

Effective Legislative Procedures for the newly constituted Assembly

Evidence for the Committee on Standing Orders

Background

This evidence will look at aspects of the law making process in the European Union (EU). In particular, it will look at recent developments at the EU level and how the EU has sought to respond to lack of public engagement with the EU, fears of over-burdensome legislation and lack of European competitiveness. It will examine the attempts that have been made to involve expert opinion and civil society within the law making process and will attempt to evaluate those aspects of law making in the EU which can be considered good practice and could possibly be followed by other law making institutions such as the National Assembly.

Better Regulation Initiative

The current EU initiative on "better regulation" or "better lawmaking" has its origins in the Edinburgh European Summit of December 1992. Results were initially disappointing in the first ten years. However, in its White Paper on European Governance the Commission committed itself to action on improving the quality of EU legislation. This was followed by a 16 point Action Plan which included action points on: Simplifying and reducing the volume of Community legislation; Consultations and impact assessments in the Member States as well as an Annual assessment of the quality of legislation. There are four main aspects to the initiative: impact assessments, simplification, consultation and alternative regulation.

Impact Assessments

Since the beginning of 2005, all major draft laws issued by the Commission have been accompanied by an impact assessment study. This means every new proposal needs to be assessed against its costs and benefits for Europe's economy and be consistent with the Commission's drive for improving business competitiveness.

Impact assessment affects all major Commission proposals, namely regulatory and other proposals having considerable economic, social and environmental impacts, proposals having a major impact on particular groups and proposals representing a major change or policy reform.

An impact assessment involves answering a number of basic analytical questions:

What is the nature, magnitude and evolution of the problem?

What should be the objectives pursued by the European Union?

What are the main policy options for reaching these objectives?

What are the likely economic, social and environmental impacts of those options?

What are the advantages and disadvantages of the main options?

How could future monitoring and evaluation be organised?

It is intended to be an aid to political decision-making, not a substitute for it. It gathers and presents evidence that helps determine possible policy options and their comparative (dis)advantages. It does not dictate the final decision. The principle of "proportionate analysis" is intended to ensure that it is not necessarily a lengthy process. "Proportionate analysis" looks at the depth and scope of the likely impacts of the proposed action. The more significant an action is likely to be, the greater the efforts expected.

Simplification

The Commission's simplification policy is intended to ensure that legislation is clear, understandable, up-to date and user-friendly. There are two aspects to the simplification initiative. Firstly, it intends to ensure that the body of EU law that has been in existence since 1957 is simplified and proportionate to prevent over-regulation. It intends achieving this aim by means of a legislative programme lasting until 2008 that seeks to repeal, codify, recast or modify 222 basic legislations and over 1,400 legal acts. It has also withdrawn 68 legislative proposals as a result of the initiative. Secondly, it intends to produce simplified legislation in its ongoing legislative work programmes. However, the purpose of the simplification policy is not just to improve accessibility and readability but also to improve the European Union's competitiveness. For this reason, it has been criticised by European Trade Union Confederation (ETUC) and environmental NGOs as being too business driven and economically liberal.

The simplification policy is intended to address national rules as well. The Commission encourages simplification when scrutinising national measures for compliance with European Union law for example, when implementing Directives.

Public consultation

Since the Treaty of Amsterdam (1997) the Commission has been required to consult widely and publish documents before putting forward major pieces of legislation. It has always used a wide range of consultative tools including mandatory advisory bodies such as the European Economic and Social Committee and the Committee of the Regions as well as the so called "comitology" committees all of which are discussed below.

In 2002, as part of the better regulation initiative, it adopted general principles for public consultations to ensure that all interested parties are properly heard. They require the Commission to:

Spell out the nature and objective of consultation

Ensure that all relevant parties are given an opportunity to express their opinions

Publish consultations widely in order to meet all target audiences via the web portal "Your Voice in Europe"

Ensure that participants are given sufficient time to respond (8 weeks for open public consultations)

Provide feedback to respondents

The Commission has recently consulted on how it can make public consultations a full aspect of EU lawmaking. The Commission has defined the main challenges as involving all relevant interests in society and ensuring adequate and equitable treatment of all participants.

Concerns expressed over consultation processes are that it should not take precedence over the voice of democratically elected representatives; that it distinguishes clearly between consultations that are targeted at the general public and those targeted at special groups such as the social partners; that it is not restricted to NGOs represented in Brussels and that privileges are extended to the corporate sector which are not extended to NGOs.

Comitology - the supervision of delegated legislative power

Most EU regulation is not enacted as legislation by the Council of Ministers and the European Parliament but as detailed implementing legislation under the European Commission's executive powers. Such implementing legislation can be adopted when executive powers have been conferred on the Commission but the exercise of its executive powers is subject to institutional constraint and it is supervised in the exercise of these powers by committees. These are composed of national representatives (usually civil servants) who are able to exert influence on behalf of the Council of Ministers. The Council itself is rarely involved. The idea behind the system is to free the legislature from detailed, technical considerations so that it can concentrate upon important policy decisions. The committee procedures are commonly referred to as "comitology".

