

**Decision-making *sub rosa* or on  
the Green ??**

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**The Making of EU Policy and the  
Comitology System**

## Legislative pressure

Of all the Commission's proposals:

- **between 20 and 25%** are a follow-up to Council or European Parliament resolutions or to requests on the part of the social partners or economic operators.
- **around 30%** arise from international obligations on the part of the Community.
- **between 10 and 15%** have to do with obligations under the treaty or secondary legislation.
- **around 20%** are for updating existing Community legislation (e.g. adapting it to technical or scientific progress)

## The main points of criticism

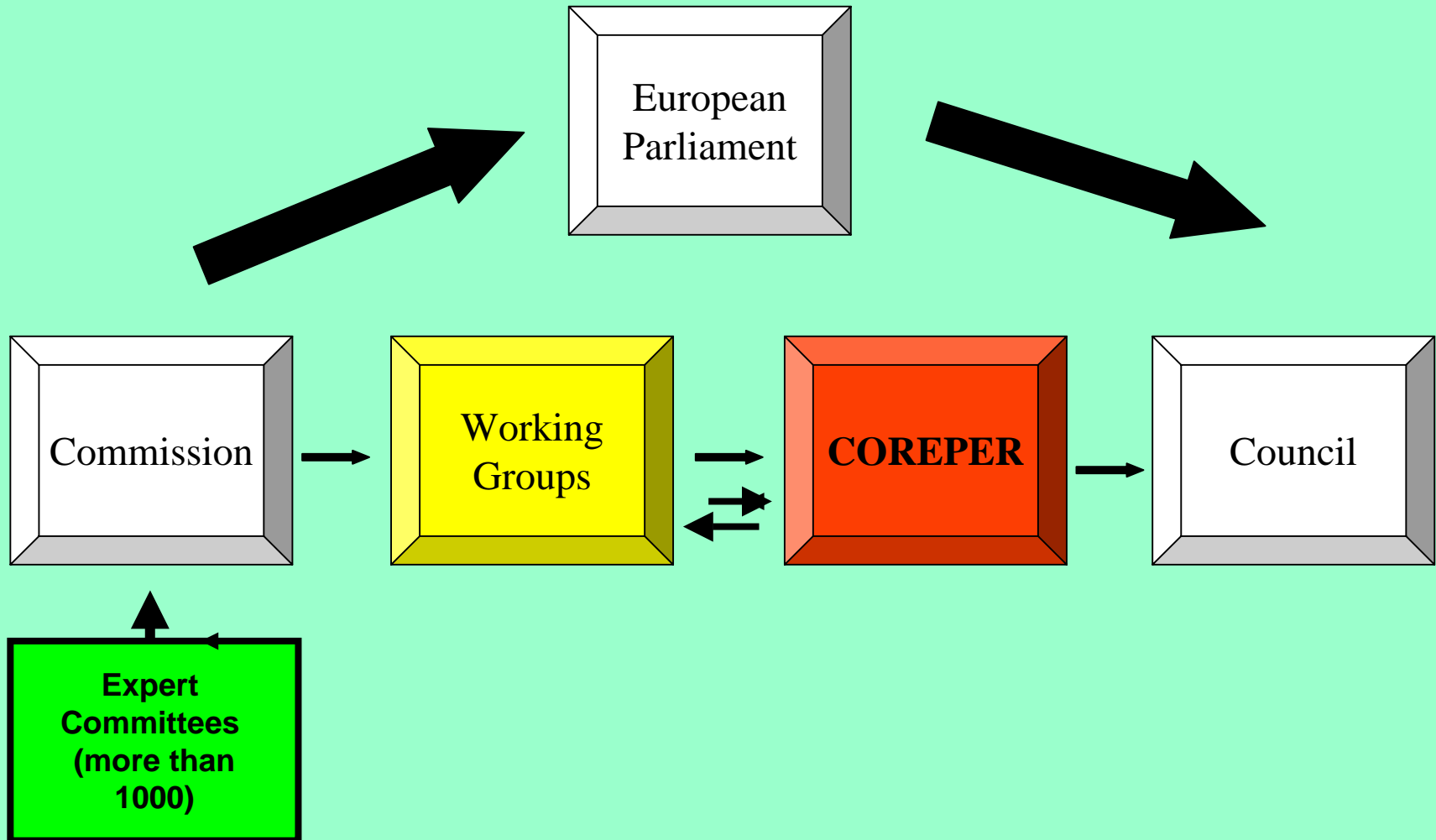
- **The preparatory** phase is often regarded as insufficient, particularly as regards **analysis of the impact** the proposed measures will have on economic operators and other interested parties. There is call for a more in-depth, systematic **consultation** process which should look particularly closely at whether a regulatory solution is really needed.
- **The volume and accumulation of Community legislation.** The volume is actually quite modest<sup>3</sup>. The accumulation of legislation, on the other hand, sometimes makes it difficult, in certain areas, and after 50 years of activity, to understand what is current and how it is put into practice.
- **The complexity**, due to various factors:
  - the tendency to have too much detail in the basic acts;
  - the result of sometimes difficult textual compromises as a result of negotiations within the European Parliament and the Council;
  - the fact that Community legislation is often fleshed out by national implementing provisions.

