

From: David H Price [REDACTED]
Sent: 01 September 2014 11:15
To: Euro-Ombudsman
Subject: Revision to my Contribution on experts and expert groups
Attachments: Omb EU Experts1.docx

Dear Ombudsman,
I sent yesterday my contribution to your initiative studying experts and expert groups in the EU system.

I am enclosing now a slightly revised version. The most important revision is this recommendation that would help improve the impartiality of expert groups and expertise. It is:

Experts and expert groups should all be placed under the aegis of the Consultative Committees: the Economic and Social Committee, the Committee of Regions and the Scientific and Technical Committee.

My thanks for your work in helping improve the democratic environment in the EU.

Yours sincerely,

David Price

Editor,
Schuman Project
eurDemocracy

Schuman Project

55 rue de Mot

Tel: +32 2 230 9803

EU Experts and Expert Groups

1. The Way Forward is already in the Treaties!

How can the European institutions receive impartial expert advice and act on this for the benefit not just of the experts (overt or covert) but for all European citizens? This question was addressed right at the beginning of the European Community. Its answer is enshrined in the treaties. Yet they have not been applied in full, even to this day. Why?

The answer relates to the distinction between impartial experts and lobbyists. Lobbyists are also usually expert but they serve a master – their paymaster. This is a private or sectional interest.

Even a body excluding all lobbyists, overt and covert, has major problems. All Regulations have to satisfy political and democratic criteria of the European population as a whole. This includes not only entrepreneurs but their workers and the consumers of the product or service. Advice from an expert group has not only to expose what is correct but help establish the path to satisfy all the sectors to change, step by step, in the future to allow for advancement in science and technology but markets and even tastes and culture.

Another problem is the Commission's approach to gaining this expertise. Should the Commissioners be in private conversations with some entrepreneurs or trade-union leaders? Should they be in private conversations with powerful leaders from Germany, France or others who are advocating support for national industries or who knows what?

2. The solution in the Treaties

The Founding Fathers solution in the treaties provided for the Commission to be in permanent dialogue with a body that would provide lobby-free expertise. This dialogue created a pan-European consensus already made!

The model is given by the first Community, the Coal and Steel Community and is present in the two subsequent Communities. This can to eliminate the undemocratic efforts of all lobbyists using two filters.

a. European Associations only.

Firstly a body of expert advisers is created that should be in permanent dialogue with the Commission. Entry is given only to those who belong to European professional associations. Thus if we need advice on shoemaking, the experts admitted to the body would not be lobbyists from individual shoemaking firms, suppliers and sellers. It would comprise only democratically constituted European professional associations of manufacturers, associations of leather and material suppliers, and shoe sellers in a trade association. They would have a constitution and be subject to usual democratic controls.

Thus if a manufacturer wanted to have a regulation for a new type of shoe or if he wanted to ban imports of another type of shoe, he would first have to convince his fellow-manufacturers that it was in the interests of the entire industry. This is the first filter.

b. What about the workers?

What if the manufacturers wanted to bring in processes that affected the workers health? What if they wanted to create a system that reduced workers' wages? This is where the second filter comes in – the pan-industry filter. The expert committee includes not only professional entrepreneurs, it includes professional associations of workers who have means to analyze the conditions of the workforce.

A further section is added for the obvious other section that needs consideration. That is the consumers. The entrepreneurs might conspire to create a market of high-price shoes and exclude all shoes imported cheaply from abroad. The consumer voice is also added only through professional associations of consumers, not partial interests.

c. the democratic element.

How can these three groups come together to provide a single voice of expertise for the Commission to make a proposal? Obviously if a committee was composed of 80 percent entrepreneurs and 10 percent workers and 10 percent consumers, it would be unbalanced. The manufacturers would win a vote on the committee every time.

The solution of the Founding Fathers was centred less on mathematical democracy than to provide a means to arrive at a fair and just solution. It

therefore divided the committee into three equal sections. No one section had a means to dominate.

If the shoe industry was threatened by cheap and nasty imports, which might suddenly dominate the European market place and wipe out local industry then the Committee could take the following action. It could examine shoes for dangerous products or production flaws, the trade conditions for reciprocity with importers, the price for dumping or cartel action and the importers workplace conditions (for example child labour) etc.