The activities of comitology committees covers a very wide subject matter and they will deal with anything ranging from humanitarian aid to budget allocation to educational programmes. The European Commission has to consult a committee comprising representatives of each Member State, with a Commission representative as chairman. The degree of control exercised by the Council of Ministers over the European Commission will vary according to the type of the committee that has been set up to supervise the Commission. Sometimes, the Commission can exercise its implementing power whatever the view of the committee (the "advisory" committee procedure). In other cases the Commission can act only if the committee agrees with the Commission's proposal (the "regulatory" committee), or at least does not disagree with it (the "management" committee). Otherwise, the matter must be referred back to the Council.

The role of comitology has been controversial and has created tensions between the various EU institutions. In an attempt to address some of these criticisms the 1999 Comitology Decision was

passed. It has four objectives: greater consistency in the choice of committee procedure, greater involvement of the European Parliament, improvement in the information given to the European Parliament and greater accessibility to the public. Consequently, it allows the European Parliament to play a minor role in the comitology procedures. In cases where legislation comes under the regulatory procedure, the European Parliament can express its disapproval of measures proposed by the Commission or, where appropriate, by the Council, which, in Parliament's opinion, go beyond the implementing powers provided for in the legislation. The Council can then within three months make clear its opposition to the proposal, in which case, the Commission must re-submit the proposal, amend it or present a new proposal.

Proposed Amendment to the Supervision of the Commission's Implementing Powers

There is a proposal to amend the regulatory committee procedure which is, at the time of writing, awaiting a decision by the Council. Its intention is to amend the regulatory committee so that there are two separate phases: the executive phase and the supervisory phase.

In the executive phase the Commission submits a draft to the representatives of national authorities on the committee. If a favourable opinion is given the draft is adopted. The committee can deliver an unfavourable opinion by qualified majority. If an unfavourable or no opinion is submitted, the Commission submits a new draft without delay taking account of the committee's position.

In the supervisory phase, the draft is submitted to the European Parliament and the Council to enable them to exercise political supervision. If either raises objections within one month (capable of being extended by another month) the Commission has four options:

- Modification of the draft
- Presentation of a legislative proposal
- Adoption of a draft without changes
- Withdrawal of a draft measure

The Commission will inform the legislator it intends to take on the latter's objections and of the reasons for doing so.

Proposed emergency procedure

The proposal also deals with implementing measures that have to be passed as a matter of urgency and it is not possible to comply with the time limits. The Commission will adopt and apply the executive measures after having obtained the opinion of the regulatory committee. It shall notify the Council, the European Parliament and the Member States without delay. Within one month of notification, which can be extended by another month by request of the European Parliament, either the European Parliament or the Council can raise objections. If it receives objections the Commission has three options:

- Present a legislative proposal while provisionally maintaining the legislative measure or
- Uphold the adopted measure or

Modify it.

The Commission shall inform the legislator of the action it intends to take on the latter's objections and the reasons for doing so.

Advisory Bodies (1): European Economic and Social Committee

Legislative procedures in the European Union (EU) involve the use of two consultative bodies: the European Economic and Social Committee and the Committee of Regions. Both these bodies are consulted by the Council of Ministers, the European Commission and the European Parliament.

The European Economic and Social Committee (EESC) consists of representatives, appointed by the Council of Ministers on the basis of nominations provided by the governments of the Member States, of economic, social and civic organisations known as organised civil society. Organised civil society is defined as those organisations which represent producers, farmers, carriers, workers, dealers, craftsmen, professional occupations, consumers and the general interest.

It is seeking to develop a "dynamic compromise" and to act as a bridge between the institutions of the EU and organised civil society.

It divides itself into three groups. Group I - Employers which consists of representatives drawn from the public and private sectors of industry, (large companies) commerce, finance, etc. Group II - Employees which consists of representatives of national trade union confederations and Group III - Various interests which consists of representatives of farmer and consumer groups, the social economy, craftsmen and SMEs, social and environmental NGOs, the professions, etc. It is up to each of the members of the EESC to decide which group they wish to join. These are groups which can have conflicting interests and the EESC provides a place where a "dynamic compromise" can be reached by striving to reach solutions by exchanging views and seeking consensus.

On some issues a referral of draft legislative proposals or policy decisions by the EU institutions to the EESC for its opinion is mandatory under the EU's founding Treaties. In other cases, the EU's institutions have a discretion to refer. It is also increasingly being asked to draw up exploratory opinions before draft proposals are adopted. It can also issue opinions and draw up information reports on its own initiative.