- **The length of the legislative process.** It takes on average 20 or so months for a legislative instrument to be adopted. A further 18 to 24 months can elapse before directives have been transposed by the Member States. It is difficult to reconcile such lengthy periods with the speed with which markets and technologies are changing.
- **The transposition and implementation** of directives in the Member States are a source of additional complexities, divergences and delays, not to mention straightforward non-transposition.
- **The application and verification** of Community law within national systems often require measures which can have a differing impact on economic and social operators.
- **Information** on the current status of the law is not always easily accessible for interested parties.
- **The adaptation and consolidation of legislation.** The Commission's efforts to update the Community's corpus of regulation, be it by consolidation (compilation for information), codification or the recasting of legislative instruments (binding replacement texts), have not always been an unqualified success.

# **So many substantial problems...**

- **We seem to have a coordination and inter-services communication problem in Brussels ...**
- **We can identify two major areas in need of improvement - ...**
  - **The preparation of policymaking**
  - **The implementation of policy decisions**

# EU Decision Making Procedure Brussels



# EU Policy / Administrative System

Commission

Council

Parliament

Court of Justice

Court of Auditors

Committee of Regions

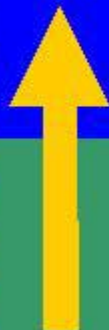
EcoSoc

COREPER

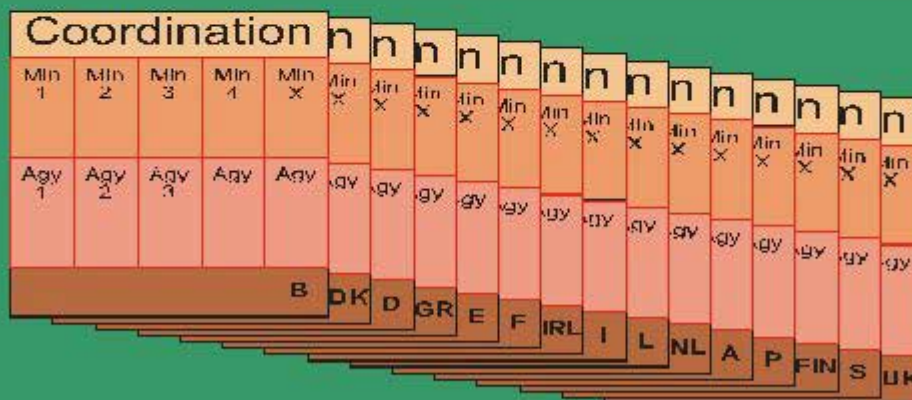
Committees

Working Groups

POLICY MAKING



IMPLEMENTING EU POLICY



REQUESTS

CIVIL SOCIETY



IMPACTS

# Governance by Committee

- The proliferation of the many different types of "committees of experts", with different functions in the political process characterises contemporary governance at the national, sub-national (regional and local) and supranational – i.e. the European – level of government. The increasing role of committees can be seen as a response to the need for an *ever higher level of technical "expertise", which stems from the growing complexity of regulating contemporary western societies.*