These issues go far beyond raw democratic voting and enter into technical discussions about ethical and moral considerations that are of a more lasting concern.

With its three-fold structure of entrepreneurs, workers, and consumers, the committee is obliged to enter into in-depth, technical discussions. The outcome of their deliberations would be to the benefit of all European citizens who wear shoes (and possibly others too!).

3. Institutional Aspects

The Consultative Committee with its three sections was created from the start as one of the five key institutions in Europe's supranational democracy. It was essential to prove that the European regulations were fair and just across the founder Member States that had recently been in bloody warfare, hatred and distrust of two world wars.

How could the decisions of the Consultative Committee be taken seriously? If it were just an advisory committee then the European Commission could ask its advice and then simply ignore it. The answer was to give the Consultative Committee a major part in the legislative process. Its work was not only essential but the Consultative Committee had legal powers to (a) be consulted fully and (b) take the Commission or other bodies like the Council or Court if they should ignore it.

In explaining the Schuman Plan on coal and steel to the Council of Europe in August 1950, Robert Schuman said that the Committee should have equivalent rights in the socio-economic power sphere as the Council of Ministers had in its own sphere of protecting national interests. (*Robert Schuman, Jalonneur de la Paix mondiale*, p194, D H Price 2014). The Assembly had a role to look after the rights of individuals and also sacking rights over the Commission for abuse of responsibility.

More than any other institution, the Commission was charged to be in permanent dialogue with the Consultative Committee. The latter could institute its specialist sub-committees which would bring matters to its plenary for review.

4. How would the Consultative Committee elect its members?

A major problem arrived at the beginning of its existence, as after World War 2 no *European* professional associations existed to populate the three sections. The treaties provided that as a *temporary* solution, the various Member States should nominate national association in the three sectors in a number that was twice that of the available seats in the Committee. From them a representative number could be selected to exercise their powers of consultation. After that the Committee had to arrange the composition of its future body. That never happened.

Firstly, industries were slow in creating organizations on a European scale (though they exist by their thousands today.) Secondly and most importantly the Council of Ministers wanted to retain the powers it had to nominate national associations. When de Gaulle took power in 1957, he was ferociously opposed to any European body having power over the French economy – how could a European body decide about French cheeses?

In their book on the first Community, Robert Schuman and Paul Reuter who was his legal aide and chaired the legal aspects of the treaty, exposed this measure for what it was.

‘After having searched different procedures to rid itself of the legal restrictions (to allow the Committee to vote and determine its future destiny) the Council of Ministers eventually came to a solution whose ingenuity barely disguised its illegality.’ (La Communauté du Charbon et de l’Acier, p58.)

To this day the Council illegally gives itself powers to choose the members of the European Consultative Committees on a national basis. This is political and nationalistic nepotism. It is also a huge disservice to the European economy, its entrepreneurs, workers and consumers. The lack of sound, detailed advice of the pan-European economy has probably cost the consumer trillions of euros.

Of course this gave the Council of Ministers extra powers (or so it seemed to them) to decide on its reaction to Commission proposals for European laws that totally eliminated the great benefits of the European Single Market. Despite the efforts of the 1992 Single Market programme and later developments, this lack is still hurting the economy.

5. Later Developments

The three Communities were active at a period when Charles de Gaulle was doing his best to block them. The Economic Community has as its Consultative Committee the Economic and Social Committee. Euratom has the Scientific and Technical Committee. The Consultative Committee of the Coal and Steel Committee exposed the need for another type of committee. For example the steel-making region of Lorraine in France employed many Italian workers as did the coal-mining area of the German Ruhr. The Committee of Regions was initiated under the Economic Community Treaty.

None of the four were able to function as originally envisaged. Because the four consultative committees were not properly elected and fit intellectually for their tasks, the European Commission then sought the much needed advice and counsel from outside experts. The first of these actions took place under presidency of Jean Monnet at the Coal and Steel Community High Authority.

