reform of council regulation 1346/2000 on cross-border insolvency proceedings – a common legal remedy for addressing market failure – was selected as a case study.

Gerring argues that it is often difficult to determine which features of a given case are typical of a larger set of cases – in his words, 'fodder for generalizable inferences' – and which are particular to the case under study (Gerring, 2007: 79). However, whilst the chief purpose of this article is to provide an in-depth study of a particular case presented through the experience of the individuals that attended the relevant meetings and thus acted together as a single community of knowledge, it is of note that the informal appointment processes described in the next section are widely used in the expert groups. As such, the informal processes used to appoint experts in different policy

areas may undermine the Commission's stated commitment to openness, as the actual means by which individuals are identified and appointed is frequently hidden from outside scrutiny.

## **2. Cross-Border Insolvency: Background**

Applicable to all member states except Denmark and in force since 2002, Council regulation 1346/2000 on insolvency proceedings provided for the interaction of different insolvency regimes between member states (European Council 2000). The regulation was intended to discourage the transfer of assets from one member state to another with a more benign legal system – a process known as ‘forum shopping’ (Schlafaer 2010). Whilst the regulation did not harmonise substantive bankruptcy law which remained – and remains – a member state competence, it established some common rules concerning issues such as the liquidator's powers and the production of claims.

By 2012, however, there had been significant shifts in the environment in which companies operated. Many more companies were now incorporated in international groups as a subsidiary of a parent company, applying corporate governance rules and with access to capital in the financial markets (European Commission 2012b). In most member states, bankruptcy law has been modernised to fit with this changed economic context but 1346/2000 remained the applicable regulation at the EU level.

With this background and in the context of the economic downturn increasing the likelihood of market failure and resultant insolvency, a decision was taken to advance the review of the legislative procedures for dealing with insolvency across borders. Whilst this had originally been planned for 2014, the Commissioner for Justice, Fundamental Rights, and Citizenship took the decision to bring forward this review to 2012 as part of the Commission's stated commitment ‘to promote economic recovery and sustainable growth, a higher investment rate and the preservation of employment’ (European Commission 2012b).

As part of the review process, DG Justice – the lead DG – commissioned a number of work strands including a comparative legal study led by the Universities of Heidelberg and Vienna, an impact assessment conducted by Consortium GLK/Milieu, and a public consultation through the website of DG Justice. Simultaneously, DG Justice launched a call for experts on a review of cross-border insolvency regulation. Given that the legislative review had been advanced at extremely short notice, there was an unusually short timeframe for this group to be established – the call was published in March 2012 with a deadline for applications of April. Further, the group was to have an extremely short life-cycle, conducting meetings frequently over a five month period with its final meeting held in October 2012. As interviews commenced shortly after the final meeting, the timeline, whilst atypical, allowed for a near contemporaneous account of individuals experience to be captured.

### **2.1. Commission Expert Group on Cross-Border Insolvency**

Since 2010, the mechanism for creating an expert group requires that the relevant DG informally consult the Commission services in order to ensure that the relevant expertise is not available ‘in-house’. Subject to approval following this consultation, an application is made to the Secretariat-

General. The call follows a standard template and is normally published in the *Official Journal of the European Union* and, usually, on the website of the DG concerned. Whilst a number of DGs maintain a database of individual experts, there is no formal means of ensuring that these individuals are made aware of a call for experts, suggesting that there may be some informal mechanisms through which DGs publicise such appointments.

In the case of the cross-border insolvency group, two main methods were employed to publicise the call for experts. Firstly, contact was made with professional insolvency associations including *Insol Europe* – the organisation of European insolvency practitioners – and national government agencies such as the British Insolvency Service, inviting these organisations to identify potential members and forward the call accordingly (Interview 16 - Commission official). Secondly, a link to the call was included in an e-mail which was sent to e-mail groups held on the database at DG Justice. Interestingly, the Commission official concerned stated that this method of identifying and communicating with potential expert group members is the normal practice within and beyond DG Justice – it was also employed at another DG where s/he had been based earlier in his/her career. This suggests that the practice of identifying and contacting potential expert group members is widespread and crosses policy areas. Importantly, this procedure is hidden from view - a function of its informal nature - but this opacity appears to undermine the Commission's efforts to increase transparency in the appointment process.

