Chapter 4

The Commission

Frequently portrayed as the civil service of the EU, the Commission is in reality both rather more, and rather less, than that: rather more in the sense that the Treaties, and political practice, have assigned to it much greater policy initiating and decision-making powers than national civil services, in theory at least, enjoy; rather less in that its role regarding policy implementation is greatly limited by virtue of the fact that it is agencies in the member states which are charged with most of the EU's day-to-day administrative responsibilities.

The Commission is centrally involved in EU decision-making at all levels and on all fronts. With an array of power resources and policy instruments at its disposal – and strengthened by the frequent unwillingness or inability of other EU institutions to provide clear leadership – the Commission is at the very heart of the EU system.

Appointment and composition

The College of Commissioners

Seated at the summit of the Commission are the individual Commissioners who are each in charge of particular policy areas and who meet collectively as the College of Commissioners. Originally, they numbered nine, but with enlargements their size has grown: to thirteen, to fourteen, and now to seventeen. Each of the five larger countries has two Commissioners (France, Germany, Italy, Spain, and the United Kingdom), and the remaining seven smaller countries each has one. (See Appendix for the size of the Commission in the event of enlargement.)

Prior to the Commission which took up office in January 1993, Commissions were appointed every four years 'by common accord of the governments of the Member States'. Under TEU this procedure was changed to the following:

1. The members of the Commission shall be appointed, in accordance with the procedure referred to in paragraph 2, for a period of five years. . .

   Their term of office shall be renewable.

2. The governments of the Member States shall nominate by common accord, after consulting the European Parliament, the person they intend to appoint as President of the Commission.

   The governments of the Member States shall, in consultation with the nominee for President, nominate the other persons whom they intend to appoint as members of the Commission.

   The President and the other members of the Commission thus nominated shall be subject as a body to a vote of approval by the European Parliament. After approval by the European Parliament, the President and the other members of the Commission shall be appointed by common accord of the governments of the Member States . . . (Article 158, EC Treaty).

The main effect of this new appointment procedure is to strengthen links between the Commission and the EP. This is done in two ways. First, by formalising, and stiffening a little, practices which developed in the 1980s regarding the appointment of the Commission and its President: member states are now obliged to consult the EP on who should be President (this will probably amount in practice to the EP having the right of confirmation since it is unlikely that a candidate who does not receive its approval will wish to proceed); the Commission is now obliged to present itself before the EP for a vote of confidence. Second, by bringing the terms of office of the EP and the Commission into close alignment: since 1979 the EP has been elected on a fixed five yearly basis in the June of years ending in four and nine (e.g. 1989 and 1994), and from January 1995 Commissions will take up office for periods of five years. (The transition gap was covered by appointing the Commission which took up office in January 1993 for only two years.)

The emphasis in the appointment procedure that the governments of the member states are to act by 'common accord' is to emphasise the collective, as opposed to the national, base of the Commission: Commissioners are not supposed to be national representatives but should 'in the general interests of the Community, be completely independent in the performance of their duties' (Article 157, EC). Much the same sentiments require Commissioners, on taking up their appointment, to give a 'solemn undertaking' that they will 'neither seek nor take instructions from any government or any other body'.

In practice, a full impartiality is neither achieved nor attempted. Although in theory the Commissioners are collectively appointed they are, in fact, national nominees. It would, therefore, be quite unrealistic to expect them, on assuming office, suddenly to detach themselves from

previous loyalties and develop a concern solely for 'the wider European interest' – not least since a factor in their appointment is likely to have been an expectation that they would keep an eye on the national interest. (A particularly graphic illustration of this latter point was seen in the way that a UK Commissioner, Lord Cockfield, was not reappointed by Mrs Thatcher to the Commission which took up office in January 1989. She believed he had been over-zealous in his support for aspects of the internal market programme for which he was responsible, and rather than looking to British interests had 'gone native'.)

The Treaty insistence on complete independence of Commissioners is therefore interpreted flexibly. Indeed, total neutrality is not even desirable since the work of the Commission is likely to be facilitated by Commissioners maintaining links with sources of influence throughout the EU and this they can most easily do in their own member states. But the requirements of the system and the necessities of the EU's institutional make-up are such that real problems arise if Commissioners try and force their own states' interests too hard. It is both legitimate and helpful to bring favoured national interests onto the agenda, to help clear national obstacles from the path, to explain to other Commissioners what is likely to be acceptable in 'my' national capital. But to go further and act consistently and blatantly as a national spokesman is to risk losing credibility with other Commissioners. It also makes it difficult for the Commission to function properly since clearly it cannot fulfil its set tasks if its divisions match those of the Council of Ministers. The Commission which was appointed to office in January 1985 under the Presidency of Jacques Delors soon ran into difficulties of this kind: the chauvinism of some of its members played an important part in limiting the ability of the Commission to act efficiently as a coherent team. Open criticisms by members of the German Government of its two Commissioners for allegedly failing to defend their country's interests in Brussels created further problems.

There are no rules or understandings as to what sort of people, with what sort of experience and background, member governments should nominate. In general, it would be fair to say that Commissioners tend to be former national politicians just short of the top rank. However, there are many who do not fully fit such a description. So a significant – and increasing – number have held senior ministerial posts in their own countries, whilst others – now constituting a declining number – are best described as 'experts', 'technicians', or 'prominent national figures' of one kind or another.

Given the diverse political compositions of the EU's national governments there is naturally a range of political opinion represented in the Commission. The smaller countries tend to put forward somebody

from, or associated with, their largest party. The five larger countries vary in what they do, but 'split representations' are common practice. Crucially, all governments have made it their custom to nominate people who are broadly pro-European and who have not been associated with any extremist party or any extreme of a mainstream party. So whilst Commissions have certainly contained party political differences, these have usually been within a range that has permitted at least reasonable working relationships.

The most prestigious and potentially influential Commission post is that of the Presidency. Although most important Commission decisions must be taken collectively by the seventeen Commissioners, the President is very much *primus inter pares*: he is the most prominent, and usually best known, of the Commissioners; he is the principal representative of the Commission in its dealings with other EU institutions and with outside bodies; he must try to provide forward movement for the EU and to give a sense of direction to his fellow Commissioners and, more broadly, to the Commission as a whole; he is directly responsible for overseeing some of the Commission's most important administrative services – notably the Secretariat General (which, amongst other functions, is responsible for the coordination of Commission activities and for relations with the Council and the EP) and the Legal Service; and he may take on specific policy portfolios of his own if he chooses. Inevitably, therefore, given the importance of the office, the European Council – which, notwithstanding the EP's increased powers, will continue to take the lead role in making the nomination for the post – takes great care as to who is chosen. In the past, appointees have tended to be people with senior ministerial experience and considerable political weight in their own country: Jacques Delors, for example (President for the unprecedentedly long period of ten years from January 1985) was a former French Minister of Finance. The dynamic interpretation which Delors gave to the role of the Presidency, and the expectations which have now come to be attached to the office, are likely to mean that in the future only the most prominent of national politicians are likely to be considered for the Presidency.

The distribution of the policy portfolios between the Commissioners is largely a matter of negotiation and political balance. The President's will is the most important single factor, but he cannot allocate posts simply in accordance with his own preferences. He is intensively lobbied – by the incoming Commissioners themselves, and sometimes too by governments trying to get 'their' Commissioners into positions which are especially important from the national point of view. Furthermore, the President is made aware that re-nominated Commissioners – of which there are usually

nine or ten – may well be looking for advancement to more important portfolios, and that the five states which have two Commissioners expect at least one of 'their' nominees to be allocated a senior post. Bearing in mind all of these difficulties it is not surprising that unless a resignation, a death, or an enlargement enforces it, reshuffles do not usually occur during the lifetime of a Commission.

To assist them in the performance of their duties Commissioners have personal *cabinets*. These consist of small teams of officials, normally numbering six or seven except for the President's *cabinet* which is larger and numbers around twelve. Members of *cabinets* are mostly fellow nationals of the Commissioner, although at least one is supposed to be drawn from another member state. Typically, a *cabinet* member is a dynamic, extremely hard-working, 30–40 year old, who has been seconded or recruited from some part of the EU's administration, from the civil service of the Commissioner's own state, or from a political party or a sectional interest with which the Commissioner has links. *Cabinets* undertake a number of tasks: they generate information and seek to keep their Commissioner informed of developments within and outside his allocated policy areas; they liaise with other parts of the Commission, including other *cabinets*, for purposes such as clearing routine matters, building support for their Commissioner's policy priorities, and generally trying to shape policy proposals as they come up the Commission system; and they act as a sort of unofficial advocate/protector in the Commission of the interests of their Commissioner's country. Over and above these tasks, the President's *cabinet* is centrally involved in brokering the many different views and interests which exist amongst Commissioners and in the Commission as a whole, so as to ensure that as an institution the Commission is clear, coherent, cohesive, and efficient (see below for further discussion of the roles of Commissioners' *cabinets*).

☐ *The Commission bureaucracy*

Below the Commissioners lies the Commission bureaucracy. This constitutes by far the biggest element of the whole EU administrative framework, though it is tiny compared with the size of administrations in the member states. Of a total EU staff in 1993 of 26,4000, almost 18,000 were employed by the Commission – less than many national ministries and, indeed, many large city councils. (EU member states average 322 civil servants per 10,000 inhabitants, as against 0.8 per 10,000 for all EU institutions.) Of these 18,000, around 12,000 were employed in administration – including just over 4000 at the policy-making 'A' grades – 3400 were engaged in research and technological development, and 1650

were engaged in the translation and interpretation work which arises from the EU's nine working languages. (There are 72 possible language combinations, although most of the Commission's internal business is conducted in French or English.) The majority of the Commission's non-research staff are based in Brussels.

The Commission makes use of temporary employees of various kinds, many of whom do not have official contracts and who are not therefore included in official staffing figures. Most employees, however, are engaged on a permanent basis following open examinations, which, for the 'A' grades in particular, are highly competitive. (The 'A' grade has an eight point scale, with A1 at the top for Directors-General and A8 at the bottom for new entrants who have little or no working experience.) An internal career structure exists and most of the top jobs are filled by internal promotion. However, pure meritocratic principles are disturbed by a policy that tries to provide for a reasonable national balance amongst staff. All governments have watched this closely and have sought to ensure that their own nationals are well represented throughout the EU's administrative framework, especially in the 'A' grades. For the most senior posts something akin to an informal national quota system operates, though this is now coming under threat following a ruling in March 1993 by the Court of First Instance annulling the appointments of two Directors – at A2 grade – in DGXIV (Fisheries) on the grounds that the successful applicants were chosen not because of their qualifications but because the countries from which they came – Italy and Spain – were 'owed' the jobs.

This multi-national staffing policy of the Commission, and indeed of the other EU institutions, has both advantages and disadvantages. The main advantages are:

(1) Staff have a wide range of experience and knowledge drawn from across all the member states.

(2) The confidence of national governments and administrations in EU decision-making is helped by the knowledge that compatriots are involved in policy preparation and administration.

(3) Those who have to deal with the EU, whether they be senior national civil servants or paid lobbyists, can often more easily do so by using their fellow nationals as access points. A two way flow of information between the EU and the member states is thus facilitated.

The main disadvantages are:

(1) Insofar as some senior personnel decisions are not made on the basis of objective organisational needs but result from national claims to posts and from the lobbying activities which often become associated with this, staff morale and commitment is damaged. The parachuting of outsiders into key jobs is less easy than it was – partly because staff and staff associations have pressed for a better internal career structure – but in the Commission's upper reaches promotion is still not based on pure meritocratic principles.

(2) Senior officials can sometimes be less than wholly and completely EU-minded. For however impartial and even-handed they are supposed to be, they cannot, and usually do not wish to, completely divest themselves of their national identifications and loyalties.

(3) There are differing policy styles in the Commission, reflecting different national policy styles. These differences are gradually being flattened out as the Commission matures as a bureaucracy and develops its own norms and procedures, but the differences can still create difficulties, both within DGs – where officials from different nationalities may be used to working in different ways – and between DGs where there are concentrations of officials from one country: French officials, for example, have traditionally been over-represented in DGVI (Agriculture).

■ Organisation

□ *The Directorates General*

The work of the Commission is divided into separate policy areas in much the same way as at national level governmental responsibilities are divided between ministries. Apart from specialised agencies and services – such as the Statistical Office and the Joint Research Centre – the Commission's basic units of organisation are its Directorates General. Somewhat confusingly for those who do not know their way around the system, these are customarily referred to by their number rather than by their policy responsibility. So, for example, Competition is DGIV, Agriculture is DGVI, and Energy is DGXVII (see Table 4.1).

The size and internal organisation of DGs varies. Most commonly, a DG has a staff of between 150 and 450, divided into between four and six directorates, which in turn are each divided into three or four divisions. However, policy importance, workloads, and specialisations within DGs, produce many departures from this norm. Thus, to take size, DGs range from DGIX (Personnel and Administration) which employs just over 2500 people and DGVI which employs around 850, to DGXVIII (Credit and Investments) and DGXXIII (Enterprise Policy) which each employ around 80. As for organisational structure, DGVI has eight directorates (two of which are themselves subdivided) and thirty-six divisions, whilst DGXV

Table 4.1 *Directorates General and Special Units of the Commission*

Directorates General	
DGI	External Economic Relations
DGIA	External Political Relations
DGII	Economic and Financial Affairs
DGIII	Internal Market and Industrial Affairs
DGIV	Competition
DGV	Employment, Industrial Relations and Social Affairs
DGVI	Agriculture
DGVII	Transport
DGVIII	Development
DGIX	Personnel and Administration
DGX	Audiovisual, Information, Communication and Culture
DGXI	Environment, Nuclear Safety and Civil Protection
DGXII	Science, Research and Development
DGXIII	Telecommunications, Information Technologies and Industries
DGXIV	Fisheries
DGXV	Financial Institutions and Company Law
DGXVI	Regional Policy
DGXVII	Energy
DGXVIII	Credit and Investments
DGXIX	Budgets
DGXX	Financial Control
DGXXI	Customs and Indirect Taxation
DGXXII	(Formerly coordination of structural policies. Now disbanded).
DGXXIII	Enterprise Policy, Distributive Trades, Tourism and Cooperatives
Main Special Units and Services	
Secretariat General of the Commission	
Forward Studies Unit	
Legal Service	
Spokesman's Service	
Translation Service	
Joint Interpretation and Conference Service	
Statistical Office	
Consumer Policy Service	
Joint Research Centre	
Task Force 'Human Resources, Education, Training and Youth'	
European Office for Emergency Aid	
Euratom Supply Agency	
Security Office	
Office for Official Publications of the European Communities	

(Financial Institutions and Company Law) has only two directorates and seven divisions and DGXXII has but one directorate and five divisions.

To meet new requirements and to improve efficiency, the organisational structure of the DGs is changed relatively frequently. So, for example, to enable the Commission to adapt to the Common Foreign and Security Policy (CFSP) requirements of the TEU, DGI (External Relations) was split in 1993 into two separate entities: a DGI for External Economic Relations and a DGIA for External Political Relations. DGI more or less corresponded to the former DGI, but DGIA was quite new and much of it was put together from staff who moved across from the Secretariat General – where they had been dealing with foreign policy in the context of European Political Cooperation or had been in the Legal Service – and from DGIX – those responsible for managing EC delegations in non-EC countries. (Further information on DGI and DGIA is provided in Chapter 14).

☐ *The hierarchical structure*

The hierarchical structure within the Commission is as follows:

- All important matters are channelled through the weekly meetings of the College of Commissioners. At these meetings decisions are taken unanimously if possible, but by majority vote if need be.
- In particular policy areas the Commissioner who is assigned the portfolio carries the main leadership responsibility.
- DGs are formally headed by Directors General who are responsible to the appropriate Commissioner or Commissioners.
- Directorates are headed by Directors who report to the Director General or, in the case of large DGs, to a Deputy Director General.
- Divisions are headed by Heads of Division who report to the Director responsible.

The structure thus appears to be quite clear. In practice, it is not completely so. At the topmost echelons, in particular, lines of authority and accountability are sometimes blurred. One reason for this is that a poor match often exists between Commissioners' portfolios and the policy responsibilities of the DGs. Community enlargements and the consequent increasing size of the Commission over the years have allowed for greater policy specialisation on the part of individual Commissioners, and a better alignment with the responsibilities of individual DGs but, even now, most Commissioners carry several portfolios, each of which may touch on the work of a number of DGs. Moreover, the content of portfolio respons-

ibilities is changed from Commission to Commission. Some, such as Budget, Agriculture, or Regional Policy, are more or less fixed, but others, of a broader and less specific kind, can be varied, or even created, depending on how a new President sees the role and tasks of the Commission and what pressures the Commissioners themselves exert.