# Governance by Committee II

- The role of committees is to define and to solve substantive policy problems. In multi-level governance systems like federal political systems, committees also perform another function: they ensure *efficient co-ordination mechanisms* between the different levels of government. The growing regulatory tasks of the EU and the need for multi-level co-ordination explain why the committee system is so highly developed in the EU system of governance.

## **Governance by Committee III**

- **Although the two major functions of committees in the EC political process – mastering technical expertise and multi-level co-ordination – are uncontroversial and generally viewed as legitimate, the EC committee system is frequently criticised from two different points of view:**

# Governance by Committee IV

Committees are regarded as embodying the most opaque and even secret part of EU decision making. They are considered to be the most intransparent aspect of the EU system of governance.

The committee system also raises serious questions about the democratic *legitimacy of the EU* policy process. They are hardly mentioned in the treaties and their proliferation is often seen as a deviation from EU "constitutional" rules. Since their members are not elected on a democratic basis (except for those of the EP committees), committees are frequently seen as symbolising the "democratic deficit" and "bureaucratic and technocratic bias" of the EU system

# **Governance by Committee V**

- **The EC committee system challenges traditional perceptions of democracy which value the transparency of decisions that should, in addition, only be taken by elected and politically accountable representatives of the people. At the same time, it can be argued that the growing complexity of economic and social regulation in European societies, combined with the increasing range of Community policy responsibilities, has lead to a situation where many of the decisions taken at Community level are both highly technical in nature and involve intricate processes of multi-level negotiations and co-ordination**

# **Deliberative Supranationalism**

- **The study of governance by committee has recently given rise to a new approach to EU decisionmaking - that of Deliberative Supranationalism**
- **This approach argues that the EU has a strong decisionmaking capacity because of its ability to systematically influence the preferences of member states. Continual discussion and exchange of arguments about policies transform the preferences of member states, making their expectations and actions more community-compatible, thus mitigating collective action problems**

# Deliberative Supranationalism II

- Basic idea - frequent interaction and arguments about policy choices over time shape the preferences of the member states and makes them more compatible with EU policymaking
- The institutional locus of these interactions is the thick web of EU Committees in which public and private actors coordinate policy formulation and implementation, often also called Comitology
- To the extent that comitology deliberations force individual actors to acknowledge the externalities of their political preferences for others and modify them accordingly, the logic of intergovernmental bargaining is replaced by the logic of supranational decision-making

# **Deliberative Supranationalism III**

- **Committees are an essential part of the functioning of EU governance. Most of them are official, others are unofficial or even ad hoc. Their crucial role in the EU governance system results from their following functions - they**
- **provide expertise in policy development and decision-making**
- **link member-states governments and administrations with the EU level**
- **increase the acceptance of European legal norms and programs in the member-states**

**In other words, they are arenas for EU governance as well as melting pots of national and supranational government systems.**

# **Deliberative Supranationalism IV**

- **In various guises, committees are active at every stage of the political process within the EU machinery – they**
- **assist the Commission in drafting legislation**
- **prepare the dossiers on which the Council takes decisions**
- **supervise the implementation of EU law by the Commission –**



- **System of governance with many faces**



# The European Commission's power of decision under the Community Pillar

A  
fundamental  
actor in the  
policy  
making  
process

*Initiates the  
EC  
legislative  
process*

- ❖ ***Policy initiator: Commission carries consultations, prepares Green papers, White papers & legislative proposals***
- ❖ **right to decide on the substance and timing of a legislative proposal**
- ❖ **right to withdraw or amend its proposal at any stage of the decision-making procedure**
- ❖ **right to decide whether or not to incorporate amendments put forward by the European Parliament**
- ❖ **The Council, when amending a Commission proposal against the opinion of the Commission, must act unanimously**