The application process simply involved the submission of an online form and CV. The formal requirements were that applicants should have the necessary skills and knowledge, have five years experience in the field of insolvency law, and a demonstrable ability to work in English – this latter requirement necessary as translation facilities are generally not available for expert group meetings. In total 55 applications were made for the 20 places in the group, although in practice several more individuals, having been granted observer status, were present at meetings. Whilst Commission guidelines suggest that consideration be given to convening a committee including external peers to help select suitable experts, in this case this selection process was conducted by the Commission officials responsible for producing the amendment. The 20 members selected were a mix of academics and legal practitioners including judges and other senior members of the judiciary. 13 member states were represented, although this is perhaps unsurprising given that a broad representation of legal systems was fundamental to the cross-border nature of the group's work.

The group met frequently during the summer of 2012 with the final meeting held in October. Following this, in-depth interviews were conducted with 12 members, representing 60 per cent of the group's membership and also with the relevant official in the civil justice policy unit at DG Justice and Commission officials in DG Secretariat-General. Members were assured that their anonymity would be preserved both to outsiders and to other members of the group. The interviews took place during November and December of 2012.

## **2.2. Appointing the experts**

As discussed, the Commission has a published set of principles and guidelines on the collection and use of expertise. In the section on identifying and selecting experts, it suggests that:

Departments should cast their net as widely as possible by including individuals outside the department's habitual circle of contacts.

In order to understand how widely this net was cast, members of the group were first asked to describe the process through which they came to apply for membership of the group. Without exception, individuals were unaware of the publication of the formal call in the *Official Journal of the European Union*, suggesting that the informal means through which the group was publicised triggered the application.

The majority of group members became aware of the formation of the group as a result of the direct e-mail list method described above. This suggests that, given that the composition of such a list is often the result of correspondence or through an individual's previous participation at an event, individuals who had previously had dealings with the Commission would be more likely to be made aware of the opportunity to participate in the expert group. Certainly, the majority of interviewees stated that they had previous professional experience at the Commission or other EU institutions:

'I have worked a lot in this area and, from time to time you will meet people from the Commission. One of them sent me a link to the application form' (Interview three - lawyer).

'They knew me because I had represented my government, although at the Council rather than the Commission (...) but I had worked with the Commission officials during this time' (Interview nine - professor).

Whilst appointing individuals with previous experience in an expert group does not necessarily indicate that a DG is relying on a 'habitual circle of contacts', interviews with both Commission officials and individual experts with previous experience in a group showed that the practice of contacting individuals held on e-mail lists is widespread. This suggests that access to an expert group is greater for those with previous experience.

Importantly, members of the group were appointed to act in a personal capacity. The formal rationale for this is that the Commission seeks to ensure that the advice it receives is objective and does not represent the official position of a member state (Interview thirteen - Commission official). It is, however, clear that in a number of instances, specific individuals were encouraged to apply by member state governments:

'My government told me that the Commission was forming this small group of specialists and they wanted me to apply (...) they said not to miss the deadline' (Interview six - judge)

'I responded to a prompt from [national insolvency agency]. They suggested that I would be a good person to represent [member state] interests' (Interview twelve - law partner).

Notwithstanding that the framework for expert groups requires members to act 'independently and in the public interest' (European Commission: 2012a), incidences of member state governments prompting particular individuals to apply suggest that the formal distinction between individuals appointed in a personal capacity and those representing national administrations may be unclear at times. Neither was this blurring of the representational boundaries confined to practitioners encouraged to represent member state interests, with one academic member specifically discussing being encouraged to apply to the group as membership

would be of direct benefit to his/her university, both as an esteem indicator and by raising the university's profile at the Commission. For the majority of members, however, there was no such institutional encouragement to apply, raising the question as to what motivates individuals to apply for membership of the expert group.