Another structural problem that arises in relation to Commissioners is the curious halfway position in which they are placed. To use the British parallel, they are more than permanent secretaries but less than ministers. For whilst they are, on the one hand, the principal Commission spokesmen in their assigned policy areas, they are not members of the Council of Ministers – the body which takes the final policy decisions on important matters.

These structural arrangements mean that any notion of individual responsibility, such as exists in most member states in relation to ministers – albeit usually only weakly and subject to the prevailing political currents – is difficult to apply to Commissioners. It might even be questioned whether it is reasonable that the Commission should be subject to collective responsibility – as it is by virtue of Article 144 of the EC Treaty which obliges it to resign if a motion of censure on its activities is passed in the EP by a two-thirds majority of the votes cast, representing a majority of all members. (No motion of censure has ever been passed.) Collective responsibility may be thought to be fair insofar as all Commission proposals and decisions are made collectively and not in the name of individual Commissioners but, at the same time, it may be thought to be unfair insofar as much of the Commission's activity and the fortunes of its attempts to develop policy are dependent on the Council. Indeed, the Commission is at a theoretical risk of being dismissed by a Parliament frustrated by its inability to censure the Council.

☐ *Decision-making mechanisms*

The hierarchical structure that has just been described produces a 'model' route via which proposals for decisions make their way through the Commission machinery:

- An initial draft is drawn up at middle-ranking 'A' grade level in the appropriate DG. Outside assistance – from consultants, academics, national officials and experts, and sectional interests – is sought, and if necessary contracted, as appropriate. The parameters of the draft are likely to be determined by existing EU policy, or by guidelines that have been laid down at senior Commission and/or Council levels.

- The draft is passed upwards through superiors and through the *cabinets* of Commissioners and through the weekly meeting of the *chefs de cabinet*, until the College of Commissioners is reached. During its passage the draft may be extensively revised.
- The College of Commissioners can do virtually what it likes with the proposal. It may accept it, reject it, refer it back to the DG for re-drafting, or defer taking a decision.

From this 'model' route all sorts of variations are possible, and in practice are commonplace. For example, where draft proposals are relatively uncontroversial, or where there is some urgency involved, procedures and devices can be employed which have as their purpose the prevention of logjams at the top and the expediting of business. One such procedure enables the College of Commissioners to authorise the most appropriate amongst their number to take decisions on their behalf. Another procedure is the so-called 'written procedure' by which proposals which seem to be straightforward are circulated amongst all Commissioners and are officially adopted if no objection is lodged within a specified time, usually a week. Urgent proposals can be adopted even more quickly by 'accelerated written procedure'.

Another set of circumstances producing departures from the 'model' route is where policy issues cut across the Commission's administrative divisions – a common occurrence given the sectoral specialisations of the DGs. For example, a draft directive aimed at providing a framework in which alternative sources of energy might be researched and developed, would probably originate in DGXVII (Energy), but would have direct implications too for DGXII (Science, Research and Development), DGXIX (Budgets), and perhaps DGIII (Internal Market and Industrial Affairs). Sometimes policy and legislative proposals do not just touch on the work of other DGs, but give rise to sharp conflicts, the sources of which may be traced back to conflicting 'missions' of DGs: there have, for example, been several disputes between DGIII and DGIV (Competition), with the former tending to be much less concerned than the latter about rigidly applying EU competition rules if European industry is thereby assisted and advantaged. Provision for liaison and coordination is thus essential if the Commission is to be effective and efficient. There are various procedures and mechanisms which attempt to provide this necessary coordination. Four of these are particularly worth noting.

First, the President of the Commission has an ill-defined, but generally expected, coordinating responsibility. A forceful personality may be able to achieve a great deal in forging a measure of collective identity out of the varied collection of people, from quite different national and political backgrounds, who sit around the Commission table. But it can only be

done tactfully and with adroit use of social skills. Jacques Delors, who presided over three Commissions – 1985–9, 1989–93, 1993–4 – unquestionably had the requirement of a forceful personality, but he also displayed traits and acted in ways which, many observers have suggested, had the effect of undermining team spirit amongst his colleagues: he indicated clear policy preferences and interests of his own; he occasionally made important policy pronouncements before fully consulting the other Commissioners; he criticised Commissioners in Commission meetings and sometimes, usually by implication rather than directly, did so in public too; and he frequently appeared to give more weight to the counsel of personal advisers and to people who reported directly to him – drawn principally from his *cabinet* and from the Commission's Forward Studies Unit – than to that of Commissioners.

Second, the College of Commissioners is, in theory at least, in a strong position to coordinate activity and take a broad view of Commission affairs. Everything of importance is referred to the Commissioners' weekly meeting and at that meeting the whole sweep of Commission interests is represented by the portfolios of those gathered around the table.

Commissioners' meetings are always preceded by other meetings designed to ease the way to decision-making:

- Informal and *ad hoc* consultations may occur between those Commissioners particularly affected by a proposal.
- The Commissioners' agenda is always considered at a weekly meeting of the heads of the Commissioners' *cabinets*. These *chefs de cabinet* meetings are chaired by the Commission's Secretary General and are usually held two days before the meetings of the Commission itself. Their main purpose is to reduce the agenda for Commission meetings by reaching agreements on as many items as possible and referring only controversial/difficult/major/politically sensitive matters to the Commissioners.
- Feeding into *chefs de cabinet* meetings are the outcomes of the six or seven meetings which are held each week of the *cabinet* members responsible for particular policy areas. These meetings are chaired by the relevant policy specialist in the President's *cabinet* and they have two main purposes: to enable DGs other than the sponsoring DG to make observations on policy and legislative proposals – in other words, they assist in the task of horizontal coordination; and to allow proposals to be evaluated in the context of the Commission's overall policy priorities.
- Officials from the different *cabinets*, who are generally well known to one another, often exchange views on an informal basis if a proposal which looks as though it may create difficulties comes forward. (Officially *cabinets* do not become involved until a proposal has been formally launched by a DG, but earlier consultation sometimes occurs. Where this consultation is seen by DGs to amount to interference, tensions and hostilities can arise – not least because *cabinet* officials are usually junior in career terms to officials in the upper reaches of DGs.)

Third, at the level of the DGs, various management practices and devices have been developed to try and rectify the increasingly recognised problem of horizontal coordination. In many policy areas this results in important coordinating functions being performed by a host of standing and *ad hoc* committees – normally referred to as inter-service meetings – task forces and project groups, and informal and one-off exchanges from Director General level downwards.

Fourth, the main institutional agency for promoting coordination is the Secretariat General of the Commission, which is specifically charged with ensuring that proper coordination and communication takes place across the Commission. In exercising this duty the Secretariat satisfies itself that all Commission interests have been consulted before a proposal is submitted to the College of Commissioners.

However, despite these various coordinating arrangements a feeling persists in many quarters that the Commission continues to function in too compartmentalised a manner, with insufficient attention paid to overall EU policy coherence. Amongst the problems are these:

(1) The Commission has a rather rigid organisational framework. Despite the development of horizontal links of the kind that have just been noted, structural relationships, both between and within DGs, remain too vertical. Although encouragement has been given, principally via the President's office, to the creation of agencies and teams which can plan on a broad front, these are not sufficiently developed, and in any event they have had difficulties in asserting their authority in relation to the DGs – especially the larger and traditionally more independent ones. As for the President himself, he has no formal powers to direct the actions of DGs, let alone the authority to dismiss or reassign the duties of those in the DGs whom he judges to be incompetent or uncooperative.

(2) Departmental and policy loyalties sometimes tend to discourage new and integrated approaches to problems and the pooling of ideas. Demarcation lines between spheres of responsibility are too tightly drawn, and policy competences are too jealously guarded.

(3) Sheer workload has made it difficult for many Commissioners and senior officials to look much beyond their own immediate tasks. One of the duties of a Commissioner's *cabinet* is supposedly to keep him abreast of general policy developments, but it remains the case that the Commissioner holding the portfolio on, say, energy, can hardly be

blamed if he has little to contribute to a Commission discussion on the milk market regime.

Responsibilities and powers

Some of the Commission's responsibilities and powers are prescribed in the Treaties and in Community legislation. Others have not been formally laid down but have developed from practical necessities and the requirements of the EU system.

Whilst recognising that there is, in practice, some overlap between the categories, the responsibilities and associated powers of the Commission may be grouped under six major headings: proposer and developer of policies and of legislation, executive functions, guardian of the legal framework, external representative and negotiator, mediator and conciliator, and the conscience of the Union.

Proposer and developer of policies and of legislation

Article 155 of the EC Treaty states that the Commission 'shall formulate recommendations or deliver opinions on matters dealt with in this Treaty, if it expressly so provides or if the Commission considers it necessary'.

What this means in practice is that under the EC Treaty, and indeed under the ECSC and Euratom Treaties too, the Commission is charged with the responsibility of proposing measures which are likely to advance the development of the EU. Under the CFSP and JHA pillars of the TEU such a role is not allocated, since the relevant Treaty provisions merely state that the Commission 'shall be fully associated with the work' in these areas.

In addition to its formal Treaty powers, political realities arising from the institutional structure of the EU also dictate that the Commission should be centrally involved in formulating and developing policy. The most important of these realities is that there is nothing like an EU Prime Minister, an EU Cabinet, or EU ministers capable of providing the Commission with clear and consistent policy direction, let alone a coherent legislative programme. Senior Commission officials who have transferred from national civil services are often greatly surprised at the lack of political direction from above and at the amount of room for policy and legislative initiation that is available to them. Their duties are often only broadly defined and there can be considerable potential, especially for the more senior 'A' grade officials, to stimulate development in specific and, if

they wish, new and innovative policy areas. An indication of the scale of this activity is seen in the fact that in an average year the Commission is likely to send the Council 600–800 proposals, recommendations, and drafts, and over 300 communications, memoranda and reports.

Although in practice they greatly overlap, it will be useful here, for analytical purposes, to look at policy initiation and development, and legislative initiation and development, separately.

Policy initiation and development takes place at several levels in that it ranges from sweeping 'macro' policies to detailed policies for particular sectors. Whatever the level, however, the Commission – important though it is – does not have a totally free hand in what it does. As is shown at various points elsewhere in this book, all sorts of other actors – including the Council of Ministers, the EP, the member states, sectional groups, regional and local authorities, and private firms – also attempt to play a part in the policy process. In so doing they exert pressure directly on the Commission wherever and whenever that is possible. From its earliest deliberations on a possible policy initiation the Commission is obliged to take note of many of these outside voices if its proposals are to find broad support and if they are to be effective in the sectors to which they are directed. The Commission must concern itself not only with what it believes to be desirable but also with what is possible. The policy preferences of others must be recognised and, where necessary and appropriate, be accommodated.

Of the many pressures and influences to which the Commission is subject in the exercise of its policy initiation functions, the most important are those which emanate from the Council of Ministers. When the Council indicates that it wishes to see certain sorts of proposals laid before it, the Commission is obliged to respond. However, important though the Council has become as a policy initiating body (see Chapter 5), the extent to which this has produced a decline in the initiating responsibilities and powers of the Commission ought not to be exaggerated. For the Council often finds it difficult to be bold and imaginative, and tends to be better at responding than at originating and proposing. Further to this, there has been an increasing tendency since the early 1980s for major policy initiatives to be sanctioned at European Council rather than Council of Ministers level, and the Commission has adjusted itself quite well to this shift by not only taking instructions from the European Council but using it to legitimise its own policy preferences. Four examples, covering issues of great importance, illustrate the increasing mutual interdependence of the Commission and the European Council as regards policy initiation and

development. First, the Commission's 1985 White Paper *Completing the Internal Market*, which spelt out a rationale, a programme, and a timetable for completing the internal market by 1992, was approved at the June 1985 Milan summit. Six months later, at the Luxembourg summit, it was agreed that this policy objective would be incorporated into the EEC Treaty via the SEA and that the institutional reforms which would be necessary if the 1992 objective was to be achieved would also be given Treaty status. Second, from shortly after the SEA came into operation in 1987, the Commission, and more especially Jacques Delors, began pressing the case for Economic and Monetary Union (EMU). The Commission played a major part in helping to set and shape the EMU policy agenda, with the consequence that the EMU provisions of the TEU largely reflected the Commission's preferences. Third, at the Strasbourg European Council in December 1989, the Commission's *Community Charter of the Fundamental Social Rights of Workers* (commonly referred to as 'the Social Charter') was adopted. The Charter did not contain specific legislative proposals for the application of the Charter – they were left to an accompanying action programme – but the adoption of the Charter has since acted as an important reference point for the development of an EU social dimension. Fourth, the important agreement reached at the 1992 Edinburgh summit for the EU's future spending plans for the rest of the decade was based to a considerable extent on the proposals which had been made earlier in the year by the Commission in its document *From the Single Act to Maastricht and Beyond: The Means to Match our Ambitions*. (The totals proposed by the Commission were scaled down, but the distributional pattern was, for the most part, accepted.)

The Commission's policy initiating activities are not, of course, restricted just to major, cross-sectional, innovatory policies and policy programmes of the kind which have just been cited. They can take many different forms. For example: attempting to generate a more integrated approach to a policy sector – as with the 1992 White Paper *Communication on the Future Development of the Common Transport Policy*; attempting to strengthen existing policy frameworks – as with the 1993 Communication *Reinforcing the Effectiveness of the Internal Market* and the working document *Towards a Strategic Programme for the Internal Market*; and attempting to promote ideas, discussion and interest as a possible preliminary to getting a new policy area off the ground – as with the 1992 Green Paper on the *Development of the Single Market for Postal Services* or the 1993 Green Paper on *The European Dimension of Education*. Whatever their particular focus, however, most – though not all – policy initiatives need to be followed up with legislation if they are to have bite and be effective.

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The Commission alone has the powers to initiate and draft legislation. The other two main institutions which are involved in the legislative process, the Council and the EP, can request the Commission to produce proposals (the Council under Article 152, EC and the EP under Article 138b, EC) but they cannot do the initiating or the drafting themselves. Moreover, after a legislative proposal has been formally tabled the Commission still retains a considerable measure of control, for though the proposal may fail to find sufficient support to enable it to be passed (in practice increasingly unlikely, except for controversial matters), it is extremely difficult for the Council or the EP to amend it without the Commission's agreement: the Council can only do so by acting unanimously, and the EP can only do so in limited circumstances and then only with the support of an absolute majority of its component members.

As with its drafting of policy proposals, in drafting its legislative proposals the Commission makes considerable use of outside sources, and is often subject to considerable outside pressures. An important part in these sounding and listening processes, especially at the pre-proposal stage (that is, before the Commission has formally presented a legislative proposal to the Council and the EP) is played by a vast network of advisory committees that have been established over the years.

□ *The Commission's advisory committee network*. The committees are of two main types.

(1) *The expert committees*. These consist of national officials, experts and specialists of various sorts. Although nominated by national governments the members are not normally viewed as official governmental spokesmen – in the way that members of Council working parties are (see Chapter 5) – so it is usually possible for the committees to conduct their affairs on a very informal basis. Many of these committees are well established, meet on a fairly regular basis, and have a more or less fixed membership; others are *ad hoc* – set up, very frequently, to discuss an early draft of a Commission legislative proposal – and can hardly be even described as committees in that they may only ever meet once or twice. As for their interests and concerns, some of the committees are broad and wide-ranging, such as the Advisory Committee on Restrictive Practices and Dominant Positions and the Advisory Committee on Community Actions for the Elderly, while others are more specialised and technical, such as the Advisory Committee on Unfair Pricing Practices in Maritime Transport and the Committee of Experts on International Road Tariffs.