# The organisation of the Commission

key  
characteristics  
of internal  
structure

- ***vertical mini-ministries (DGs):*** the total number of officials is less than that in most national government departments. There is also a number of other services : Secretariat General, Legal Service, Eurostat...( + agencies)
- ❖ [http://europa.eu.int/comm/dgs\\_en.htm](http://europa.eu.int/comm/dgs_en.htm)
- ❖ ***hierarchical management:*** the Commissioners and their “cabinets” set the political tone and the public image, the Director Generals are also very influential
- ❖ DGs of varying size and strength. Some DGs are overstretched, others are overstaffed
- ❖ (weak) inter-service coordination

# Two Key problems

difficulties of  
interdepartmental  
coordination

A Close look at the  
Commissioners'  
Cabinets reveals  
pressures from  
Member States

- ❖ some DGs are powerful enough to act more independently (e.g. Industry and Agriculture)
  - ❖ conflict between administrative coordination (DGs) and political coordination (cabinets)?
  - ❖ contested territory between Director Generals and between Commissioners
- 
- ❖ inter-cabinet negotiations reveal national interests and those of the Commissioner
  - ❖ briefings by the permanent representation of their country
  - ❖ settling of “A points” and “B points”

# The College of Commissioners

*Decision-making:  
procedures  
within the  
college of  
Commissioners*

- ❖ **debate outstanding issues**
- ❖ **settle on what they can agree on**
- ❖ **reschedule other issues for future meetings or refer them back for re-drafting**
- ❖ **fast-track procedures for technical & administrative issues**
- ❖ **Striving for compromises & package deals**

# Once a draft is adopted..

Commission  
plays a  
fundamental role  
throughout the  
legislative  
process

- ❖ submission of the draft to the Council and the European Parliament
- ❖ Commission present to coordinate and defend proposal
- ❖ brokerage role continues throughout inter-institutional decision-making procedure
- ❖ may withdraw and amend its proposal at any time

# Committees which assist the Commission in the preparation of its proposals

- The register of expert groups is located at the following address:  
[http://europa.eu.int/comm/secretariat\\_general/regexp/](http://europa.eu.int/comm/secretariat_general/regexp/)
- The register of comitology is located at the following address:  
[http://europa.eu.int/comm/secretariat\\_general/regcomito/](http://europa.eu.int/comm/secretariat_general/regcomito/)
- A list of Joint Entities resulting from international agreements is located at the following address:  
[http://europa.eu.int/comm/secretariat\\_general/joint\\_entities/index\\_fr.htm](http://europa.eu.int/comm/secretariat_general/joint_entities/index_fr.htm)

# Committees which assist the Council in Decision-Making

- Cf. next slides



# THE COUNCIL: ORGANISATION

- At the top Ministers assemble regularly in general Councils and also more specialised Councils like the **Competitiveness Council (Internal Market, Industry and Research)**
- Committee of permanent representatives (**COREPER**)
- Our main interlocutors: national experts in Working Groups
- 70 % of agreements struck at WG levels !

COUNCIL OF MINISTERS

COREPER 1  
(Deputies)

COREPER 2  
(Permanent  
representatives)

WORKING GROUPS  
(NATIONAL EXPERTS)