This set in the rot and the need for '*experts.*' However competent each individual was there was no guarantee that the advice of an individual or a group of individual experts was (a) totally impartial in any sector (b) was thoroughly expert in the manufacturing process AND the employees concerns AND the economic and social effects for consumers. Nor was it certain that (c) they had taken long term development into account as a strategic plan for all three areas. Yet the Consultative Committee system could do all these operations by engaging all the associations and networks of associations concerned, covering all the fields over the entire Community Single Market. It could act as Europe's intelligence network.

A further and very recent development also affects the impartiality of advice given in the preparation of regulations. That is the Commission itself. The treaties define the Commission as independent and supranational. Commissioners should have no links to any body, organisation or interest group. This includes political parties. Why? Because party policy and political ideology can easily be biased by outside interests. Impartiality can easily be contaminated by such interests as business, trades unions, donors or clever public relations firms, to mention but a few sources. This is also true of the Council of Ministers where the influence of '*national champions*' can warp the judgement of ministers away from properly national or European interests.

6. The Treaty Mandate

It makes common sense that the Consultative Committees should have a proper EUROPEAN perspective and vision for the future. At the moment they have broken powers. They are a mixture of national organizations nominated in Member States and proposed by ministers intent on helping the national interest before others. Ministers as politicians want to reduce the power of the Consultative Committee as a non-political rival institution. They want to stop this non-political, technical institution reaching democratic maturity.

The European Parliament has highlighted the rise of a rival power. In the past the parliamentary assembly was ignored because it was not directly elected. Its opinions on legislation were dropped in the dustbins – until the Parliament reacted and took the Commission and Council to Court. The Court said that full consultation is a necessary part of the legislative process. Without proper, expert, democratic consultation the legislation is void.

7. The Consultative Committee powers

The Treaty articles are clear but sufficiently ambiguous for the Council to try to re-interpret them and impose its own will to stunt democratic growth.

- European Associations should apply to join thus creating an electoral list. Each may nominate an individual representative but as soon as the individual becomes a member he/she represents only their personal views and not that of the association.
- The associations who actually participate in the Committee are voted in from the larger list of eligible associations.
- This implies that strict criteria must be determined and decided by the first sitting Committee as to what constitutes a professional association of entrepreneurs, workers or consumers. What constitutes 'European'? All lobbyists must be eliminated.
- The Consultative Committee itself designates among its members its president and bureau.
- And critically it can organize itself for the future. That obviously includes creating an electoral system among European associations.

8. How to proceed?

For many years the Council ignored the Treaty Articles that specified that the Parliamentary Assembly should be elected and not appointed by the national authorities. A parallel development is expected for the Consultative Committees. In the case of the Parliament it depended on MEPs in the 1970s having sufficient civic courage to take the Council and Commission to the European Court to engage in this process. It might well be that such a crisis will be necessary to engage political courageous members of the committees to move forward on their own democratic track.

Europe is certainly in a major crisis at the moment. The Founding Fathers foresaw that, for example, the Economic and Social Committee should have extra supervisory and guiding powers in the construction and management of a European currency. Their wisdom was ignored. Instead we have a currency that has little supervision and the main body that controls the operation is the euroGroup, which is nothing more than an informal body as far as the Treaties are concerned. Hence much ad hoc bandaging and behind the scenes decisions in the European Council have taken place trying to repair the obvious lack of democratic control and even fraud.

The Council fears that any democratic powers given to the Economic and Social Committee or the others will never be relinquished. However should Committee members obtain a small increase of their competence, it may well lead on to others. That process will require political skill to lead it on to a fuller democracy of effective experts and expert groups.

Experts and expert groups should all be placed under the aegis of the Consultative Committees: the Economic and Social Committee, the Committee of Regions and the Scientific and Technical Committee.

Democracy, as Schuman said, involves the perfection of powers. The process itself is inevitable but the timetable is difficult to predict as it depends on the character of our representatives.

This contribution is written by David Heilbron Price, Editor of the [Schuman Project](#) and biographer of Robert Schuman and author of a number of monographs on European Community and the EU. David Price writes [eurDemocracy](#) news commentaries on a number of websites on the internet. As a life-long journalist, he has also been a European Commission scientific information officer, and editor of wide-circulating EU publications. He contributes to internet and the international press, radio and television.
31 August 2014