(2) *The consultative committees*. These are composed of representatives of sectional interests and are organised and funded by the Commission

without reference to the national governments. Members are normally appointed by the Commission from nominations made by representative EU level organisations: either umbrella groups such as the Union of Industrial and Employers' Confederations of Europe (UNICE), the European Trade Union Confederation (ETUC), and the Committee of Professional Agricultural Organisations of the European Community (COPA), or more specialised sectoral organisations and liaison groups such as the Common Market Group of the International Union of Railways (IUR), or the Committee of Transport Unions in the Community (ITF–ICFTU). The effect of this appointments policy is that the consultative committees are made up overwhelmingly of full-time employees of associations and groups. The largest number of consultative committees are to be found in the agriculture sector, where there are over twenty committees for products covered by a market regime, plus half a dozen or so more general committees. Most of the agricultural advisory committees have a membership of between thirty and fifty, but there are a few exceptions: the largest are those on cereals (54), milk and dairy products (52), and sugar (52); the smallest are the veterinary committee and the committee on hops, each of which have fourteen members.

In addition to these two types of committees there are many hybrids with mixed forms of membership.

Most of the advisory committees are chaired and serviced by the Commission. A few are serviced by the Council and are, technically, Council committees, but the Commission is entitled to observer status on these so the distinction between the two types of committees is of little significance in terms of their ability to advise the Commission.

The extent to which policy sectors are covered by advisory committees varies. One factor making for variation is the importance of the policy within the EU's policy framework – it is hardly surprising, for example, that there should be many more agricultural advisory committees than there are educational advisory committees. Another factor is the dependence of the Commission in particular policy areas on outside expertise and technical knowledge. And a third factor is the preferences of DGs – some incline towards the establishment of committees to provide them with advice, others prefer to do their listening in less structured ways.

The influence exercised by the advisory committees varies enormously. In general, the committees of national experts are better placed than the consultative committees. There are a number of reasons for this. First, Commission consultation with the expert committees is usually compulsory in the procedure for drafting legislation, whereas – despite their name – it is usually optional with the consultative committees. Secondly, the expert committees can often go beyond offering the Commission technical advice, to alerting it to probable governmental

reactions to a proposal and, therefore, to possible problems that may arise at a future decision-making stage if certain views are not incorporated. Thirdly, expert committees also have the advantage over consultative committees of tending to meet more regularly – often convening as necessary when something important is in the offing – whereas consultative committees tend to gather on average no more than two or three times a year. Usually, consultative committees are at their most influential when they have high-ranking figures amongst their membership, when they are given the opportunity to discuss policy at an early stage of development, when the timetable for the enactment of a proposal is flexible, and when the matter under consideration is not too constrained by existing legislation.

☐ *Executive functions*

The Commission exercises wide executive responsibilities. That is to say, it is closely involved in the management, supervision and implementation of EU policies. Just how involved varies considerably across the policy spectrum but, as a general rule, it can be said that the Commission's executive functions tend to be more concerned with monitoring and coordinating developments, laying down the ground rules, carrying out investigations and giving rulings on significant matters (such as proposed company mergers, state aids, and applications for derogations from EU law) than they are with detailed 'ground level' policy implementation.

Three aspects of the Commission's executive functions are worth special emphasis.

(1) *Rule-making powers*. It is not possible for the Treaties, or for legislation which is made in the name of the Council or the European Parliament and the Council, to cover every possible area and eventuality in which a rule may be required. In circumstances and under conditions that are defined by the Treaties and/or EU legislation the Commission is, therefore, delegated rule-making powers. This puts the Commission in a similar position to national executives: because of the frequent need for quick decisions in that grey area where policy overlaps with administration, and because too of the need to relieve the normal legislative process of over-involvement with highly detailed and specialised matters, it is desirable to have truncated and special rule-making arrangements for 'administrative' and 'technical' law.

The Commission normally issues between 6000 and 7000 legislative instruments per year. These are in the form of directives, regulations, and decisions. (The Commission also issues a large number of other

instruments – in particular recommendations and opinions – but these do not usually have legislative force.) Most of this Commission legislation is confined to the filling in of details, or the taking of decisions, that follow automatically from Council, or European Parliament and Council, legislation. So the greatest proportion of Commission legislation is made up of regulations dealing with price adjustments and market support measures under the Common Agricultural Policy. Exhibit 8.1 (p. 212) provides an example of such legislation. (See Chapter 8 for an examination of the differing types of EU legislative instruments.)

But although most of the Commission's rule-making powers are confined to the routine and the straightforward, not quite all are. In at least three areas opportunities exist to make not just 'administrative' law, but what verges on 'policy' law. First, under the ECSC Treaty, the Commission is granted extensive rule-making powers subject, in many instances, only to 'consultations' with the Consultative Committee of the ECSC and with the Council of Ministers. Article 60, for example, gives the Commission powers to define what constitutes 'unfair competitive practices' and 'discrimination practices', and under Article 61 it may set maximum prices. If a state of 'manifest crisis' is declared, as it was in October 1980 because of the Community's chronic over-production of steel, the Commission's powers are increased further: it may then set minimum prices (Article 61) and also, with the 'assent' of the Council of Ministers, establish a system of production quotas (Article 58). Second, the management of the EU's Common External Tariff gives the Commission considerable manoeuvrability. It is, for example, empowered to introduce preventive measures for a limited period in order to protect the EU market from dumping by third countries. Third, in furtherance of the EU's competition policy, the Commission, supported by decisions of the Court of Justice, has taken advantage of the rather generally phrased Article 85 of the EC Treaty to clarify and develop the position on restrictive practices through the issuing of regulations and decisions.

(2) *Management of EU finances.* On the revenue side of the budget, EU income is subject to tight constraints determined by the Council (see Chapter 12 for an explanation of budgetary revenue). In overseeing the collection of this income the Commission has two main duties. First, to see that the correct rates are applied within certain categories of revenue. Second, to ensure that the proper payments are made to the EU by the national authorities which act as the EU's collecting agents.

On the expenditure side, the administrative arrangements vary according to the type of expenditure concerned. The Commission must, however, always operate within the approved annual budget (the EU is not

legally permitted to run a budget deficit) and on the basis of the guidelines for expenditure headings that are laid down in EU law. Of the various ways in which the EU spends its money two are especially important in that, together, they account for over 75 per cent of total budgetary expenditure.

First, there is the Guarantee section of the European Agricultural Guidance and Guarantee Fund (EAGGF). This takes up around 50 per cent of the annual budget and is used for agricultural price support purposes. General management decisions concerning the EAGGF – such as whether, and on what conditions, to dispose of product surpluses – are taken by the Commission, usually via an appropriate management committee (see below). The practical application of agricultural policy and management decisions occurs at national levels through appropriate agencies (see Chapter 13).

Second, there are the structural funds, which consist of the European Regional Development Fund (ERDF), the European Social Fund (ESF), and the Guidance Section of the EAGGF. Following the inclusion, via the SEA, of a new Title V in the EEC Treaty on 'Economic and Social Cohesion' and, in particular, of a new Article 130A under Title V which stated 'the Community shall aim at reducing disparities between the various regions and the backwardness of the least-favoured regions', it was decided in 1988 to double the size of the structural funds over a five year period so that they would account for 25 per cent of the budget by 1993. It was also decided in 1988 to reform the funds so that instead of each having its own rules and objectives they would be based on four shared principles: concentration (involving the collective use of the funds in areas of greatest need); programming (mostly based on medium-term programmes for regional development, rather than 'one-off' projects); partnership (preparation, decision-making, and implementation of programmes and projects to be a shared responsibility between the Commission, national governments, and sub-national bodies); and additionality (programmes and projects to be co-financed by the Community and appropriate national bodies). The funds were to concentrate their attention on five shared objectives: developing backward regions, converting or adjusting declining industrial regions, combatting long-term unemployment, integrating young people into the job market, and adjusting agricultural structures and developing rural areas.

When the structural funds came up for review in 1992–3 it was agreed that the arrangements which had been created in 1988 had worked reasonably well. Accordingly, the size of the funds was again significantly increased (see Chapter 12) and their principles, their objectives, and administrative arrangements were confirmed, subject to some fine tuning. This means that the structural funds are managed in the following way:

(1) National governments, in consultation with both the Commission and with the competent regional and local authorities, submit to the Commission three to five year plans. The plans – which can be national, regional, or local in their scope – identify strategies and priorities for achieving the five objectives and indicate how EU financial assistance is to be used.

(2) On the basis of the plans submitted by the member states, in dialogue with the appropriate national and sub-national representatives, and after consulting the appropriate advisory committee – either the Advisory Committee on the Development and Conversion of Regions, the Committee of the European Social Fund, or the Committee on Agricultural Structures and Rural Development – the Commission draws up what are known as Community Support Frameworks (CSFs). By setting out a statement of the priorities for action, outlining the forms of assistance that are to be made available, and indicating the financial allocations that are envisaged, CSFs provide a reference framework for the applications for assistance which are made to the funds.

(3) Procedures for operationalising CSFs vary. The three main forms of implementation are through operational programmes (there may be several types of programme in a particular region), individual applications for large-scale projects, and global grants (whereby the Commission entrusts the administration of a budget to a national or regional intermediary).

(4) Monitoring and assessment of CSFs and individual operations is undertaken by monitoring committees on which sit representatives both of the Commission and of national, regional, and local partners.

Moving beyond the different parts of the Commission's financial management functions to look at the overall financial picture, it is clear that the Commission's ability to manage EU finances effectively is greatly weakened by its reliance on the Council. The Council controls the upper limits of the revenue base, and framework spending decisions are taken by different groups of ministers. In the past this sometimes caused considerable difficulties because it meant that if it became obvious during the course of a financial year that expenditure was exceeding income the Commission could not step in at an early stage and take appropriate action by, for example, increasing the Value Added Tax (VAT) ceiling on revenue or reducing agricultural price guarantees. All the Commission could do, and regularly did, was to make out a case to the Council as to what should be done. This dependence on the Council still remains, but the general situation is not so fraught as it was, because since 1988 there have been planned and clearer controls on the growth of both income and expenditure, and there are provisions for the Commission to act quickly if expenditure expands beyond targets in the main 'problem' area of

agriculture. The Commission is thus now more capable of effective financial management than formerly it was.

Before leaving the Commission's responsibilities for financial management it should also be noted that the Commission has some responsibilities for coordinating and managing finances which are not drawn exclusively from EU sources. These responsibilities mostly cover environmental programmes, scientific and technological research programmes, and educational programmes in which the member states are joined by non-member European states – mainly from the EFTA countries.

A particularly important programme area in which the Commission has assumed coordination and management responsibilities is not even exclusively European-based. The seven-nation Western Economic Summit of July 1989 called on the Commission to coordinate a programme of assistance from the twenty-four OECD countries to Poland and Hungary. This resulted in the PHARE programme (Poland and Hungary: Aid for the Restructuring of Economies), which has subsequently been extended to other countries of the former Soviet bloc. The PHARE programme is by no means the only channel via which Western aid is being made available to the fledgling democracies of Central and Eastern Europe, but it is an extremely important one, with billions of Ecus being made available for purposes such as increasing investment, expanding vocational training, and improving environmental standards.

(3) *Supervision of 'front line' policy implementation.* The Commission's role with regard to the implementation of EU policies is primarily that of supervisor and overseer. It does undertake a limited amount of direct policy implementation – in connection with competition policy, for example – but the bulk of the practical/routine/day-by-day/front line implementation of EU policies is delegated to appropriate agencies within the member states. Examples of such national agencies are: Customs and Excise Authorities (which deal with most matters in relation to movements across the EU's external and internal borders); veterinary inspection teams (which check quality standards on foodstuffs); and Ministries of Agriculture and Agricultural Intervention Boards (which are responsible for controlling the volume of agricultural produce on domestic markets and which deal directly with farmers and traders about payments and charges). To ensure that policies are applied in a reasonably uniform manner throughout the member states the Commission attempts to supervise, or at least hold a watching brief on, the national agencies and

the way they perform their EU duties, a task that carries with it many difficulties. Four of these are especially important.

First, the Commission is not, in general, sufficiently resourced for the job. There just are not enough officials in the DGs, and not enough money to contract the required help from outside agencies, to see that the agriculture, the fishing, the regional, and all the other policies are properly implemented. The Commission is, therefore, heavily dependent on the good faith and willing cooperation of the member states. However, even in those policy spheres where it is in almost constant communication with national officials, the Commission cannot know everything that is going on. And with respect to those areas where contacts and flows of communication between Brussels and national agencies are irregular and not well ordered, it is almost impossible for Commission officials to have an accurate idea as to what is happening 'at the front'. Even if the Commission comes to suspect that something is amiss with an aspect of policy implementation, lack of resources can mean that it is not possible for the matter to be fully investigated: at the end of 1993 there were only about 100 Commission officials specifically employed to combat fraud, with a mere 35 in the special fraud unit.

The second difficulty is that even where they are willing to cooperate fully, national agencies are not always capable of implementing policies as the Commission would ideally wish. One reason for this is that some EU policies are, by their very nature, extremely difficult to administer. For example, the Common Fisheries Policy is extremely difficult to police, with the provisions on fishing zones, total allowable catches, and conservation requiring surveillance measures such as obligatory and properly entered logbooks, port inspections, and aerial patrols. Another reason why national agencies are not always capable of effective policy implementation is that national officials are often poorly trained and/or are overburdened by the complexities of EU rules. The maze of rules which officials have to apply is illustrated by the import levy on biscuits which varies according to cereal, milk, fat and sugar content, while the export refund varies also according to egg content. Another example of rule complexity is seen in respect of the export of beef which, at the beginning of 1993, was subject to over forty separate regulations, which were themselves subject to an array of permanent and temporary amendments.

The third difficulty is that agencies in the member states do not always wish to see EU law applied. Competition policy, for example, is rich in such examples, but there is often little the Commission can do against a deliberately recalcitrant state given the range of policy instruments available to governments which wish to assist domestic industries, and given too the secretiveness with which these can often be arranged.

The fourth, and final, difficulty is that EU law can be genuinely open to different interpretations. Sometimes indeed it is deliberately flexible so as to allow for adjustments to national circumstances.

□ *The role of management and regulatory committees.* As is clear from the above discussion, a number of different procedures apply with regard to how the Commission exercises its executive functions. An important dimension of these differences concerns the role of management and regulatory committees. These committees have some role to play with regard to each of the three aspects of the Commission's executive powers that have just been outlined, but particularly the first two. This is because the committees are very important with regard to how the Commission may act when it wishes to adopt appropriate implementing/adaptive measures in respect of Council and European Parliament and Council legislation.

Aware that the arrangements regarding the Commission's implementing powers were becoming ever more confusing and complex, and aware too that the projected completion of the internal market by 1992 would entail a host of implementing decisions, the Single European Act (SEA) provided for a clarification of the procedures. On the basis of the SEA, and of a Council decision of 13 July 1987, the Commission's management and implementing powers in respect of Council decisions were clarified and streamlined. While no new procedures were introduced, it was established what the possible procedures were, and some guidelines were laid down for which should apply in particular cases.

As can be seen from Table 4.2, there are significant differences between the powers of the different types of committee: advisory committees can only *advise*; management committees can *block* Commission decisions by a qualified majority; regulatory committees must give their *approval* for Commission decisions by a qualified majority. These differences have led to disputes on 'comitology', between the Council on the one hand and the Commission and the EP on the other, regarding which procedure should apply – as is perhaps inevitable given that when the 1987 reforms were being discussed, the EP only wanted Procedures I and II and the Commission did not want procedure IIIb or Safeguard Measure b. The main bone of contention is that the Council has made too much use of the regulatory committee procedure and insufficient use of the advisory committee procedure.

Concentrating attention now just on management committees and regulatory committees – advisory committees having been discussed earlier – both types of committee are chaired and serviced by the Commission. The committee members are governmental representatives with, in an average-sized committee, two or three middle-ranking officials from

Table 4.2 *Procedures to be used in respect of the Commission's implementing powers*[1]

Procedure I (Advisory Committee)	The Commission submits a draft of the measures to be taken to the committee. The committee delivers an opinion on the draft, by a simple majority if necessary. The Commission takes 'the utmost account' of the opinion delivered by the committee.
Procedure II (Management Committee)	The Commission submits a draft of the measures to be taken to the committee. If the Commission's measures are *opposed* by a qualified majority in the committee then either: Variant (a) The Commission *may* defer application of its decision for up to one month. Variant (b) The Commission *shall* defer application of its decision for up to three months. Within the one month and three month deadlines the Council may take a different decision by a qualified majority vote.
Procedure III (Regulatory Committees)	The Commission submits a draft of the measures to be taken by the committee. If the Commission's measures are not *supported* by a qualified majority in the committee, or if no opinion is delivered, the matter is referred to the Council. The Council may, within a period not exceeding three months, take a decision on the Commission's proposal by a qualified majority. If the Council does not act within the three month period then either: Variant (a) The proposal shall be adopted by the Commission. Variant (b) The proposal shall be adopted by the Commission except where a *simple* majority in the Council votes against adoption.
Safeguard Measures (Mainly trade)	No committee is appointed, but the Commission must notify, and in some cases must consult with, the member states in respect of a measure to be taken. If any member state asks for the Commission's measures to be referred to the Council, within a time limit to be determined, then either: Variant (a) The Council may take a different decision by a qualified majority within a time limit to be determined. Variant (b) The Council must confirm, amend, or revoke the Commission's decision. If the Council takes no decision within a time limit to be determined the Commission's decision is revoked.