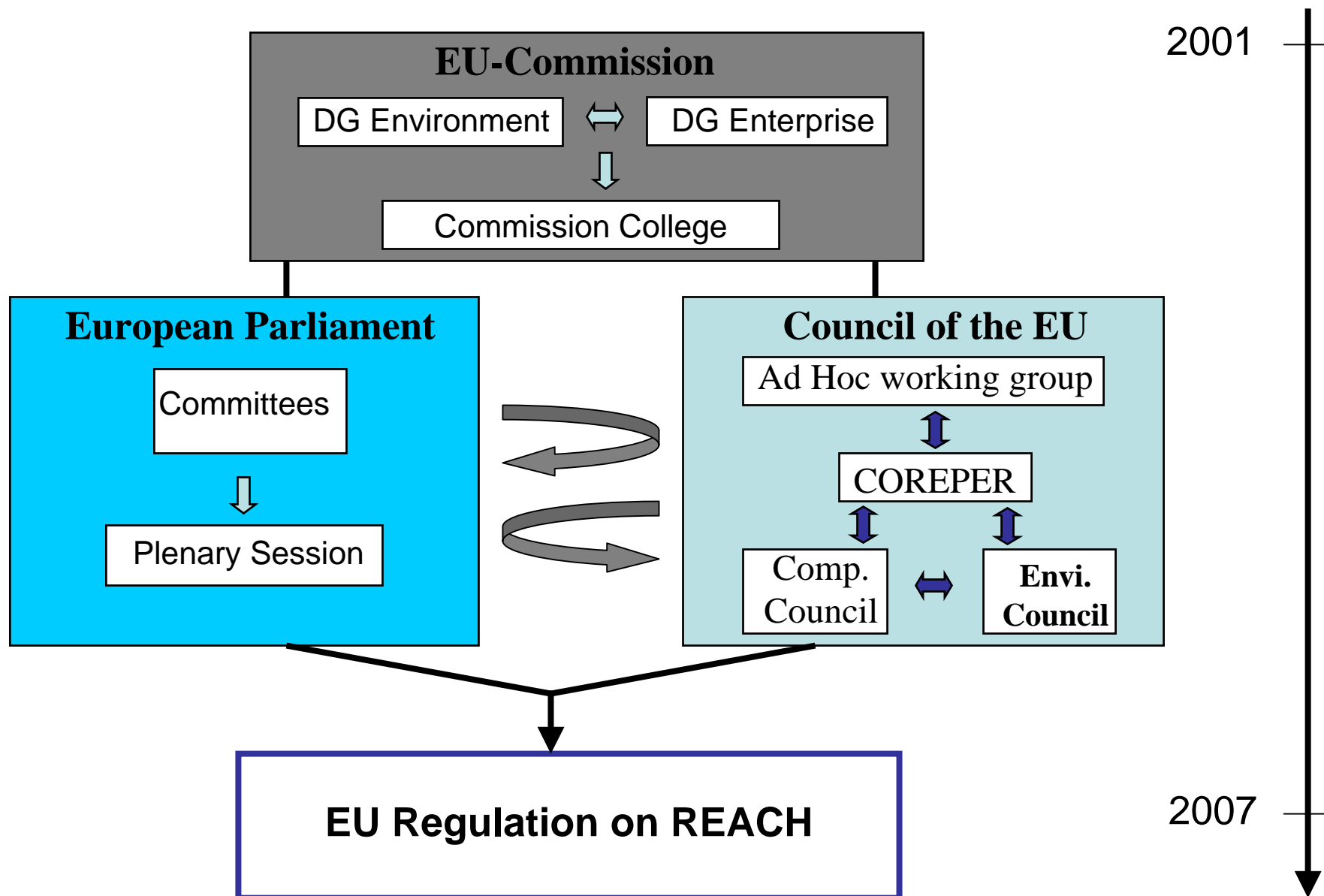
# **Art 207 TEC**

“1. 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. The Committee may adopt procedural decisions in cases provided for in the Council's Rules of Procedure.”

# COREPER

- Permanent Representatives Committee
- COREPER II – ambassadors (economic and finance issues or external relations)
- COREPER I – deputies (e.g. environment, social affairs, internal market).
- A-points: political agreement In COREPER, no deliberation in the Council (en block voting)
- B-points: discussion and decision by ministers in the Council.