As discussed in the first section, with a few exceptions for those groups advising under the seventh framework agreement (FP7), membership of a Commission expert group is an unpaid role. Members can claim travel expenses on production of receipts, although this is limited to public transport only – no expenses are paid for taxi fares, for example. For legal practitioners in particular, attendance at meetings may be financially disadvantageous. Clearly, however, an appointment to a Commission expert group may be considered professionally prestigious but, in order to understand whether this prestige affords practical benefits, interview participants were asked to reflect on the reasons that they chose to apply to the Commission for membership of the group.

Again, responses showed a marked difference between legal practitioners and academic members. A number of lawyers explicitly stated that there were professional benefits to membership of the group:

'I knew that I being considered for partnership [of a law firm] and, by joining the expert group, I was able to present this aspect of my work to my colleagues. It gave me some leverage as none of them had much experience at the EU level and, well, I got appointed' (Interview twelve - law partner).

For this individual, membership of the group had a direct professional benefit, suggesting that acting in an advisory capacity at the Commission level carries with it a degree of personal prestige, despite the fact that this expertise is proffered in an area of national competence. In some instances, however, membership of the group was used to enhance the European credentials of a law firm which, in reality, conducted limited business outside of a member state:

'It's really good for us that our clients see us involved in EU policy. A lot of them operate across the EU or have wider interests in the EU (...) it gives us a lot of credibility' (Interview five - lawyer).

Thus, for the law firms, membership of a Commission expert group may be considered to enhance professional and/or personal prestige for the individual lawyer, whilst simultaneously granting the company a competitive advantage by allowing it to present membership of the group as evidence of its EU reach.

Although academic members also identified some professional benefits to membership of the group, these considerations appeared secondary. A number of academics specifically mentioned that they enjoyed the experience of spending time discussing insolvency issues and particularly valued the opportunity to be involved in the policy process:

'I believe we must create the best insolvency system and, instead of writing an article or teaching a class, I can change the main source (...) the legislation' (Interview eleven - professor).

That notwithstanding, academic members also acknowledged that applying to the Commission for membership of the group was not an entirely altruistic act, expressing the view that the opportunity to be involved directly in the policy process may carry potential future benefits, not

least in regard to the likely success of funding applications. So, whilst no single motivation for applying can be identified, it is clear that the majority of interviewees saw membership of the group as a prestigious position, although the esteem indicator varied. Interestingly, whilst the majority of members of the groups framed their motivation for applying in terms of a desire to ensure that the EU developed a common and workable insolvency protocol and/or because of the professional benefits membership carries, only one member took an explicitly ‘pro-Europe’ position when asked why s/he had applied for membership of the group:

‘I was asked by [national agency] to apply (...) “asked by my country”, if you like. But I am very pro-European – a Euro-fanatic, you might say – and this work is for the good of Europe’ (Interview eleven - judge).

It appears that, for the majority of members, the policy area is the focus of interest rather than the EU context of the discussion, save where the EU factor is seen to carry commercial benefits or to enhance professional reputation. In only one instance was any ideological position mentioned, suggesting that – for the expert group as a community of knowledge – the Commission is generally considered a forum for discussion and a means of furthering professional interests. The article now considers the extent to which characterising the expert group as a community of knowledge accurately reflects the experience of the individual members.

### **2.3. The expert group as a community of knowledge**

In publicising the call for experts, it is perhaps unsurprising that professional networks together with previous contact at the Commission should prove so significant a feature. By definition, there are a limited number of individuals with a level of knowledge commensurate with membership of an expert group, hence the characterisation of the expert group as a community of knowledge. However, as insolvency is a member state competence, it follows that the group would normally operate at the national level, suggesting that there may be a lower incidence of cross-border contact between practitioners than, for example, academics. In order to test whether this was the case, interviewees were asked to what extent they had previous personal contact with other members of the group. Here there was a marked distinction, with academic members likely to have had more frequent personal contact with other members:

‘I had met quite a lot of people through seminars and so forth. I knew about sixty per cent of the people’ (Interview one - academic).

The extent to which academic members of the group had met previously is perhaps unsurprising given the opportunities for cross-border contact. Legal practitioners, by contrast, tended to know members only from their own member state, reflecting the somewhat limited administration of insolvency matters across judicial systems:

‘I knew a few people by reputation, but had only met one of the [same nationality] members’ (Interview twelve - law partner).