[1] Which procedure applies is specified in the enabling legislation.

appropriate ministries attending on behalf of each state. There is no hard and fast distinction of either principle or policy responsibility between the two types of committee. Management committees in the past were mostly concerned with agriculture – there are currently over thirty of these, most of them having a specific sectoral responsibility for the CAP's product regimes – but there are now an increasing number of management committees in other areas too. The regulatory committees tend to be concerned with harmonisation and vary greatly in their sectoral interests. Some, such as the Standing Committee on Foodstuffs, the Steering Committee on Feedingstuffs and the Regulatory Committee on the Improvement of Information in the Field of Safety, Hygiene and Health at the Workplace, have fairly broad briefs. Others, such as the committees 'for the adaptation to technical progress of directives on the removal of technical barriers to trade', are highly specialised: they include committees on dangerous substances and preparations, on motor vehicles, and on fertilisers. All of these committees, management and regulatory, meet as appropriate, which means almost weekly in the case of agricultural products requiring frequent market adjustments such as cereals, sugar, and wines, and in other cases means hardly at all.

Both types of committees do similar things, with variations occurring not so much between management and regulatory committees as such, but rather between individual committees according to their terms of

reference, the nature of the subject matter with which they are concerned, and how they are regarded by the Commission. In addition to considering proposed Commission decisions, agenda items for committee meetings could include analysing the significance of data of various kinds, looking at how existing legislation is working, considering how existing legislation may be modified to take account of technical developments (the particular responsibility of the technical progress committees), and assessing market situations (a prime task for the agricultural committees).

Those who criticise the EU on the grounds that it is undermining national sovereignties sometimes cite regulatory and management committees as part of their case. They point to the rarity of adverse opinions, the low number of no opinions, the frequency with which measures go through without unanimous support, and the ability of the Commission – especially under the management procedure – to ignore or circumvent unfavourable votes. There is, however, another side to this; a side which suggests that the power of the Commission to control the committees and impose its will on the states ought not to be exaggerated. Four points in particular ought to be noted. First, although some of the committees do exercise important powers, they tend, for the most part, to work within fairly narrowly defined limits. Anything very controversial is almost invariably referred to a Council meeting. Second, many negative votes by states are cast tactically rather than as part of a real attempt to stop a proposal. That is to say, a national delegation might well recognise that a measure is going to be approved but will vote against it or will abstain to satisfy a political interest at home. Third, as with all aspects of its activity, it is just not in the Commission's long-term interests to abuse its powers by forcing unwelcome or unpopular measures through a committee. It wants and needs cooperation, and if a proposal meets serious opposition in a committee a good chairman will, unless special circumstances prevail, suggest revisions rather than press a vote which may have divisive consequences. Finally, the Council tends to be jealous of its powers and would move quickly against the Commission if it thought committees of any sort were being used to undermine Council power.

☐ *The guardian of the legal framework*

In association with the Court of Justice, the Commission is charged with ensuring that the Treaties and EU legislation are respected. This role links closely with the Commission's supervisory and implementing responsibilities. Indeed, the lack of a full EU-wide policy implementing framework means that a legal watchdog role acts, to some extent, as a substitute for that detailed day-to-day application of policies that at national levels

involves, as a matter of routine, such activities as inspecting premises, checking employee lists, and auditing returns. It is a role that is extremely difficult to exercise: transgressors of EU law do not normally wish to advertise their illegal actions, and they are often protected by, or themselves may even be, national governments.

The Commission may become aware of possible illegalities in one of a number of ways. In the case of non-incorporation or incorrect incorporation of a directive into national law that is obvious enough, since directives normally specify a time by which the Commission must be supplied with full details of national incorporation measures. A second way is through self-notification. States, for example, are obliged to notify the Commission about all national draft regulations and standards concerning technical specifications so that the Commission may satisfy itself that they will not cause barriers to trade. Similarly, under Article 93 of the EC Treaty, state aids must be referred to the Commission for its inspection. Self-notifications also come forward under Article 85 of the EC Treaty, because although parties are not obliged to notify the Commission of possible restrictive business practices, they frequently do, either because they wish for clarification as to whether or not a practice is in legal violation, or because they wish to seek an exemption. (If notifications are not made within specified time limits exemptions are not permissible.) A third way in which illegalities may come to the Commission's attention is from the many representations that are made by individuals, organisations, firms or member states who believe that their interests are being damaged by the alleged illegal actions of another party. For example, Germany has frequently complained about the amount of subsidisation given by many national governments to their steel industries. A fourth way is through the Commission's own efforts. Such efforts may take one of several forms: investigations by one of the small monitoring/investigatory/fraud teams that the Commission has in a few policy areas; careful analysis of the information that is supplied by outside agencies; or simply a Commission official reading a newspaper report that suggests a government or a firm is doing, or is not doing, something that looks suspicious under EU law.

Infringement proceedings are initiated against member states for not notifying the Commission of measures taken to incorporate directives into national law, for non-incorporation or incorrect incorporation of directives, and for non-application or incorrect application of EU law – most commonly in connection with internal market and industrial affairs, indirect taxation, agriculture, and environmental and consumer protection. Before any formal action is taken against a state it is informed by the Commission that it is in possible breach of its legal obligations. If, after the

Commission has carried out an investigation, the breach is confirmed and continued, a procedure comes into force, under Article 169 of the EC Treaty, whereby the Commission

> shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

Since most infringements have implications for the functioning of the market, the Commission usually seeks to ensure that these procedures operate according to a tight timetable: normally about two months for the state to present its observations and a similar period for it to comply with the reasoned opinion.

Most cases, it must be emphasised, are settled at an early stage. So, in an average year, the Commission issues around 800 letters of formal notice, delivers 200 reasoned opinions, and makes 80 references to the Court of Justice (see Table 11.2). Italy, France, and Greece consistently figure high in these lists. One reason for so many early settlements is that most infringements occur not as a result of wilful avoidance of EU law but rather from genuine differences over interpretation or from national administrative and legislative procedures which have occasioned delay. Although there are differences between member states in their enthusiasm for aspects of EU law they do not usually wish to engage in open confrontation with EU institutions.

If states do not wish to submit to an EU law it is, therefore, more customary for them to drag their feet rather than be openly obstructive. Delay can, however, be a form of obstruction, in that states know it could be years before the Commission, and even more the Court of Justice, brings them to heel. Environmental legislation illustrates this, with most states not having fully incorporated and/or implemented only parts of long-standing EU legislation – on matters such as air pollution, bathing water, and drinking water.

As regards what action the Commission can take if it discovers breaches, or prospective breaches, of EU law, that depends very much on the circumstances. Four different sorts of circumstances will be taken as illustrations of this point:

- *Non-compliance by a member state.* Until the entry into force of the TEU in 1993 the Commission was not empowered to impose sanctions against member states which were in breach of their legal obligations. Respect for Commission decisions was dependent on the goodwill and political judgement of the states themselves, backed up by the ability of the Commission to make a referral to the Court of Justice – though the Court too could not impose sanctions. However, under the TEU the Commission is now permitted, where a member state refuses to comply with a judgement of the Court, to bring the state back before the Court and in so doing to specify a financial penalty which should be imposed. The Court takes the final decision.
- *Firms breaching EU law on restrictive practices.* Treaty provisions (notably Article 85, EC), secondary legislation, and Court judgements have established a considerable volume of EU law in the sphere of restrictive practices. If at all possible, however, the Commission avoids using this law to take formal action against firms. This is partly because of the ill-feeling that can be generated by open confrontations, and partly because formal action necessitates the use of cumbersome and protracted bureaucratic procedures within the Commission itself. Offending parties are, therefore, encouraged to fall into line or to reach an agreement with the Commission during the extensive informal processes that always precede formal action. If this fails, however, fines can result. Thus, in 1989 fines totalling 60 million Ecu (£42 million) were imposed on 23 plastic groups for price-fixing in the early 1980s. (This subsequently led to appeals to the Court of Justice and to the reduction of some of the fines.) Less punitively, in December 1986, the Commission issued a token fine of 50,000 Ecu (£36,000) on three major acid manufacturers – Unilever, Henkel, and Oleofina – for exchanging confidential information between 1979 and 1982 about their sales of certain products. This was the first occasion the Commission had imposed fines for a pure exchange of information agreement. In explaining its action the Commission stated: 'This exchange of information, normally regarded as business secrets, provided each of them with a means to monitor the activities of its major competitors and to adjust its own behaviour accordingly.'
- *Firms breaching EU rules on state aids.* Articles 92–94 of the EC Treaty provide the Commission with powers to take action against what is deemed to be unacceptable state subsidisation of business and industry. These powers can take the form of requiring that the state aid in question be repaid, as was the case in July 1990 when the Commission instructed the UK Government to recover £44.4 million worth of concessions which had been given to British Aerospace at the time of its acquisition of the Rover car group in 1988. (Interestingly, this case then dragged on through appeals and legal technicalities, and when the money was eventually repaid, in May 1993, the total had risen to £57.6 million because of lost interest calculated from August 1990 – the first occasion aid repayment involved reimbursement of interest.)
- *Potential breaches of EU rules on company mergers.* Council Regulation 4064/89 – the so-called Merger Control Regulation – which came into effect in September 1990, specifies the Commission's powers in

some detail: specified information regarding proposed mergers and takeovers above certain limits have to be notified to the Commission; on receipt of the information the Commission must decide within one month whether it proposes to either let the deal go ahead on the grounds that competition would not be harmed, or whether it wishes to 'open proceedings'; if it wishes to 'open proceedings' it has four months to carry out an investigation, during which it is entitled to enter the premises of firms and seize documents; any firm that supplies false information during the course of a Commission inquiry, or implements a merger or takeover without gaining clearance from the Commission, is liable to be fined up to 10 per cent of its annual sales.

In practice, up to the end of 1993 the Commission had given authorisation to all but one of the mergers referred to it – though sometimes conditions were laid down requiring, for example, some of the assets of the merging firms to be sold off. The first merger to be blocked was in 1991 when – to the background of a fierce disagreement within the Commission (between those who wished to apply the competition rules strictly and those who wished to be 'flexible' in the interests of building strong European-based global companies) the College of Commissioners voted by nine votes to eight to block the Aerospatiale (of France)/Alenia (of Italy) bid to buy De Haviland Canada from Boeing.

In exercising the role of guardian of the legal framework the Commission attempts to operate in a flexible and politically sensitive manner. It would not be in its, or the EU's, interests to use an overly heavy hand. A good example of the way in which political calculation, as well as legal interpretation, is employed by the Commission in the exercise of this role was seen in the much publicised Renault case: in March 1988 the Commission approved French Government aid to Renault subject to certain conditions; in November 1989 the approval was revoked, on the grounds that Renault had not kept its part of the bargain; in the deliberations which followed the Commission initially leant towards ordering Renault to pay back most of the aid, but following protracted negotiations at the highest levels – involving, at times, the Commissioner responsible (Sir Leon Brittan) and the French Prime Minister (Michel Rocard) a deal was struck under which Renault would pay back half of the FFr 12 billion (£1.26b) it had received.

As with most of its other activities, the Commission's ability to exercise its legal guardianship role is blunted by a number of constraints and restrictions. Three are especially important:

- The problem of limited resources means that choices have to be made about which cases are worth pursuing, and with what vigour. For example, only about fifty officials – in a specially created task force located in DGIV – have been appointed to undertake the detailed and highly complex work that is necessary to give effect to the 1989 Merger Control Regulation. As one Community official told the *Financial Times* in 1989 in connection with state aid: 'It is depressing to think that there are 30 of us here trying to control state aid, while in the Walloon region of Belgium alone there are 150 doling it out.'
- Relevant and sufficiently detailed information can be difficult to obtain – either because it is deliberately hidden from prying Commission officials, or because, as is the case with many aspects of market conditions, reliable figures are just not available. An example of an EU law which is difficult to apply because of lack of information is the *Council Directive of 2 April 1979 on the Conservation of Wild Birds* (79/409/EEC). Amongst other things, the Directive provides protection for most species of migrant birds and forbids killing for trade and by indiscriminate methods. Because the shooting of birds is popular in some countries, several governments were slow to transpose the Directive into national law, and were then reluctant to do much about applying the law once it had been transposed. On the first of these implementing problems – transposition – the Commission can acquire the information it needs since states are obliged to inform it of the measures they have taken. On the second of the implementation problems, however – application of the law by national authorities against transgressors – the Commission has been much less able to make judgements about whether states are exercising their responsibilities: it is very difficult to know what efforts are really being made by national authorities to catch shooters and hunters.
- Political considerations can inhibit the Commission from acting as vigorously as it could in certain problem areas and in particular cases. This is largely because it does not normally wish to upset or politically embarrass member states if it is at all avoidable: the Commission does, after all, have to work closely and continuously with the states both on an individual and – in the Council of Ministers – on a collective basis. An example of political pressures inhibiting the Commission is seen in the above cited Conservation of Wild Birds Directive: in addition to the practical problems it has in acquiring information about the killing of birds, the Commission's sensitive political antennae also serve to hold it in check in that it is well aware of the unpopularity and political difficulties that would be created for some governments if action was to be taken against the thousands who break this law. Another example of the inhibiting role of political pressures is seen in the cautious line that the Commission has traditionally adopted towards multinational corporations

which appear to be in breach of EU competition law: to take action against multinationals is to risk generating political opposition from member states in which the companies are based, and also risks being self-defeating in that it may cause companies to transfer their activities outside the EU. (There are also, of course, practical problems of the sort noted in the previous point when seeking to act against multinationals: it is very difficult to follow investigations through when dealing with organisations which are located in several countries, some of which may be outside Europe.)

☐ *External representative and negotiator*

The different aspects of the Commission's role in respect of the EU's external relations are considered in some detail in Chapter 14, so attention here will be limited to simply identifying what those aspects are. There are, essentially, six.

First, the Commission is centrally involved in determining and conducting the EU's external trade relations. On the basis of Article 113 of the EC Treaty, and with its actions always subject to Council approval, the Commission represents and acts on behalf of the EU both in formal negotiations, such as those which are conducted under the auspices of GATT, and in the more informal and exploratory exchanges such as are common between, for example, the EU and the United States over world agricultural trade, and between the EU and Japan over access to each other's markets.

Second, the Commission has important negotiating and managing responsibilities in respect of the various special external agreements which the EU has with many countries and groups of countries. These agreements take various forms but the more 'advanced' – the economic cooperation agreements and the association agreements – go beyond the 'privileged' trading conditions which are invariably at their heart, to include provisions for such things as European Investment Bank loans, financial aid, and political dialogue.

Third, the Commission represents the EU at, and participates in the work of, a number of important international organisations. Four of these are specifically mentioned in the EC Treaty: the United Nations and its specialised agencies (Article 229); GATT (Article 229); the Council of Europe (Article 230); and the Organisation for Economic Cooperation and Development (Article 231).

Fourth, the Commission has responsibilities for acting as a key point of contact between the EU and non-member states. Over 140 countries have diplomatic missions accredited to the EU and the Commission is expected

to keep them informed about EU affairs, either through the circulation of documents or by making its officials available for information briefings and lobbying. The EU, for its part, maintains an extensive network of diplomatic missions abroad, numbering 100 delegations and offices, and these are staffed by Commission employees.

Fifth, the Commission is entrusted with important responsibilities in regard to applications for EU membership. On receipt of an application the Council normally asks the Commission to carry out a detailed investigation of the implications and to submit an opinion (an opinion that the Council need not, of course, accept – as it did not in 1976 when it rejected the Commission's proposal that Greece be offered a pre-accession period of unlimited duration and instead authorised negotiations for full membership). If and when negotiations begin, the Commission, operating within Council approved guidelines, acts as the EU's main negotiator, except on show-piece ministerial occasions or when particularly sensitive or difficult matters call for an inter-ministerial resolution of differences. The whole process – from the lodging of an application to accession – can take years. Portugal, for example, applied in March 1977; the Commission forwarded a favourable opinion to the Council in May 1978; negotiations opened in October 1978 and were not concluded until March 1985; and Portugal eventually joined in January 1986 – eight years and ten months after applying.