# EU Co-decision procedure



# COREPER (Committee of Permanent representatives)

The last step  
before the  
vote in the  
Council

- ❖ Members are ambassadors from the Member States
- ❖ Prepares the Council's work, in a pre-negotiation phase .
- ❖ A place for dialogue between the different governments
- ❖ Directs and supervises the work of the expert groups.
- ❖ Divided in 2 to share workload :
  - ❑- *Coreper I*: Deputy Permanent Representatives,
  - ❑- *Coreper II*: ambassadors.

# The Role of the Permanent Representations

An important  
“broker” of  
national  
interests

- ❖ **First link in the formulation of the national position with regard to the Commission’s proposal**
- ❖ **Each Member State has a Permanent Representation in Brussels**
- ❖ **Plays an important role in providing technical experts for the various committees which help define EU policy**
- ❖ **Role played in the Committees in charge of implementing EU policies**

# **Committees which assist the Commission in the exercise of its implementing powers**

- **Vulgo: Comitology System**
- **In August 2000, over 1000 committees listed**
- **Important and lesser important ones, as e.g.**
  - **Standing Committee on the approximation of the laws of the Member States relating to lifts**
  - **Management Committee for Bananas**
  - **Committee on the Driving Licence**
- **Large number of Committees in the Environmental Field – 41 – plus Health & Consumer Protection – 22**
- **Development: 5                      Enlargement: 2**
- **Humanitarian Aid: 1              Agriculture: 46**

# Comitology

- The nature and functioning of comitology is one of the most commonly used examples to demonstrate the complexity, inconsistency, as well as the lack of transparency and accountability in the European Union policy-making process. The term refers to the system of committees assisting the European Commission when it implements EU legislation in cooperation with national authorities
- The use of committees was formalised in more or less its current form in 1986, following the Single European Act. Chaired by a representative of the Commission, and consisting of representatives of the Member States, comitology committees have not only mere implementation responsibilities. In a quasi-legislative perspective, comitology may be used as an alternative method of decision-making to adapt Community regulation during the implementing phase of EU legislation

# Comitology II

- The origins of comitology date back to the beginning of the 1960s. What the early stages of the Common Agricultural Policy (CAP) already required at that time – i.e. extensive and detailed technical regulation – became a necessity as the single internal market continued to develop. The Community institutions lacked not only the relevant insight, but also the resources to respond to the needs of day-to-day policy management. Moreover, Member States did not wish to fully delegate the implementation of Community acts to a supra-national institution. They therefore retained some form of control over the European Commission by introducing what has been called the ‘comitology procedure’. In their essence, committees have therefore been conceived to safeguard the interests of the Member States with respect to the exercise of the powers of the Commission.



# **A paradigmatic example....**

- **Regulation in the Insurance and Pensions Industry**

# **CEIOPS, its members and tasks**

- **The Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) is composed of high level representatives from the insurance and occupational pensions supervisory authorities from Member States of the European Union. The authorities of the Member States of the European Economic Area also participate in the CEIOPS as observers.**
- **It performs the functions of the Level 3 Committee for the insurance and occupational pensions sectors in applying the "Lamfalussy" Process. It is also a forum of co-operation and information exchange between insurance and occupational pensions supervisors.**
- **The CEIOPS organisation and tasks are described in its Charter, and in Decision 2004/6/EC of the European Commission of 5 November 2003.**

# **The CEIOPS will:**

- **Advise the Commission, either at the Commission's request or on the Committee's own initiative, in particular as regards the preparation of draft implementing measures in the fields of insurance, reinsurance and occupational pensions.**
- **Contribute to the consistent implementation of EU Directives and to the convergence of Member States' supervisory practices throughout the Community.**
- **Constitute a forum for supervisory co-operation, including the exchange of information on supervised institutions.**
- **Deal with convergence in the supervision of insurance companies and occupational pension funds.**