‘I had met two of the members before, but they are both from [same member state]’ (Interview five - lawyer).

Having characterised the expert group as a community of knowledge, it seems clear that some group members were better established within that community. The legal representatives, with

less opportunity for cross-border working, had previous contact with fewer members of the group – and this contact generally only from within their own member states. Members of the academic community, by contrast, generally had far more previous contact with members, including from other member states.

‘I knew most of the people personally (...) probably about seventy or eighty per cent of the people in the meeting (...) the world of insolvency is a small one’ (Interview nine - professor).

The quotation above might suggest that those familiar with considering legal issues in a cross-border context are more inclined to this ‘small world’ view than are those members whose experience of the same issues tends to be within a single legal jurisdiction. However, it is not merely a lack of familiarity with differing national systems that acts as an impediment to the diffusion of this ‘small world’ view. As mentioned, one of the requirements for appointment to the expert group was a demonstrable capacity to work in English. For the majority of the members this requirement posed no difficulty, with one member stating, for example:

‘I didn't see anyone having difficulty expressing themselves – English is the international language of insolvency’ (Interview seven - lawyer).

Clearly, however, this view is self-reinforcing – given that a good command of English was a pre-requisite for application, it would be more surprising if any such difficulty had been observed, although this does raise some questions about the balance of membership. Earlier research by Robert looked at the composition of 30 expert groups across eight DGs. Although she found fluency in English to be a ‘more or less explicit recruitment criteria’, she also observed that this ‘rule’ is often mentioned matter-of-factly by Commission officials, suggesting an expectation that fluency in English is the norm (Robert 2010: 257). She identified a number of examples of French experts stating that they owed their appointment in an expert group solely to their fluency in English in a profession where such a skill is rare. It seems reasonable to suggest that, therefore, that whilst fluency in English may be more common in the insolvency field, stipulating it as a requirement of membership might inadvertently skew the group to reflect certain views – a point raised by one interviewee:

‘An English speaking Italian liquidator is much more likely to work for a big firm which, in turn, is much more likely to have corporate clients – to represent the banks, I mean. I wonder if there was some bias in the representation because of this’ (Interview nine - professor).

For the majority of members of the insolvency group, however, the use of English as a working language presented no difficulty, although one interviewee did suggest that the lack of translation facilities acted as a barrier to communication:

‘Some people didn't have good English and didn't get to speak’ (Interview four - professor).

It is of note that this comment was made in the context of a more general discussion concerning the limited resources available at meetings. The group met in one of two meeting rooms in the building of DG Justice at Rue Monteyser. The rooms can accommodate between 25 and 30 people. Meetings were chaired by the same Commission official responsible for the production of

the draft amendment, who also took notes. A number of participants expressed some surprise at the limited facilities:

‘It was run on a shoestring. The meeting room was rather primitive with few modern facilities. In a way, it’s an impressively low budget affair but, on the other hand, they’re dealing with half a billion people (...) trillions of Euros (...) you would expect better facilities’ (Interview eleven - judge).

‘There were no microphones so it was difficult to hear. It wasn’t the fault of the chair, just the lousy facilities’ (Interview ten - professor).

Whilst the lack of resources may reflect the limited budget allocated to the expert groups, and the complaints from members might initially seem somewhat trivial, the lack of secretarial support meant that the official responsible for steering the proposed legislative amendment also acted as meeting chair and note taker. As a result of this multi-tasking, there was insufficient time to produce formal minutes of meetings. Instead, a modified version of the draft amendment reflecting the discussion in the last meeting was distributed to members ahead of the next meeting. This solution to the lack of secretarial support, whilst practical from the perspective of the responsible Commission official and the expert group members, somewhat undermines the Commission’s stated commitment to ‘openness’ as one of the core principles of the collection and use of expertise as, in the absence of formal minutes, it is not immediately possible for an observer to understand the extent to which the discussion in the meetings changed the Commission’s proposals. When this matter was raised in the interview, a number of participants expressed surprise at the lack of formal meeting minutes.