Sixth, and finally, under the TEU the 'Commission shall be fully associated with the work carried out in the common foreign and security policy field' (Article J.9). Quite what this will mean in practice remains to be seen, though the creation in the 1993–5 Commission of a new portfolio of External Political Relations, and the subsequent splitting of DGI into two so as to create a separate DG for External Political Relations, signalled the Commission's desire to maximise its role. Clearly, however, political relations, coupled with the intergovernmental and non-EC nature of the CFSP pillar, suggest that the Commission's role will essentially be supportive and secondary to that of the Council, and not in any way comparable to the role it undertakes in regard to external trade. Indeed the TEU makes that virtually explicit by stating that the Council Presidency shall take the leading role in representing the EU on CFSP matters and should also assume responsibility for implementing measures.

☐ *Mediator and conciliator*

Much of EU decision-making, especially in the Council of Ministers, is based on searches for agreements between competing interests. The Commission is very much involved in trying to bring these agreements

about and a great deal of its time is taken up looking for common ground which can create compromises that are somewhat more than the lowest common denominator. As a consequence, the Commission is often obliged to be guarded and cautious with its proposals. Radical initiatives, involving perhaps what it really believes needs to be done, are almost certain to meet with fierce opposition. More moderate proposals on the other hand, perhaps taking the form of adjustments and extensions to existing policy, and presented preferably in a technocratic rather than an ideological manner, are more likely to be acceptable. In other words, the Commission is often subject to an enforced incrementalism.

The Commission is not the only EU body that consciously seeks to oil the wheels of decision-making. As is shown in Chapter 5, the Council itself has taken steps to improve its own machinery. But the Commission is particularly well placed to act as mediator and conciliator. One reason for this is that it is normally seen as being non-partisan: its proposals may, therefore, be viewed less suspiciously than any which come from, say, the chairman of a Council working party. Another reason is that in many instances the Commission is simply in the best position to judge what proposals are likely to command support, both inside and outside the Council. This is because of the continuous and extensive discussions which the Commission has with interested parties from the earliest considerations of a policy proposal through to its enactment. Unlike the other institutions, the Commission is represented at virtually every stage and in virtually every forum of the EU's decision-making system.

Although there are naturally limitations on what can be achieved, the effectiveness with which the Commission exercises this mediating role can be considerably influenced by the competence of its officials. While, for example, one Commission official may play a crucial role in driving a proposal through a Council working party, another may be so incompetent as not only to prejudice the Commission's own position but to threaten the progress of the whole proposal. Many questions must be handled with care and political sensitivity: when should a proposal be brought forward, and in what form?; at what point will an adjustment in the Commission's position open the way to progress in the Council?; is there anything to be gained from informal discussions with 'awkward delegations'? These, and questions such as these, call for highly developed political skills.

☐ *The conscience of the Union*

In performing each of the above tasks the Commission is supposed to stand above and beyond sectional and national interests. While others might look to the particular, it should look to the general; while others migl look to the benefits to be gained from the next deal, it should keep at lea one eye on the horizon. As many have described it, the Commission shoul be the 'conscience' of the Union.

Christopher Tugendhat, a former Commissioner, has commented o this role. Among other things, he states, the Commission exists 't represent the general interest in the welter of national ones and to point th way ahead, but also drawing the attention of member states to new an more daring possibilities' (Tugendhat, 1986). Ideally this may be so. But, i practice, it is very difficult to operationalise. One reason for this is that it i highly questionable whether such a thing as the 'general interest' exist there are few initiatives which do not threaten the interests of at least som – were this not the case there would not be so many disagreements in th Council. Another reason is that many in the Commission doubt whether is worth pursuing 'daring possibilities' if it is clear that they will be rejecte and may even generate anti-Commission feelings.

In practice, therefore, the Commission tends not to be so detached, s far-seeing, or so enthusiastic in pressing the *esprit communautaire*, as som would like. This is not to say that it does not attempt to map out the futu or attempt to press for developments that it believes will be generall beneficial. On the contrary, it is precisely because the Commission doe seek to act in the general interest that the smaller EU states tend to see it a something of a protector and are consequently normally supportive of th Commission being given greater powers. Nor is it to deny that th Commission is sometimes ambitious in its approach and long-term in it perspective – as, for example, is demonstrated with the SEM programm with the Social Charter, with the championing of the cause of EMU, an with the campaign which was launched in late 1992 and which produced White Paper in late 1993 setting out a medium-term strategy for growtl competitiveness and employment. But the fact is that the Commission doe operate in the real EU world, and often that necessitates looking to th short rather than to the long term, and to what is possible rather than wh is desirable.

■ Concluding remarks

It is frequently stated that there has been a decline in the powers of th Commission since the mid-1960s. Commentators have particularly stresse a diminution in the Commission's initiating role and a correspondin weakening in its ability to offer real vision and leadership. It has become, is claimed, too reactive in exercising its responsibilities: reactive to th

pressures of the many interests to which it is subject; reactive to the immediacy of events; and above all, reactive to the increasing 'instructions' which are given to it by the Council of Ministers and the European Council.

Unquestionably, there is something in this view. The explanation for why it has happened is to be sought in a combination of factors. The rather rigid vertical lines within the Commission's own organisational structure sometimes make it difficult for a broad vision to emerge. The tensions which are seemingly present between the politically creative elements of the Commission's responsibilities and the bureaucratic roles of administering and implementing have perhaps never been properly resolved. Beyond such internal considerations, factors as varied as the accession of states which are anxious to protect their independence, the frequent appearance on the EU agenda of politically sensitive matters, and the desire of politicians not to cede too much power to others if it can be avoided, have resulted in the states being reluctant to grant too much autonomy to the Commission.

But the extent to which there has been a decline should not be exaggerated. Certainly the Commission has to trim more than it would like, and certainly it has suffered its share of political defeats – not least in regard to its wishes for stronger Treaty-based powers. But in some respects its powers have actually increased as it has adapted itself to the ever-changing nature of, and demands upon, the EU. As has been shown, the Commission exercises, either by itself or in association with other bodies, a number of crucially important functions. Moreover, it has been at the heart of pressing the case for, and putting forward specific proposals in relation to, all of the major issues which have been at the heart of the EU agenda in recent years: the SEM programme, EMU, the social dimension, institutional reform, enlargement, and a strategy for promoting growth. Perhaps the Commission is not quite the motor force that some of the founding fathers had hoped for, but in many ways it is both central and vital to the whole EU system.

■ *Chapter 5* ■

The Council of Ministers

The Council of Ministers is the principal meeting place of the national governments and is the EU's main decision-making institution.

When the Community was founded in the 1950s many expected that in time, as joint policies were seen to work and as the states came to trust one another more, the role of the Council would gradually decline, especially in relation to the Commission. This has not happened. On the contrary, by jealously guarding the responsibilities that are accorded to it in the Treaties, and by adapting its internal mechanisms to enable it to cope more easily with the increasing volume of business that has come its way, the Council has not only defended, but has in some respects extended, its power and influence. This has naturally produced some frustration in the Commission, and in the EP. It has also ensured that national governments are centrally placed to influence most aspects of EU business.

There was also a general expectation when the Community was founded that governments would gradually come to be less concerned about national sovereignty considerations and that this would be reflected in an increasing use of majority voting in the Council. Until the 1980s, however, there was little movement in this direction: even where the Treaties permitted majority votes, the Council normally preferred to proceed on the basis of consensual agreements. This preference for unanimity naturally bolstered the intergovernmental, as opposed to the supranational, side of the Community's nature and resulted in Council decision-making processes tending to be slow and protracted. As will be shown, this situation has changed considerably in recent years.

■ Responsibilities and functions

The principal responsibility of the Council is to take policy and legislative decisions. As is shown in Chapters 4, 7, and 11, the Commission and the EP also have such powers, but they are not comparable to those of the Council. Virtually all proposals for politically important and/or sensitive legislation have to receive Council approval in order to be adopted.

Normally, the Council has to act on the basis of proposals which are made to it by the Commission, and after receiving advice from the EP and the Economic and Social Committee (ESC) but, crucially, it alone decides, apart from under the co-decision legislative procedure where final decision-making powers are shared with the EP. The Council is, therefore, the legislature, or under the co-decision procedure the co-legislature, of the European Union. In 1993 it adopted 63 directives, 319 regulations and 164 decisions.

But, if the Council is the EU's legislature in the sense that it converts proposals into legal acts, its legislative capacity is significantly restricted by the requirement of the EC, ECSC and Euratom Treaties which state that the Council can usually act only on the basis of Commission proposals. This means that it does not have the constitutional power to initiate or draft proposals itself. In practice, ways have been found, if not to completely circumvent the Commission, at least to allow the Council a significant policy initiating role. Article 152 of the EC Treaty is especially useful: 'The Council may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals.' In the view of many observers, the use that has been made of Article 152, and the very specific instructions which have sometimes been issued to the Commission under its aegis, are against its intended spirit. Be that as it may, the political weight of the Council is such that the Commission is bound to pay close attention to what the ministers want.

In addition to Article 152, four other factors have also enhanced the Council's policy initiating role:

(1) The increasing adoption by the Council of opinions, resolutions, agreements and recommendations. These are not legal texts but they carry political weight and it is difficult for the Commission to ignore them. Sometimes they are explicitly designed to pressurise the Commission to come up with proposals for legislation.
(2) The movement of the EU into policy spheres which are not covered, or are not covered clearly, in the Treaties. This sometimes produces uncertainty regarding the exact responsibilities of decision-making bodies, and hence grey areas which the Council can exploit.
(3) The increasingly developed Council machinery. There are now many places in the Council's network where ideas can be generated. The emergence of the Council Presidency as a key institutional actor has played a particularly important role in enabling the Council to influence policy directions and priorities.
(4) The increasing willingness of the states to found aspects of their cooperation not on EU law but on non-binding agreements and understandings. This is most obviously seen in the spheres of foreign policy and justice and home affairs, which constitute the second and third pillars of the EU Treaty, but it does sometimes also happen in other, more conventional, EU spheres where national differences make it very difficult for law to be agreed. Such non-legal arrangements do not have to be Commission initiated.

Not only has the Council encroached on the Commission's policy initiating function but it has also joined it in exercising important responsibilities in the key activities of mediation and consensus building. Of course, as the forum in which the national representatives meet, the Council has always served the function of developing mutual understanding between the member states. Moreover, a necessary prerequisite for successful policy development has always been that Council participants display an ability to compromise in negotiations. But, as the EC/EU has grown in size, as more difficult policy areas have come onto the agenda, and as political and economic change has broken down some of the pioneering spirit of the early days, so has positive and active mediation come to be ever more necessary: mediation primarily between the different national and ideological interests represented in the Council, but also between the Council and the Commission, the Council and the EP, and the Council and non-institutional interests. The Commission has taken on much of this task, but so too have agencies of the Council itself.

The Council has thus gained powers and responsibilities over the years, but it has lost some too. It has done so in two principal respects. First, the European Council – the body which brings together the Heads of Government two or three times a year – has assumed increasingly greater responsibilities for taking the final political decisions on such matters as new accessions, institutional reform, and the launching of broad policy initiatives (see Chapter 6). Second, under both the SEA and the TEU the legislative powers of the EP were increased, to such an extent that though it is not yet as powerful as the Council, it can, in respect of certain policy matters in certain circumstances, prevent the Council from overriding its wishes.

■ Composition

□ *The ministers*

Ministerial meetings are at the apex of the Council machinery. Since the 1965 Merger Treaty entered into force in 1967 there has, legally, been only one Council of Ministers but, in practice, there are many in the sense that

the work of the Council is divided into policy areas. The General Affairs Council, which is composed of Foreign Ministers, has the widest brief: it deals with general issues relating to policy initiation and coordination, with external political relations, and often too with matters which, for whatever reason, are particularly politically sensitive. More sectoral matters are dealt with in the twenty or so 'Technical Councils', which are made up of Ministers of Agriculture, of Energy, of Environment and so on (see Table 5.1, p. 129).

Often, the national representatives who attend ministerial meetings differ in terms of their status and/or their policy responsibilities. This can inhibit efficient decision-making. The problem arises because the states themselves decide by whom they wish to be represented, and their decisions may vary in one of two ways:

□ *The level of seniority*. Normally, by prior arrangement, Council meetings are attended by ministers of a similar standing, but circumstances do arise when delegations are headed at different levels of seniority. This may be because a relevant minister has pressing domestic business or because it is judged that an agenda does not warrant his attendance. Occasionally, he may be 'unavoidably delayed' because he does not wish to attend an unwanted or a politically awkward meeting. Whatever the reason, a reduction in the status and political weight of a delegation may make it difficult for binding decisions to be agreed.

□ *The sectoral responsibility*. Usually it is obvious which government departments should be represented at Council of Ministers meetings, but not always. Doubts may arise because agenda items may straddle policy divisions, or because member states organise their central government departments in different ways. As a result, it is possible for ministers from rather different national ministries, with different responsibilities and interests, to be present. The difficulties which this creates are sometimes compounded, especially in broad policy areas, by the minister attending not feeling able to speak on behalf of other ministers with a direct interest and therefore insisting on a reference back to national capitals.

States are not, therefore, always comparably represented at ministerial meetings. But whether a country's principal spokesman is a senior minister, a junior minister or, as occasionally is the case, the Permanent Representative or even a senior diplomat, care is always taken to ensure that national interests are defended. The main way in which this is done is by the attendance, at all meetings, not only of the national spokesmen, but

of small national delegations. These delegations comprise national officials and experts plus, at important meetings or meetings where there is a wide-ranging agenda, junior ministers to assist the senior minister. (Trade Ministers, for example, usually accompany Foreign Ministers to meetings of the General Affairs Council when trade issues are to be considered.) Normally five or six officials and experts support the 'inner table team' (that is, the most senior national representatives who actually sit at the negotiating table), but this number can vary according to the policy area concerned (Foreign Ministers may be accompanied by teams of as many as eight or nine), the importance of the items on the agenda, and the size of the meeting room. The task of the supporting teams is to ensure that the head of the delegation is properly briefed, fully understands the implications of what is being discussed, and does not make negotiating mistakes. Sometimes, when very confidential matters are being discussed, or when a meeting is deadlocked, the size of delegations may, on a proposal from the President, be reduced to 'Ministers plus two', 'Ministers plus one', or, exceptionally, 'Ministers and Commission'.

Council of Ministers meetings are normally convened by the country holding the Presidency, but it is possible for the Commission or a member state to take the initiative. The Presidency rotates between the states on a six monthly basis: January until June, July until December (see Figure 5.1 and the Appendix for the order of rotation). The main tasks of the Presidency are as follows:

(1) Arranging (in close association with the Council Secretariat) and chairing, all Council meetings from ministerial level downwards (apart from a few committees and working parties which have a permanent chairman). These responsibilities give to the Presidency a considerable control over how often Councils and Council bodies meet, over agendas, and over what happens during the course of meetings.

(2) Launching and building a consensus for initiatives. A successful Presidency is normally regarded as one which gets things done. This can usually only be achieved by extensive negotiating, persuading, manoeuvring, cajoling, mediating and bargaining with and between the member states, and with the Commission and the EP.

(3) Ensuring some continuity and consistency of policy development. An important way in which this is achieved is via the so-called 'troika' arrangements which provide for cooperation between the preceding, the incumbent, and the succeeding Presidencies.

(4) Representing the Council in dealings with outside bodies. This task is exercised most frequently with regard to other EU institutions (such as

regular appearances before the EP), and with non-member countries in connection with certain external EU policies.