One of the purposes of the EESC is to ensure that those affected by legislation are given a role in its formation and that the expertise of "people in the field" is utilised whilst legislation is being considered. The own initiative opinions often enable the EESC to raise the awareness of the EU's legislators which do not appear to be coming to their attention. Exploratory opinions enable the EESC to state its needs, expectations and concerns at an early stage and therefore, it is hoped, improve the quality of legislation.

Its working methods involve a Bureau which organises the EESC's work. The Bureau will refer issues to one of six specialised sections. In turn, in order to issue opinions these sections will usually set up "study groups" with a rapporteur supported by experts.

In addition, there are two other bodies: the Single Market Observatory (SMO) and the Consultative Commission on Industrial Change (CCIC).

Whilst the EESC seems to allow disparate groups to have an equal say in legislation it has been criticised as corporate interests tend to find it easier to engage in its processes than other bodies such as consumer groups and NGOs.

Advisory Bodies (II): Committee of the Regions

The Committee of the Regions (COR) consists of 317 members representing local and regional authorities plus 317 alternates (and 27 Bulgarian and Romanian observers). Its members must hold a regional or local authority mandate or be politically accountable to an elected assembly. Its members are formally proposed by Member States and formally appointed by the Council of Ministers. If the Treaty establishing a Constitution for Europe is to be ratified by all the Member States and to come into force the order of protocol will be changed so that it ranks ahead of the EESC on account of its political composition.

Its purpose is to ensure that EU legislation is improved using the expertise of local and regional representatives; to act as the voice of local and regional authorities and to bring Europe closer to its citizens.

It is headed by a President who chairs plenary sessions and represents the Committee in external relations. The President and First Vice-president are elected by Committee members for a two-year term of office. There is also one Vice-President per Member State.

A Bureau of 56 members, whose number per Member State reflects national and political balances, manages the agenda of plenary sessions, draws up the Committee's policy programme, allocates opinions to Commissions and decides when to draft own-initiative opinions.

Once a proposal has been allocated by the Bureau to one of the seven specialist commissions, a commission rapporteur will be appointed who will start work. S/he will present a draft to the specialist commission, work will then continue by the rapporteur prior to further discussion, amendments and adoption by the specialist commission. The opinion will then be sent to a plenary session with a view to being adopted there.

The EC Treaty makes consultation of the COR mandatory in certain areas such as Economic and Social Cohesion. There can also be optional consultation in the following cases:

Where the Council of Ministers, the European Commission or the European Parliament consider it appropriate.

Where the COR decides to draw up an opinion, where the EESC has been consulted, and where it considers that specific regional or local interests are involved.

The COR may draw up an opinion on its own initiative where it considers such action appropriate.

The COR produces the following types of opinions, reports and studies:

Consultative opinions

Resolutions - declarations adopted in accordance with an accelerated procedure

Outlook opinions - opinions drawn up by the COR before the European Commission drafts a Green/White Paper on the subject

Outlook reports - preliminary reports drawn up before the European Commission's proposals are made public

Impact reports - to evaluate the impact of policy at local and regional level

Studies - on various aspects of the local and regional dimension of the EU

Conclusion

The EU's law making processes can be characterised by extensive consultations which draw upon available expertise and those affected by legislation and extend beyond the advisory and expert groups to other interested parties. It involves consultations at early stages before proposals are formed, at the time proposals are made and also allows the advisory bodies to be pro-active and make reports on the impact of law and policy. However, its consultation procedures have been criticised for relying too heavily on Brussels "insiders" and creating the appearance of consulting all interested parties when in reality it may be easier for large corporate interests to organise and bring influence to bear on legislative proposals. Bearing this in mind, consultations over legislative proposals need to be transparent and conducted through a single portal so that it's simple to assess where a proposal is in the consultation process.

The "better regulation" initiative, inter alia, assesses the environmental, social and economic costs of legislative proposals. However, the scale of impact assessments needs to be tailored to the significance of a proposal. The simplification initiative places obligations on national authorities to ensure that national implementing legislation also follows the same approach to language.

The fear with both consultations and impact assessments is that the final say on legislation will be handed over from democratic bodies to interest groups and experts yet the input of these groups improves the quality of legislative proposals. This fear can be countered if it's made clear that the final decision on legislation lies unequivocally with the democratically elected body.

The trend in the supervision of the Commission in the exercise of its implementing powers is for greater involvement of the European Parliament in supervising the Commission as well as proposals for a more clearly defined balancing of the need, on the one hand, for the Commission to exercise executive powers effectively and, if necessary, quickly with the need, on the other hand, for democratic supervision of executive power.

The current proposal to reform the comitology procedure into two phases - the executive phase and the supervision phase may be a template that may be used by other law making institutions. The proposed executive phase requires consultation that enables concerns to be raised at an early stage. This could be adapted by the National Assembly with implementing measures being discussed at an early stage with a cross representation of Assembly Members prior to being placed before the whole

Assembly at some later stage. The expectation being that the earlier consultation facilitates the smooth passage through the Assembly.

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