## **More on tasks:**

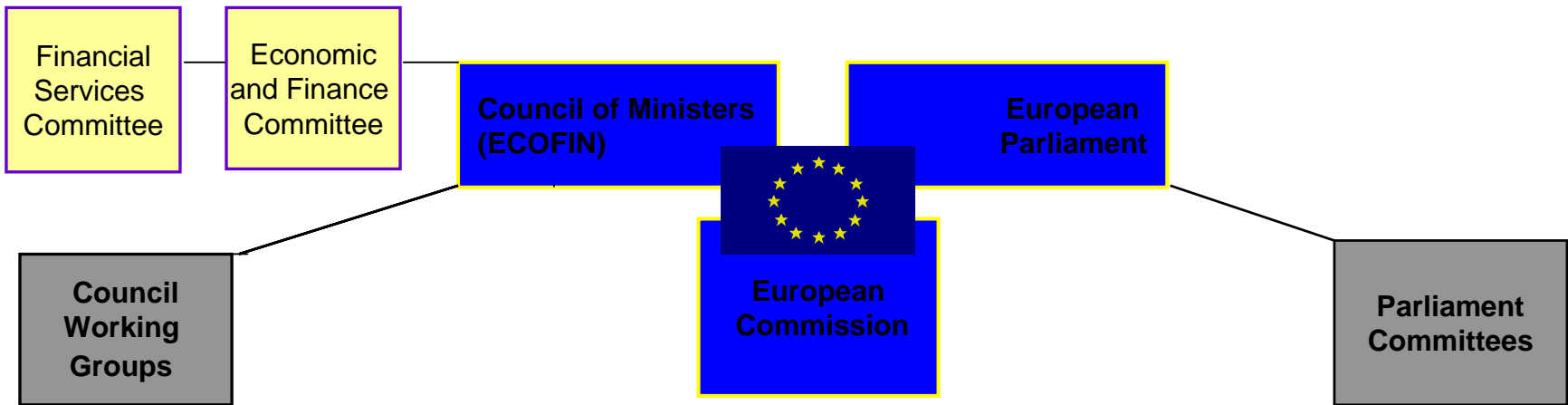
- **This role involves, in particular, the drafting of implementation measures ("Level 2" measures, in the frame of the Lamfalussy Process) for the implementation of the directives on insurance and occupational pensions, and establishing guidelines and standards ("Level 3" measures) in the areas that are not subject to harmonised European Legislation. It also involves the participation of the CEIOPS to the work of different European institutions in charge of issues relating to insurance and occupational pensions, in particular the Economic and Financial Committee and the Financial Services Committee.**

# Role of CEIOPS: The Framework

- The four level model of the new EU regulatory framework:
  - I : Framework principles (directive)
  - II : Implementing measures
    - “Comitology” procedure
  - III: Actual Implementation
    - Supervisory Standards
  - IV : Enforcement