Holding the Presidency has advantages and disadvantages. One advantage is the prestige and status that is associated with the office: during the six month term of office the Presidential state is at the very heart of EU affairs; its ministers – especially its Head of Government and its Foreign Minister – meet with prominent international statesmen and dignitaries on behalf of the EU; and media focus and interest is considerable. Another advantage is that during its term of office a Presidency can do more than it can as an ordinary member state to help shape, and set the pace of, EU policy priorities. The extent of the potential of the Presidency in terms of policy development should not, however, be exaggerated: though Presidencies set out their priorities when they enter office, they do not start with a clean sheet but have to be much concerned with uncompleted business from previous Presidencies; related to this last point, an increasingly important part of the 'troika' arrangement is 'rolling work programmes' in which measures to be taken by the Council are coordinated between the three participating states, rather then being left solely to the preferences of the incumbent state; and, finally, six months just does not provide sufficient time for the full working through of policy initiatives – especially if legislation is required. As for the disadvantages of holding the Presidency, one is the blows to esteem and standing that are incurred when a state is judged to have had a poor Presidency, and another is the heavy administrative burdens that are attached to the job – burdens which some of the smaller states find difficult to carry.

Altogether there are around 90 Council meetings in an average year (95, for example, in 1993) with a certain bunching occurring in relation to key features of the EU timetable: the budgetary cycle, the annual agricultural price-fixing exercise, and the ending of a country's six month Presidency. Meetings are normally held in Brussels, except for April, June, and October when they are held in Luxembourg.

The regularity of meetings of individual Councils reflects their importance in the Council system and the extent to which there is an EU interest and activity in their policy area. So, as can be seen from Table 5.1, Foreign Ministers, Agriculture Ministers, and Economic and Finance Ministers (in what is customarily referred to as the Ecofin Council) meet most regularly: usually about once a month, but more frequently if events require it; Internal Market Ministers, Environment Ministers, Fisheries Ministers, and Transport Ministers follow next, with around four or five meetings per year; other Councils – such as Research, Social, Energy, and

Table 5.1 *Council Meetings in 1992*

Agriculture	14	Consumer Protection	2
General Council		Health	2
(Foreign Ministers)	12*	Education	2
Economic and Finance		Culture	2
(Ecofin)	10	Energy	2
Internal Market	7	Industry	2
Fisheries	5	Development	2
Environment	5**	Budget	2
Transport	4	Tourism	1
Research	3	Justice	1
Telecommunications	3		
Labour and Social		Total Number of Council	
Affairs	3	Meetings	84

* Including 2 special meetings.
** Including 1 jointly with Development Ministers.

Source: R. Corbett (1993) 'Governance and Institutional Developments' in N. Nugent (ed.) *The European Community 1992: Annual Review of Activities* (Blackwell).

Industry – meet only two or three times a year, or even just once or twice a year in fringe areas such as Health and Cultural Affairs.

Unless there are particularly difficult matters to be resolved, meetings do not normally last more than a day. A typical meeting would begin about 10.00 a.m. and finish around 6.00 p.m. or 7.00 p.m. Foreign Ministers, Agriculture Ministers, and Budget Ministers are the most likely to meet over two days, and when they do it is common to start with lunch on Day 1 and finish around lunchtime on Day 2.

Outside the formal Council framework some groups of ministers, particularly Foreign Ministers and Ecofin Ministers, have periodic weekend gatherings, usually in the country of the Presidency, which are used for the purpose of discussing matters on an informal basis without the pressure of having to take decisions.

☐ *The Committee of Permanent Representatives*

Each of the states has a national delegation, or Permanent Representation as they are more usually known, in Brussels which acts as a kind of embassy to the EU. There was some debate as to whether, post-Maastricht, they were embassies to the European Union or the European Communities. Most states decided upon Union, but the UK preferred

Communities, doubtless mainly because the word 'Union' is not much liked, though the formal explanation was a legalistic one: in the words of a spokesman 'The EU does not have the legal status to send or receive ambassadors. [The UK Ambassador] cannot be accredited to the Union because it does not have the legal personality to receive his accreditation.'

The Permanent Representations are headed by a Permanent Representative, who is normally a diplomat of very senior rank, and are staffed, in the case of the larger states, by thirty to forty officials, plus back-up support. About half of the officials are drawn from the diplomatic services of the member states with the others being seconded from appropriate national ministries such as Agriculture, Trade, and Finance.

Of the many forums in which governments meet 'in Council' below ministerial level, the most important is the Committee of Permanent Representatives (COREPER). Although no provision was made for such a body under the Treaty of Paris, ministers established a coordinating committee of senior officials as early as 1953, and under the Treaties of Rome the Council was permitted to create a similar committee under its Rules of Procedure. Under Article 4 of the Merger Treaty these committees were merged and were formally incorporated into the Community system: 'A committee consisting of the Permanent Representatives of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council.'

There are, in fact, two COREPERs. Each normally meets once a week. COREPER 2 is the more important and is made up of the Permanent Representatives plus supporting staff. Because of its seniority it is the more 'political' of the two COREPERs and works mainly for the Foreign Ministers (and through them for the European Council) and Ecofin. It also usually deals with issues for other Council meetings that are particularly sensitive or controversial. COREPER 2 is assisted in its tasks by the Antici Group, which is made up of senior officials from the Permanent Representations and which, in addition to assisting COREPER 2, acts as a key information gathering and mediating forum between the member states. COREPER 1 consists of the Deputy Permanent Representatives and supporting staff. Amongst the policy areas it normally deals with are environment, social affairs, transport and the internal market. Agriculture, because of the complexity and volume of its business, is not normally dealt with by COREPER except in regard to certain aspects, of which the most important are finance, harmonisation of legislation, and commercial questions in relation to non-EU countries. Most agricultural matters are dealt with by the Special Committee on Agriculture (SCA) which is staffed by senior officials, either from the Permanent Representations or from national Ministries of Agriculture. Like the two COREPERs the SCA normally meets at least once a week.

☐ *Committees and working parties*

A complicated network of committees and working parties assists and prepares the work of the Council of Ministers, COREPER and the SCA. The *committees* are of different types. They include:

- Council committees in the strict sense of the term are those standing committees which are serviced by Council administrators. There are only a handful of these, of which the Energy Committee and the Committee on Education are examples. Council committees are composed of national officials and their role is essentially to advise the Council and the Commission as appropriate and, in some instances, as directed. A particularly important and rather special Council committee is the Article 113 Committee which deals with commercial policy. Any significant action undertaken by the EU in international trade negotiations is preceded by internal coordination via this Committee. It normally meets once a week: the full members – who are very senior officials in national Ministries of Trade or the equivalent – meet monthly, and the deputies – who are middle-ranking officials from the Ministries, or sometimes from the Permanent Representations – meet three times a month. The Committee performs two main functions: it drafts the briefs on which the Commission negotiates on behalf of the EU with third countries (the Committee's draft is referred, via COREPER, to the Ministers for their approval); and it acts as a consultative committee to the Council and the Commission – by, for example, indicating to the Commission what it should do when problems arise during the course of a set of trade negotiations.
- The Standing Committee on Employment is also a Council serviced committee, but its membership is unusual in two respects: first, it is composed not only of governmental representatives but also of sectional interest representatives – the latter being drawn from both sides of industry; and, second, the governmental representations are headed by the Ministers themselves – or, if they are unable to attend, by their personal representatives. The Committee meets twice a year to discuss matters of interest and, where possible, to make recommendations to the Labour and Social Affairs Council. The nature of the membership of the Committee, with ministerial representation, means that where general agreement can be found, the matter is likely to be taken up by the Council.
- Various committees which are, technically, Commission committees, report to, or feed into, the Council, as well as the Commission, in an advisory capacity. In practice, they are as much Council committees as Commission committees. Their access to the Council usually stems either from their founding mandates, the importance of their policy competences, the eminence of their memberships, or from some combination of all three.

The most important of these committees is the Monetary Committee which was established under Article 105 of the EEC Treaty and which saw its position consolidated by Article 109c of the TEU: 'In order to promote coordination of the policies of the Member States to the full extent needed for the functioning of the internal market, a Monetary Committee with advisory status is hereby set up.' The Committee's prestige and power is explained by four main factors. First, it is given a broad brief in very important policy areas. The main focus of its work covers the European Monetary System (EMS), (it can be crucial when realignments of currencies in the Exchange Rate Mechanism (ERM) are being considered), capital movements, international monetary relations, and the many issues that arise in connection with Economic and Monetary Union (EMU). (On most of these matters the Committee works closely with another very important committee, the Committee of Governors of Central Banks.) Second, the Committee enjoys unusually privileged access to both the Commission and the Council. Indeed, in relation to the latter, the Committee's chairman normally reports several times a year directly to the Ecofin Council on the Committee's work. Third, the Committee meets regularly – including, normally, before Ecofin Council meetings – and is supported in most aspects of its work by an Alternates Committee and a small number of working parties. Finally, the members of the Committee – of which there are two from each member state, plus two from the Commission – are mostly senior and influential figures from Finance Ministries and Central Banks: people, in other words, who can normally communicate directly with whomsoever they wish, and people who are customarily listened to. If, and when, the third stage of EMU begins, the Monetary Committee will, under provisions laid down by the TEU, be replaced by an Economic and Financial Committee.

- In addition to the 'formally constituted' committees that have just been described – formally constituted in the sense that they have been established by the Treaties or by EU legislation – many other committees also assist the work of the Council. Not always referred to as committees, but sometimes as groups or simply meetings, these are most often found in policy areas which are now part of the EU but not of the EC. Such committees perform a variety of tasks: in the foreign policy field there is a well established committee structure – made up of the Political Committee, the Correspondents Group, and about twenty specialised working groups – which seeks to facilitate the exchange of information, coordinate positions, and prepare the work of the Foreign Ministers; in the internal security field, officials meet to perform similar functions in connection with their areas of responsibility – reporting in their case to Interior Ministers; and there has been an increasing tendency in recent years for *ad hoc* committees of senior national officials – usually referred to as *High Level Groups* – to be established for the purpose of developing initiatives and policies (though not, of course, for the purpose of drafting legislation) in new, and sometimes sensitive areas – the control of drugs, for example.

The role of the *working parties* (or working groups) is more specific than that of most of the committees in that they are responsible for carrying out a detailed analysis of formally tabled Commission proposals for Council, and EP and Council, legislation. The number of working parties in existence at any one time varies according to the overall nature of the EU's workload and the preferences of the Presidency in office, but in recent years there have usually been somewhere in the region of 150. (It is impossible to give a precise figure because over half of the working parties are *ad hoc* in nature.) Members of the working parties, of whom there may be up to three or four per member state, are almost invariably national officials and experts based either in the Permanent Representations or in appropriate national ministries. Occasionally governments appoint non-civil servants to a working party delegation when highly technical or complex issues are under consideration.

Working parties meet as and when they are required, usually with an interval of at least three weeks between meetings so as to allow the Council's Secretariat time to circulate minutes and agendas – in all the languages of the member states. For permanent working parties with a heavy workload meetings may be regular, for others, where nothing much comes up within their terms of reference, there may be very few meetings at all. Up to ten or eleven different working parties can be in session in Brussels on some days. On completion of their analyses of the Commission proposals, groups report to COREPER or to the SCA.

☐ *The Council Secretariat*

The main administrative support for the work of the Council is provided by the General Secretariat. This has a staff of just over 2000, of whom around 200 are at 'A' grade, that is diplomatic level. The Secretariat's base, which also houses Council meetings, is near to the main Commission and EP buildings in Brussels.

The Secretariat's main responsibility is to service the Council machinery – from ministerial to working party levels. This it does by activities such as preparing draft agendas, keeping records, providing legal advice, processing and circulating decisions and documentation, translating, and generally monitoring policy developments so as to provide an element of continuity and coordination in Council proceedings. This last task includes seeking to ensure a smooth transition between Presidencies by performing

a liaising role with officials from the preceding, the incumbent, and the incoming Presidential states.

In exercising many of its responsibilities, the Secretariat works closely with representatives from the member state of the President-in-office. This is essential because key decisions about such matters as priorities, meetings, and agendas are primarily in the hands of the Presidency. Before all Council meetings at all levels Secretariat officials give the Presidency a full briefing about subject content, about the current state of play on the agenda items, and about possible tactics – 'the Danes can be isolated', 'there is strong resistance to this in Spain and Portugal so caution is advised', 'a possible vote has been signalled in the agenda papers and, if taken, will find the necessary majority', and so on.

The extent to which Presidencies rely on the Council Secretariat varies considerably, with smaller countries, because of their more limited administrative resources, tending to be most reliant. Even the larger countries, however, have much to gain by making maximum use of the Council's resources, as the United Kingdom discovered – somewhat late in the day – during its Presidency in the second half of 1992: for the first few months of its Presidency the UK Government made little headway in dealing with the problems which arose from the first Danish referendum on the TEU, but progress was made after it started using the Council Secretariat, which had long had a solution lined up but which was not consulted until mid-November. (This episode led, in December 1992 at Edinburgh, to a Council official – the head of the Legal Department – addressing a European Council meeting for the first time.)

The main reason why Presidencies are sometimes a little reluctant to make too much use of the Council's Secretariat is that there is a natural tendency for them to rely heavily on their own national officials as they seek to achieve a successful six month period of office by getting measures through. It is largely for this reason that the staff of a state's Permanent Representation increases in size during a Presidential tenureship. Something approaching a dual servicing of the Presidency is apparent in the way at Council meetings, at all levels, the President sits with officials from the Council's General Secretariat on his one side and national advisers on the other.

The operation of the Council

The hierarchical structure

As indicated above, a hierarchy exists in the Council consisting of the General Affairs Council, the Technical Councils, COREPER and SCA, and

the committees and working parties. The European Council is also sometimes thought of as being part of this hierarchy but, in fact, it is not properly part of the Council system, even though it does have the political capability of issuing what amount to instructions to the ministers.

The Council's hierarchical structure is neither tight nor rigidly applied. The General Affairs Council's seniority over the Technical Councils is, for example, very ill-defined and only very partially developed, whilst important committees and working parties can sometimes communicate directly with Technical Councils. Nonetheless, the hierarchy does work in many important respects. This is best illustrated by looking at the Council's procedures for dealing with a Commission proposal for Council, or EP and Council, legislation.

The first stage is initial examination of the Commission's text. This is normally undertaken by a working party, or if it is of very broad application, several working parties. If no appropriate permanent working party exists, an *ad hoc* one is established.

As can be seen from Table 5.2, several factors can affect the progress of the proposal. A factor that has greatly increased in importance in recent years is whether the proposal will be subject to qualified majority voting rules (see below) when it appears before the ministers (votes are not taken below ministerial level). If it is not, and unanimity is required, then working party deliberations may take as long as is necessary to reach an agreement – which can mean months, or even years. If, however, it is, then delegations which find themselves isolated in the working party are obliged to anticipate the possibility of their country being outvoted when the ministers consider the proposal, and so they must seek to engage in damage limitation. This usually involves adopting some combination of three strategies: (1) if the proposal is judged to be important to national interests, then this is stressed during the working party's deliberations, in the hope that other delegations will take a sympathetic view and will either make concessions or will not seek to press ahead too fast; (2) if the proposal is judged to be not too damaging or unacceptable, then attempts will be made to amend it, but it is unlikely that too much of a fuss will be made; and (3) an attempt may be made to 'do a deal' or 'come to an understanding' with other delegations so that a blocking minority of states is created.

The General Secretariat of the Council is always pressing for progress and tries to ensure that a working party does not need to meet more than three times to discuss any one proposal. The first working party meeting normally consists of a general discussion of key points. Subsequent meetings are then taken up with a line by line examination of the Commission's text. If all goes well, a document is eventually produced indicating points of agreement and disagreement, and quite possibly

Table 5.2 *Principal factors determining the progress of a proposal through the Council machinery*

- The urgency of the proposal
- The controversiality of the proposal and support/opposition amongst the states
- The extent to which the Commission has tailored its text to accommodate national objections/reservations voiced at the pre-proposal stage
- The complexity of the proposal's provisions
- The ability of the Commission to allay doubts by the way it gives clarifications and answers questions
- The judgements made by the Commission on whether, or when, it should accept modifications to its proposals
- The competence of the Presidency
- The agility and flexibility of the participants to devise (usually through the Presidency and the Commission) and accept compromise formulae
- The ability and willingness of the states to use majority voting

having attached to it reservations that states have entered to indicate that they are not yet in a position formally to commit themselves to the text or a part of it. (States may enter reservations at any stage of the Council process. These can vary from an indication that a particular clause of a draft text is not yet in an acceptable form, to general withholdings of approval until the text has been cleared by appropriate national authorities.)