‘We didn’t see any proper minutes. We just worked off the latest version of the amendment’ (Interview five - lawyer).

‘We got a copy of the most recent version before the meeting. Then we would go around the table commenting on it. Everyone was asked for their view’ (Interview four - professor).

In response to the question of whether members felt that their contributions led to changes in the draft proposal, the majority of interviewees felt that, collectively, the group’s discussions directly led to changes in the draft amendment.

‘Everyone had the opportunity to make their views heard and [commission official] would scribble away whilst we were speaking. If [s/he] agreed with our arguments, the ideas would find their way into the next version’ (Interview twelve - law partner).

On the basis of such responses it seems, therefore, that the advice proffered by the expert group directly affected the proposal. Without formal minutes, however, the legislative proposal lacks an audit trail. Given the closed nature of the expert group negotiations, the provision of such an audit trail is one of the few mechanisms open to an EU citizen wishing to monitor the integrity of the expert group advice. As such, it is considered that the provision of minutes of meetings is an essential pre-requisite to maintaining – or building – public confidence in the policy-making system.



## Conclusion

By conceptualising the expert group as a community of knowledge, this article set out to investigate three particular questions. Firstly, how is the nature and extent of the informal appointment mechanisms used to augment the Commission's formal appointment process? Secondly, what are the motives and experiences of those who apply for membership of a group that, in advising the Commission at the agenda setting phase of the process, is a largely invisible part of the anatomy of EU policy-making? Finally, do the rules governing the activities of the group ensure a balanced representation of interests?

On the first question, it is clear that, across the Commission, appointments are made chiefly as a result of the informal practices used to supplement the formal procedures. Whilst this is perhaps unsurprising – reliance on the formal mechanisms alone would limit applicants to those who routinely peruse the *Official Journal of the European Union* and relevant DG websites – the somewhat opaque nature of these informal processes rather undermines the Commission's stated commitment to openness in the appointment process and devalues the electronic register's published information on the process used for the selection of members of expert groups.

On the second question, it is clear that membership of an expert group is considered a prestigious position and, for those on an upward career trajectory, it carries a certain professional cache. Although members may formally be appointed in a personal capacity, they are often seen within the group as representing a particular organisation and, certainly, an individual's parent organisation will frequently use its connection with a Commission expert group to gain a competitive advantage.

In terms of the final question, whilst the Commission cannot ensure a balanced representation of interests, it is apparent that it seeks to comply with its guidelines to achieve gender and geographical balance where possible. Through limited resources, however, there is a potential imbalance in the group where the requirement to speak English is a pre-requisite for appointment. Whilst this did not appear to cause major problems in the cross-border insolvency group, the observation that the requirement to speak English may bias the representation is well made. Furthermore, in policy areas where English may not necessarily be the *Lingua Franca*, limiting access to experts with the requisite language skills may restrict the capacity of a DG to follow the Commission's guidance to appoint beyond its habitual contacts whilst also denying access to policy-making bodies to non-English speakers.

As discussed, the group's short life cycle is atypical but, by asking expert group members to discuss their experience immediately after attending a series of meetings, the interviews demonstrate that seemingly mundane issues such as meeting room facilities can have an impact on the extent to which members are able to contribute to the meeting and, ultimately, to be involved in the policy-making process.

However, it is perhaps in the process of publicising and appointing expert members that the gap between the Commission's guidelines and practice is at its most stark. Whilst the framework document requires DGs to add specific information concerning the selection of experts, the informal arrangements for publicising the establishment of the expert group remain hidden from view and seem to privilege access to those with previous experience at the Commission or other EU institutions. Thus, the majority of members belonging to this 'community of knowledge' are

‘pre-known’ to one another, sometimes having worked together in an earlier expert group. However, the alternative to appointing through this ‘community of knowledge’ model – publicising the vacancies through professional bodies or member state agencies – seems equally likely to skew the application process at the national level toward certain favoured individuals. Further, the practice whereby the Commission official responsible for the delivery of the draft legislation selects the expert advisers, whilst seemingly logical, may also undermine the Commission’s efforts to increase transparency by creating the impression of potential for bias in the provision of expert advice.

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