# **The actors at the first three levels:**

- Cf. following slide



# Role of CEIOPS

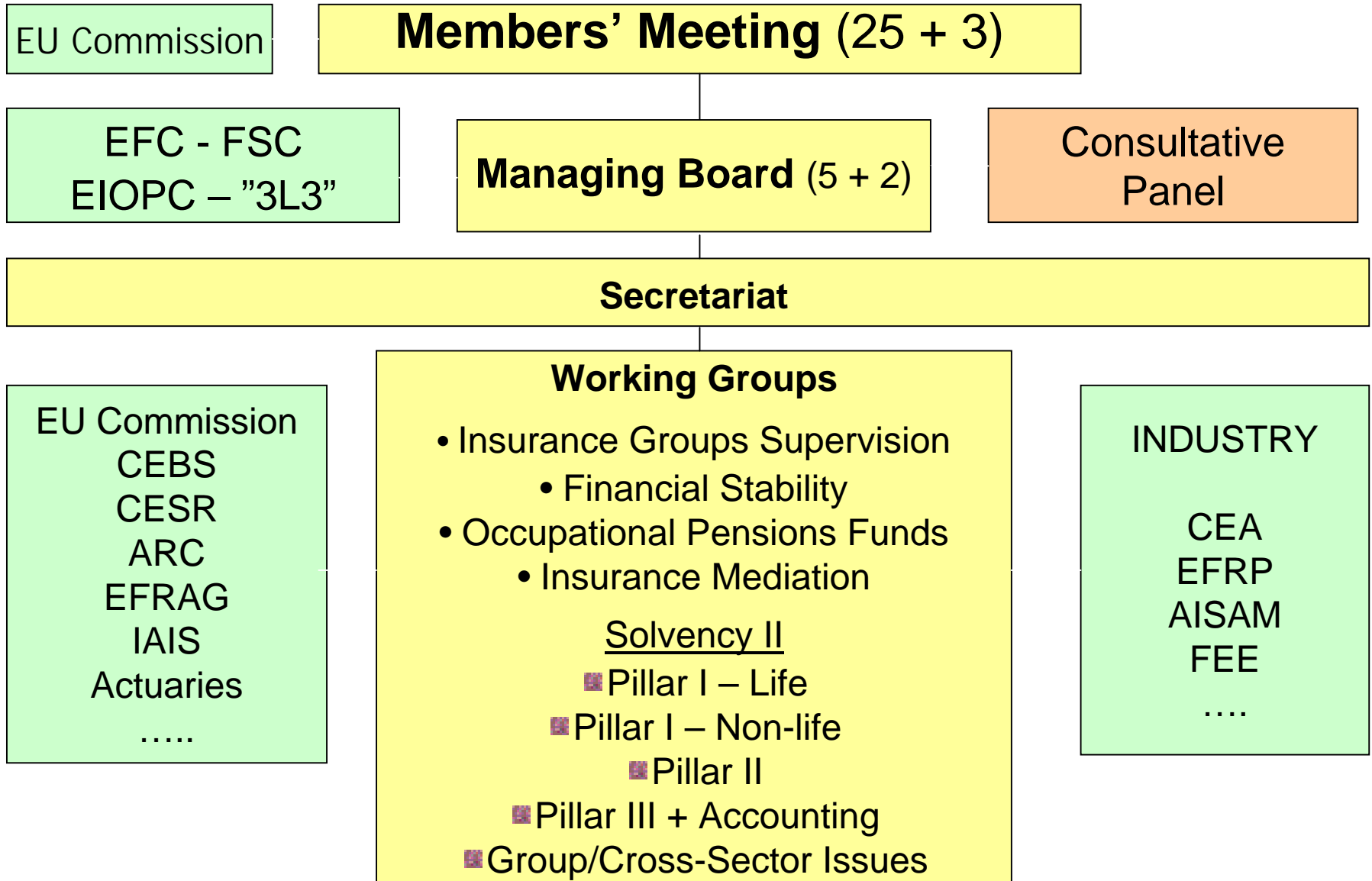
- **CEIOPS was established by the Commission's Decision of 5 November 2003 as Level 3 Committee in the Insurance and Pensions field**
- **"Level 2" tasks:**
  - **It works as an independent advisory committee and, as such, shall advise the Commission for the preparation of draft implementing measures.**
- **"Level 3" tasks:**
  - **It works for a consistent implementation of EU Directives,**
  - **can issue its own standards in areas not covered by EU Directives and shall promote adoption of best practices and**
  - **shall constitute a forum for exchange of information and supervisory cooperation.**



# Role of CEIOPS (2)

- **Accountability**
  - CEIOPS submits an Annual Report to the Commission which also will be sent to the EP and Council
  - Takes part in IC/EIOPC and FSC-EFC meetings
  - Meeting of Chairs of Level 3 Committees (3L3)
- **Transparency and Consultation**
  - CEIOPS shall fulfills its tasks in a spirit of openness and transparency
  - CEIOPS publishes an Annual Work Programme
  - CEIOPS consults market participants both ex ante and ex post (mainly for level 2 work but also for level 3 work)
  - Public Statement on Consultation Practices
  - Market Participants Consultative Panel

# CEIOPS Structure and relations with third parties



# European Environmental Advisory Councils

## Classification of advisory councils: institutional differences and remits