The second stage is the reference of the working party's document to COREPER or, in the case of agriculture, to the SCA. In being placed between the working parties and the Council of Ministers COREPER acts as a sort of filtering agency for ministerial meetings. It attempts to clear as much of the ground as possible so as to ensure that only the most difficult and sensitive of matters will detain the ministers in discussion. So, where the conditions for the adoption of a measure have been met in a working party, COREPER is likely to confirm the working party's opinion and advance it to the ministers for formal enactment. Where, however, agreement has not been possible in a working party, COREPER can do one of three things: try to resolve the issue itself (which its greater political status might permit); refer it back to the working party, perhaps with accompanying indications of where an agreement might be found; or pass it upwards to the ministers.

Whatever progress proposals have made at working party and COREPER levels, formal adoption is only possible at ministerial level. Ministerial meetings thus constitute *the third and final stage* of the Council's legislative procedure.

Items on ministerial meeting agendas are grouped under two headings: 'A' points and 'B' points. Matters which have been agreed at COREPER level, and on which it is thought Council approval will be given without discussion, are listed as 'A points'. These can cover a range of matters – from routine 'administrative' decisions to controversial new legislation which was agreed in principle at a previous ministerial meeting but on which a formal decision was delayed pending final clarification or tidying up. 'A points' do not necessarily fall within the policy competence of the Council that is meeting but may have been placed on the agenda because the appropriate Technical Council is not due to meet for some while. Ministers retain the right to raise objections on 'A points', and if any do the proposal may have to be withdrawn and referred back to COREPER. Normally, however, 'A points' are quickly approved without debate. Such is the thoroughness of the Council system that ministers can assume they have been thoroughly checked in both Brussels and national capitals to ensure they are politically acceptable, legally sound, and not subject to outstanding scrutiny reservations. Ministers then proceed to consider 'B points', which may include items left over from previous meetings, matters which it has not been possible to resolve at COREPER or working party levels, or proposals which COREPER judges to be politically sensitive and hence requiring political decisions. All 'B points' will have been extensively discussed by national officials at lower Council levels, and on most of them a formula for an agreement will have been prepared for the ministers to consider.

As can be seen from Exhibit 5.1, ministerial meetings – in this case a meeting of Agriculture Ministers – can have very wide and mixed agendas. Four observations are particularly worth making about the sorts of agenda items which arise.

- There are variations regarding what ministers are expected to do. The range of possibilities includes the taking of final decisions, the adoption of common positions (see below and Chapter 11), the approval of negotiating mandates for the Commission, the resolution of problems that have caused difficulties at lower levels of the Council hierarchy, and – simply – the noting of progress reports.
- Some items concern very general policy matters, whilst others are highly specialised and technical in nature.
- Most items fall within the sectoral competence of the ministers who have been convened, but a few – such as that on a technology initiative for disabled and elderly people in Exhibit 5.1 – do not.

Exhibit 5.1 A Council of Ministers meeting: items considered and decisions taken

1683rd meeting of the Council – Agriculture – Brussels, 21 September 1993

Agri monetary sector

The Council adopted the following conclusions:

The Council discussed in depth the agri-monetary situation following the decision taken on 2 August 1993 by the Ministers for Finance and the governors of the central banks to widen the fluctuation ranges in the EMS.

It took note of all the observations made by the Member States.

In the light of that discussion it invited the Commission to submit, before the next Council meeting on agriculture, a proposal for the agri-monetary system to be applied following the decision of 2 August.

In that context it stressed the need to take account of all relevant factors, including budgetary ones.

Meanwhile the Council noted the Commission's intention of taking appropriate steps to suspend any change in agricultural conversion rates, while ensuring that any deflection of trade was avoided.

The Council saw no need at this stage to examine the Commission proposal laying down the arrangements for implementing the agri-monetary compensatory aid decided on by the Council in December 1992.

Supply of milk to schoolchildren

The Council discussed the Commission proposal concerned which, following discontinuation of the 'normal' co-responsibility levy on milk, is designed to reduce the amount of Community aid given for the school milk scheme. The proposal seeks to cut this aid, which up to now has been largely financed from that levy, from 125% to 62.5% of the guide price for milk.

At the close of its debate the Council, acting by a qualified majority (the German and Portuguese delegations wanted to keep the aid at its current level and voted against), agreed to a compromise text alleviating the adverse impact on the original proposal by setting the level of aid at 95% of the guide price for milk. The Community aid is not to be reduced before the end of 1993.

The Commission will make the necessary technical adjustments under the powers vested in it.

The Regulation will be formally adopted shortly, once the relevant texts have been finalized.

Development and future of wine-sector policy

The Council held a wide-ranging exchange of views on the Commission communication concerning the development and future of wine-sector policy. The Commission discussion paper in question sets out guidelines for future wine-sector reform further to the undertaking given by the Commission during discussion of the 1993/1994 prices package to make a thorough analysis of the present situation and likely trends in this sector.

Delegations endorsed the Commission's analysis of the situation and the view that the wine-sector CMO needed a comprehensive overhaul in order to balance this market in the medium term; they gave their opinions on the broad range of measures which the Commission advocated for achieving this goal.

In conclusion, the Presidency asked the Commission to submit its formal proposals in this area at an early date.

Support for producers of certain arable crops (set-aside)

Pending the European Parliament's Opinion, the Council held a preliminary exchange of views on the Commission proposal which seeks to introduce more flexibility into the rules adopted as part of the arable crops reform. The proposal follows up the review of the reform of the arable crops arrangements carried out in the course of fixing the 1993/1994 prices and the Commission's discussion paper on possible changes in its set-aside policy . . .

At the close of its debate on this complex technical dossier, the Council instructed the Special Committee on Agriculture to expedite its work on this matter so that the Council would be able to take a decision once it received the European Parliament's Opinion.

Implementation of the memorandum of understanding on oilseeds

Pending the European Parliament's Opinion, the Council held a preliminary exchange of views on the Commission proposal concerned, which follows on from the formal approval by the Council last June on the Memorandum of Understanding on Oilseeds between the Community and the United States concluded on 3 December 1992 . . .

Closing its debate – which revealed a need for more thorough discussion – the Council instructed the Special Committee on Agriculture to continue examining the matter.

Further decisions relating to agriculture

Imports of wine from Hungary

The Council adopted the Regulation amending Regulation No 3677/89 in regard to the total alcoholic strength by volume of certain quality wines imported from Hungary. . .

Special report No 4/93 of the Court of Auditors

The Council took note of Special report No 4/93 of the Court of Auditors on the implementation of the quota system intended to control milk production, accompanied by the Commission's replies.

Fees for health inspectors and controls of fresh meat

The Council adopted by a qualified majority (the French delegation having voted against) the Decision deferring until 31 December 1993 the deadline laid down in Decision 88/408/EEC, *inter alia* for applying the standard fee for poultrymeat to be charged when carrying out health inspections and controls of fresh meat. The extension is intended to enable an in-depth study to be made of all the arrangements relating to fees with a view to a decision on the future regime.

Fruit juices and similar products

Following the European Parliament's approval of its common position, the Council finally adopted the Directive relating to juices and certain similar products. That Directive is a consolidated version of Directive 75/726/EEC and subsequent amendments thereto.

This consolidation is designed to simplify the whole body of Community legislation already in force in this area and to make it more understandable to both consumers and business.

More specifically, the Directive provides that Member States must take all measures necessary to ensure that the products can be marketed only if they conform to the Directive's rules. These rules cover, *inter alia*, substances, treatments, processes, additives and descriptions authorized in the manufacture of each type of fruit juice.

Marketing standards for eggs

Acting by a qualified majority (the United Kingdom delegation having voted against), the Council adopted the Regulation amending Regulation (EEC) No 1907/90 on certain marketing standards for eggs. The aim is to replace the indication of the packaging date by the recommended limit date for consumption and also to provide for the possibility of advertizing on egg packs.

Miscellaneous decisions

Importation of Mediterranean products

The Council adopted the Regulations suspending, within the limits of the quota volumes and for the periods indicated, customs duties applicable to imports into the Community of:

- melons originating in Israel: 10 789 tonnes – from 1 November 1993 to 31 May 1994;
- cut flowers and flower buds, fresh, originating in:

- Morocco: 325.5 tonnes; Jordan: 54.2 tonnes; Israel: 18 445 tonnes – from 1 November 1993 to 31 May 1994;
- Cyprus: 70 tonnes – from 1 June 1994 to 31 October 1994.

Technology initiative for disabled and elderly people (TIDE) (1993–1994)

The Council adopted the Decision on a Community technology initiative for disabled and elderly people (TIDE) (1993–1994). The initiative is aimed at promoting and applying technology with a view to encouraging the creation of an internal market in rehabilitation technology and assisting the economic and social integration of disabled and elderly people . . .

Source: General Secretariat of the European Communities, *Press Release* 8696/93 (147) (extracts).

- As well as policy issues, agenda items can also include administrative matters – such as appointments to advisory committees.

The position of the General Council rather suggests that there would, in certain circumstances – such as when a policy matter cuts across sectoral divisions, or when Technical Councils cannot resolve key issues – be a fourth legislative stage involving the Foreign Ministers. In practice, though recourse to such a stage would frequently be desirable, it is by no means common. A principal reason for this is that the theoretical seniority enjoyed by the General Affairs Council over other Councils has no legal basis. Rather it stems only from an ill-formulated understanding that the General Affairs Council has special responsibility for dealing with disputes which cannot be resolved in the Technical Councils, for tackling politically sensitive matters, and for acting as a general coordinating body at ministerial level. Another factor limiting the role of the General Affairs Council is that often the Foreign Ministers are not able, or willing, to act any more decisively in breaking a deadlock than is a divided Technical

Council. Members of the General Council may, indeed, have no greater seniority in rank, and may even be junior, to their national colleagues in, say, the Budget or the Agriculture Councils. In any case, Technical Councils are often not willing to refer their disputes 'upwards': Ministers of Agriculture, Trade, Environment, etc. have as much authority to make EU law as do Foreign Ministers and they normally prefer to take their own decisions – unless something which is likely to be very unpopular can be passed on elsewhere. The General Council is thus of only limited effectiveness in resolving issues that have created blockages in the Technical Councils and in counteracting the fragmentation and sectoralism to which the Council of Ministers is unquestionably prone. The same is true of joined or 'jumbo' Councils, which bring together, but only on an occasional basis, different groups of ministers.

This absence of clear Council leadership and of an authoritative coordinating mechanism has had the consequence of encouraging the European Council to assume responsibilities in relation to the Council of Ministers, even though it is not formally part of the Council hierarchy. Increasingly at their meetings the Heads of Government have gone beyond issuing general guidelines to the Council of Ministers, which was intended to be the normal limit of European Council/Council of Ministers relationships when the former was established in 1974. Summits have sometimes been obliged to try and resolve thorny issues that have been referred to them by the Council of Ministers, and have also had to seek to ensure – principally via policy package agreements of the sort that were agreed at Fontainebleau in 1984, Luxembourg in 1985, Brussels in 1988, and Edinburgh in 1992 – that there is some overall policy direction and coherence in the work of the Council of Ministers. The European Council can only go so far, however, in performing such problem solving, leadership, and coordinating roles: partly because it is timetabled to meet only twice a year; partly because many national leaders prefer to avoid getting too involved in detailed policy discussions; but, above all, because the Heads of Government are subject to the same national and political divisions as the ministers.

☐ *Decision-making procedures*

The Treaties provide for three basic ways in which the Council can take a decision: unanimously; by a qualified majority vote; or by a simple majority vote.

- *Unanimity* used to be the normal requirement where a new policy was being initiated or an existing policy framework was being modified or further developed. However, the SEA and the TEU have greatly reduced the circumstances in which a unanimity requirement applies and it is now largely confined to the CFSP and JHA pillars of the TEU (though even here some implementing decisions may be taken by qualified majority vote), and to various 'constitutional' and financial matters which fall under the EC Treaty (see Table 11.1 for details). Unanimity is also required when the Council wishes to amend a Commission proposal against the Commission's wishes. Abstentions do not constitute an impediment to the adoption of Council decisions that require unanimity.
- *Qualified majority voting* now applies to most types of decisions in most policy areas. As regards variations in the usage of qualified majority voting between the EU's various legislative procedures, it applies invariably under the cooperation procedure (except for certain specified circumstances at second reading stage), almost invariably under the co-decision procedure (except for decisions in the spheres of culture and research frameworks), commonly under the consultation procedure, and sometimes under the assent procedure (see Chapter 11 and Table 11.1 for details).

Under the qualified majority voting rules, France, Germany, Italy and the United Kingdom have 10 votes each; Spain has 8; Belgium, Greece, the Netherlands and Portugal have 5; Denmark and Ireland have 3; and Luxembourg has 2. Of this total of 76 votes, 54 votes (that is 71 per cent of the total) constitutes a qualified majority vote. This means that the five larger states cannot outvote the smaller seven, and also that two large states cannot by themselves constitute a blocking minority. An abstention has the same effect as a negative vote, since the total vote required to achieve a majority is not reduced as a result of an abstention. (See Appendix for voting arrangements following accessions to the EU by EFTA states.)

- *Simple majority voting*, in which all states have one vote each, is used mainly for procedural purposes and, since February 1994, for anti-dumping and anti-subsidy tariffs within the context of the Common Commercial Policy (CCP).

Until relatively recently, proposals were not usually pushed to a vote in the Council when disagreements between the states existed, even when majority voting was perfectly constitutional under the Treaties. To appreciate the reasons for this it is necessary to go back to the institutional crisis of 1965.

In brief, events unfolded in the following way. The Commission, in an attempt to move progress in areas which had almost ground to a halt, put forward a package deal which had important policy and institutional implications. The most important aspects of its proposals were the

completion of the CAP, changing the basis of Community income from national contributions to own resources, and the granting of greater powers of control to the EP over the use of those resources. The French Government objected to the supranational implications of these proposals. It also used the occasion to register its opposition to what it saw as the increasing political role of the Commission and to the imminent prospect of the Community moving into a stage of its development in which there was to be more majority voting in the Council. When no agreement could be reached on these matters in the Council, France withdrew its representatives from the Community's decision-making institutions in July 1965, though it continued to apply Community law. This so-called 'policy of the empty chair' continued for six months and was ended only after the French Government, under strong domestic pressure, accepted a fudged deal at a special Council meeting in Luxembourg in January 1966. The outcome of that meeting is usually referred to as the *Accords de Luxembourg* or the Luxembourg Compromise. In fact, there was little agreement or genuine compromise but rather a registering of differences. This is apparent from the official communiqué:

> I Where, in the case of decisions which may be taken by majority vote on a proposal of the Commission, very important interests of one or more partners are at stake, the Members of the Council will endeavour, within a reasonable time, to reach solutions which can be adopted by all the Members of the Council while respecting their mutual interests and those of the Community, in accordance with Article 2 of the Treaty.
> II With regard to the preceding paragraph, the French delegation considers that where very important interests are at stake the discussion must be continued until unanimous agreement is reached.
> III The six delegations note that there is a divergence of views on what should be done in the event of a failure to reach complete agreement.
> IV The six delegations nevertheless consider that this divergence does not prevent the Community's work being resumed in accordance with the normal procedure.

Although it had no constitutional status, the Luxembourg Compromise came to profoundly affect decision-making in the Council at all levels. It did so because point II of the communiqué came to be interpreted as meaning that any state had the right to exercise a veto on questions which affected its vital national interests – and the states themselves determined when such interests were at stake.

The Luxembourg Compromise did not, it should be emphasised, replace a system of majority voting by one of unanimous voting. On the contrary, before 1966 majority voting was rare and, indeed, it was its proposed phasing-in that the French were most concerned about. After 1966, the norm became one not of unanimous voting but one of no voting at all – except in a few areas where decisions could not be indefinitely delayed and postponed, such as during the annual budgetary cycle and on internal staffing matters. Most decisions, even on routine issues, came to be made by letting deliberations and negotiations run until an agreement finally emerged. As a result there was rarely a need for the veto to be formally invoked, and it was so only very occasionally – no more than a dozen times between 1966 and 1985.

Because it had produced a norm of consensual, and therefore very slow, decision-making, in which decisions were all too often of a lowest common denominator type, the Luxembourg Compromise had naturally never been liked by those who wished for an efficient and dynamic Community. By the mid-1980s the damaging effects of the Compromise were coming to be generally acknowledged and the practice of majority voting began to develop where it was so permitted by the Treaties. The 1986 SEA, which greatly increased the circumstances in which majority votes were permitted by the Treaties, seemed to signal the final demise of the Compromise. In the event it has not quite done so in that Greece attempted – with only marginal success – to invoke the Compromise in 1988 in connection with a realignment of the 'green drachma', and in 1992–3 France threatened to invoke it in connection with the GATT Uruguay Round trade settlement which was proposed by the Commission. These are, however, isolated incidents and on many occasions where it might have been expected that the Compromise would have been invoked had it still had bite – such as by the United Kingdom in connection with unwanted social legislation – it has not been so. Everything thus indicates that whilst the Compromise may not be quite completely dead, it is in the deepest of sleeps and is subject only to very occasional and partial awakenings.

Clearly, the most visible aspect of the Luxembourg Compromise was the national veto – a veto to which some still make reference when they wish to claim that Community membership has not fundamentally undermined national sovereignty. A less visible, but in practice much more significant effect, was in the stimulus it gave to the Council of Ministers to take virtually all of its decisions unanimously. But the preference for unanimity, which still exists today despite the greatly increased use of majority voting, was not, and is not, just a consequence of an unofficial agreement made in the mid-1960s. There are strong positive reasons for acting only on the basis of unanimity. In many ways the functioning and development of the EU is likely to be enhanced if policy-making processes are consensual rather than conflictual. Thus, national authorities (which may be governments or parliaments) are unlikely to undertake with much enthusiasm the necessary task of transposing EU directives into national law if the directives are perceived as domestically damaging, or if they are

being unwillingly imposed following a majority vote in the Council. Nor is it likely that national bureaucracies will adopt helpful attitudes towards the implementation of unwanted legislation. More generally, the over-use of majority votes on important and sensitive matters could well create grievances that could have disruptive implications right across the EU's policy spectrum.

For good reasons, as well as perhaps some bad, decision-making in the Council thus usually proceeds on the understanding that difficult and controversial decisions are not imposed on dissenting states without full consideration being given to the reasons for their opposition. Where it is clear that a state or states have serious difficulties with a proposal, they are normally allowed time. They may well be put on the defensive, asked to fully explain their position, pressed even to give way or at least to compromise, but the possibility of resolving an impasse by a vote is not the port of first call. Usually, the item is held over for a further meeting, with the hope that in the meantime informal meetings or perhaps COREPER will find the basis of a solution. All states, and not just the foremost advocates of the retention of the veto (initially France, more latterly Denmark, the United Kingdom, and, to a more limited extent, Greece and Ireland) accept that this is the only way Council business can be done without risking major divisions.

But though there are good reasons for preferring unanimity, it is now generally accepted that the principle cannot be applied too universally or too rigidly. Were it to be so decision-making would, as in the 1970s, be determined by the slowest, and many much needed decisions would never be made at all. Qualified majority voting has thus become common where the Treaties so allow.

Several – in practice closely interrelated – factors explain this increased use of majority voting:

- The 'legitimacy' and 'mystique' of the Luxembourg Compromise were dealt a severe blow in May 1982 when, for the first time, an attempt to invoke the Compromise was overridden. The occasion was an attempt by the British Government to veto the annual agricultural prices settlement by proclaiming a vital national interest. The other states did not believe that such an interest was at stake (and with some reason given that the United Kingdom had already approved the constituent parts of the package). The view was taken (correctly) that the British were trying to use agricultural prices to force a more favourable outcome in concurrent negotiations over UK budgetary contributions. Agricultural ministers regarded this attempted linkage as quite invalid. They also thought it was over-demanding, since the dispute was played out to the background of the Falklands crisis in which the UK Government was being supported by her Community partners even though some were unenthusiastic. Prompted by the Commission, the Belgian Presidency proceeded to a vote on the regulations for increasing agricultural prices and they were approved by seven (of the then ten) states. Denmark and Greece abstained, not because of any sympathy for Britain but because of reservations about the possible supranational implications of the majority vote.

- Attitudes have changed. There has been an increasing recognition, even amongst the most rigid defenders of national rights and interests, that decision-making by unanimity is a recipe not only for procrastination and delay, but often for unsatisfactory, or even no decision-making. The situation whereby consensus is the rule, even on issues where countries would not object too strongly to being voted down, has increasingly been seen as unsatisfactory in the face of the manifest need for the EU to become efficient and dynamic in order, for example, to assist its industries to be able to compete successfully on European and world markets.
- The 1981 and 1986 enlargements of the Community, which brought the membership to twelve, clearly made unanimity on policy issues all the more difficult to achieve and hence increased the necessity for majority voting.
- The SEA, and later the TEU, extended the number of policy areas in which majority voting was constitutionally permissible. Crucially, under the SEA the extension included most of those matters that were covered by the priority programme of completing the internal market by 1992: harmonisation of technical norms, opening up public procurement, removing restrictions in banking, insurance, capital controls and so forth. Moreover, the discussions which accompanied the SEA and the TEU were based on the assumption that the new voting procedures would be used.
- In July 1987, the General Council, in accordance with an agreement it had reached in December 1986, formally amended the Council's Rules of Procedure. Among the changes was a relaxation of the circumstances by which votes could be initiated: whereas previously only the President could call for a vote, under the new Rules any national representative and the Commission also have the right, and a vote must be taken if a simple majority agrees.

In 1986, the last full year before the SEA came into force, over 100 decisions were taken by majority vote, most of them in the three main areas provided for in the EEC Treaty: budget, agriculture, and external trade. Since 1986 the number has increased enormously, though to exactly what figure is impossible to say. It is impossible to say because though Council minutes, unlike previously, now record when formal votes have taken place (see Exhibit 5.1, p. 138), what really amounts to majority

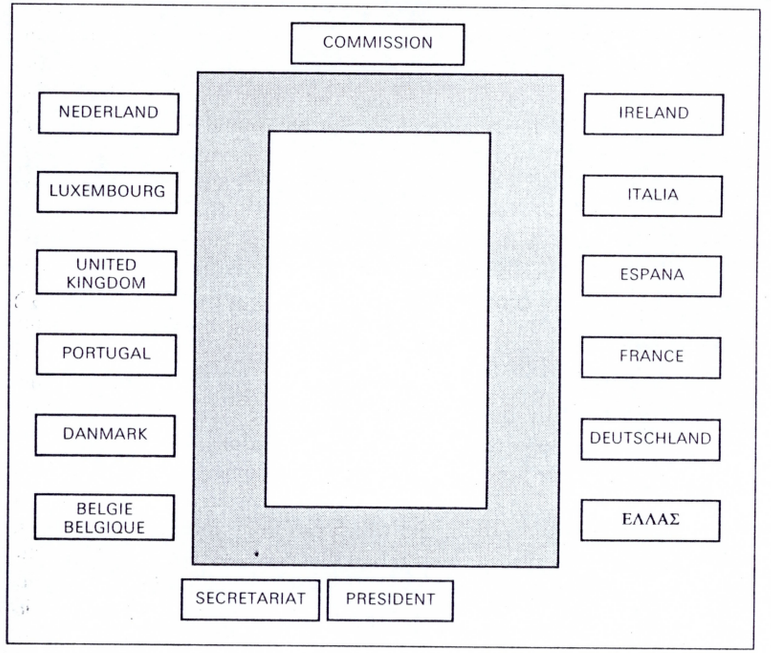
voting often occurs without a formal vote being taken. This may take the form of a state which is opposed to a proposal that otherwise commands general support preferring to try and extract concessions in negotiations – perhaps at working party or COREPER stage – rather than run the risk of pressing for a vote and then finding itself outvoted. Or it may take the form of the Presidency simply announcing 'we appear to have the necessary majority here', and that being left unchallenged by a dissenting state, and not therefore formally voted on. Unless an important point of principle or a damaging political consequence is at stake, a country in a minority thus often chooses not to create too much of a fuss.

Important, however, though this development of majority voting is, consensual decision-making remains, and can be expected to remain, a key feature of Council processes. Quite apart from the fact that unanimity is still required by the Treaties in some important areas, there is still a strong preference for trying to reach general agreements where 'important', 'sensitive', and 'political' matters, as opposed to 'technical' matters, are being considered. This may involve delay, but the duty of the national representatives at all Council levels is not only to reach decisions but also to defend national interests.

The formal processes by which Council meetings are conducted and business is transacted are broadly similar at ministerial, COREPER, and working party levels. As can be seen from Figure 5.1, at one end or one side of the table sits the Presidency – whose delegation is led by the most senior figure present from the country currently holding the Presidency; at the other end or side sit the Commission representatives; and ranged between the Presidency and the Commission are the representatives of the twelve member states – with the delegation from the country holding the Presidency sitting to the right of, but separate from, the President.

As indicated earlier, the Presidency plays a key role in fixing the agenda of Council meetings, both in terms of content and the order in which items are considered. The room for manoeuvre available to the Presidency should not, however, be exaggerated for, quite apart from time constraints, there are several factors which serve to limit options and actions: it is difficult to exclude from the agenda of Council meetings items which are clearly of central interest or which need resolution; the development of rolling programmes means that much of the agenda of many meetings is largely fixed; and anyone in a COREPER or a ministerial meeting can insist a matter is discussed provided the required notice is given. A Presidency cannot, therefore, afford to be too ambitious or the six month tenureship will probably be seen to have been a failure. With this in mind the normal pattern for an incoming President of a reasonably

Figure 5.1 *Rotation of Council Presidency between the states and seating arrangements in Council meetings*



Notes:

1. Figure 5.1 shows the seating arrangements when Greece holds the Presidency (which it last did January–June 1994). National delegations sit according to the order in which they will next assume the Presidency – which rotates in an anti-clockwise direction. With each change of Presidency all states move round one place in a clockwise direction.
2. In the round of Presidencies which began with Belgium in the first half of 1987 and ended with the United Kingdom in the second half of 1992, the Presidency rotated in alphabetical order, according to how countries names were spelt in their own language. Because of variations in the responsibilities of Presidencies between the first half and the second half of the year – most of the work on agricultural prices, for example, is done in the first half and most of the work on the budget is done in the second half – the round of Presidencies which began in the first half of 1993 saw pairs of countries' reversing their alphabetical order: so, Denmark assumed the Presidency for the first half of 1993 and Belgium did so for the second half.
3. The arrangements apply to all Council meetings at all levels.
4. See Appendix for the rotation of the Presidency in the event of accessions from EFTA states.

important Technical Council is to take the view that of, say, twenty proposed directives in his policy area, he is going to try and get eight particular ones through. This will then be reflected in the organisation of Council business, so that by the end of the Presidency four may have been adopted by the Council, while another three may be at an advanced stage.

At ministerial level Council meetings can often appear to be chaotic affairs: not counting interpreters there can be around 100 people in the room – with each national delegation putting out a team of perhaps six or seven, the Commission a similar number, and the Presidency being made up of both General Secretariat and national officials; participants frequently change – with ministers often arriving late or leaving early, and some of the officials coming and going in relation to items on the agenda; ministers are constantly being briefed by officials as new points are raised; there are huddles of delegations during breaks; requests for adjournments and postponements are made to enable further information to be sought and more consideration to be given; and telephone calls may be made to national capitals for clarifications or even, occasionally, for authorisation to adopt revised negotiating positions. Not surprisingly, delegations which are headed by ministers with domestic political weight, which are well versed in EU ways, which have mastered the intricacies of the issues under consideration, and which can think quickly on their feet, are particularly well placed to exercise influence.

A device which is sometimes employed at Council meetings, especially when negotiations are making little progress, is the *tour de table* procedure. By this, the President invites each delegation to give a summary of its thinking on the matter under consideration. This ensures that discussion is not totally dominated by a few and, more importantly, establishes the position of each member state. It can thus help to clarify the possible grounds of an agreement and provide useful guidance to the President as to whether a compromise is possible or whether indeed he can attempt to move to a decision. As well as advantages there are, however, also drawbacks with the procedure: in particular, states can find it more difficult to alter their position once they have 'gone public', and it is very time-consuming – even if each state restricts itself to just five minutes a *tour* takes an hour. Presidencies do then tend, and are normally advised by the General Secretariat, to be cautious about using the procedure unless there seems to be no other way forward. It is usually better to use another approach, such as inviting the Commission to amend its proposal, or seeking to isolate the most 'hard line' state in the hope that it will back down.

This last point highlights how important the Presidency can be, not only at the agenda setting stage but also during meetings themselves. An astute

and sensitive chairman is often able to judge when a delegation that is making difficulties is not terribly serious: when, perhaps, it is being awkward for domestic political reasons and will not ultimately stand in the way of a decision being made. A poor chairman, on the other hand, may allow a proposal to drag on, or may rush it to the point that a state which, given time, would have agreed to a compromise may feel obliged to dig in its heels.

An extremely important feature of the whole Council network is the role of informal processes and relationships. Three examples demonstrate this. First, many understandings and agreements are reached at the lunches that are very much a part of ministerial meetings. These lunches are attended only by ministers and the minimum number of translators. (Most ministers can converse directly with one another – usually in French or English – although the entry of Greece, Spain, and Portugal did reduce this capacity.)

Second, where difficulties arise in ministerial negotiations a good chairman can make advantageous use of scheduled and requested breaks in proceedings to explore possibilities for a settlement. This may involve holding off-the-record discussions with a delegation that is holding up an agreement, or it may take the form of a *tour* of all delegations – perhaps in the company of the relevant Commissioner and a couple of officials – to ascertain 'real' views and fall-back positions.

Third, many of the national officials based in Brussels come to know their counterparts in other Permanent Representations extremely well: better, sometimes, than their colleagues in their own national capitals or Permanent Representations. This enables them to make judgements about when a country is posturing and when it is serious, and when and how a deal may be possible. A sort of code language may even be used between officials to signal positions on proposals. So if, for example, a national representative states 'this is very important for my minister', or 'my minister is very strongly pressurised on this', other participants recognise that signals are being given to them that further deliberations are necessary at their level if more serious difficulties are to be avoided when the ministers gather.

Concluding comments

The structure and functioning of the Council is generally recognised as being unsatisfactory in a number of important respects. In particular: power is too dispersed; there is insufficient cohesion between, or

sometimes even within, the sectoral Councils; and decision-making processes are still often too cumbersome and too slow.

Many have argued that what the Council structure most needs to deal with these weaknesses is some sort of 'super' Council, with authority to impose an overall policy pattern on subsidiary 'Technical Councils'. Such a Council may indeed be useful for identifying priorities and knocking a few heads together, but it would be unwise to hold out too many hopes for it, even if the practical obstacles in the way of establishing it could be overcome. As the experience of the European Council demonstrates (see Chapter 6), the dream of authoritative national leaders rationally formulating policy frameworks in the 'EU interest' just does not accord with political realities.

But if fundamental structural reforms are unlikely, it should be recognised that the Council has undergone, and is undergoing, quite radical changes in an attempt to deal with the increasing demands on it. The most important of these changes are the greatly increased use of majority voting, the enhancement of the role of the Presidency, and the increased cooperation which occurs between Presidencies – of which the development of rolling policy programmes is especially important. Further changes can be expected in the future – not least because of questions which arise in connection with the projected enlargement of the EU.

■ *Chapter 6* ■

The European Council

■ Origins and development

Although no provision was made in the Founding Treaties for summit meetings of Heads of Government, a few such gatherings did occur in the 1960s and early 1970s. In 1974, at the Paris summit, it was decided to institutionalise these meetings with the establishment of what soon became known as the European Council.

The main reason for the creation of the European Council was a growing feeling that the Community was failing to respond adequately or quickly enough to new and increasingly difficult challenges. Neither the Commission, whose position had been weakened by the intergovernmental emphasis on decision-making that was signalled by the Luxembourg Compromise, nor the Council of Ministers, which was handicapped both by sectoralism and by its practice of proceeding only on the basis of unanimous agreements, were providing the necessary leadership. A new focus of authority was seen as being required to try and make the Community more effective, both domestically and internationally. What was needed, argued France's President Giscard d'Estaing who, with West Germany's Chancellor Schmidt, was instrumental in establishing the European Council, was a body which would bring the Heads of Government together on a relatively informal basis to exchange ideas, to further mutual understanding at the highest political level, to give direction to policy development, and perhaps sometimes to break deadlocks and clear logjams. It was not anticipated that the leaders would concern themselves with the details of policy.

The formal creation of the European Council was very simple: a few paragraphs were issued as part of the Paris communiqué. The key paragraphs were these:

> Recognising the need for an overall approach to the internal problems involved in achieving Europe, the Heads of Government consider it essential