The Governance of Policy Advice:
Regulation of Advisory Commissions and Councils in Germany and The Netherlands

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by Sven T. Siefken, Martin-Luther-University, Halle-Wittenberg
and Martin Schulz, Netherlands School of Public Administration, Den Haag

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1 Introduction

Setting up commissions for policy advice is common around the world: The United States have Presidential Commissions, the UK, Canada and Australia their Royal Commissions, and both Germany and The Netherlands have expert commissions and advisory councils.

For The Netherlands the In 't Veld Commission (on growth and environment around the national airport Schiphol, 1997), the Oosting Commission (on the explosion of a fireworks factory in the city of Enschede, 2000), the Hermans Commission (on automated voting machines, 2006), the Davids Commission (on the war in Iraq, 2009) and the De Wit Commission (on financial mismanagement of the school conglomerate Amarantis, 2012) are just some examples of these advisory bodies from during the past years.

In Germany, the Hartz Commission (on labor market reform, 2002), the Süßmuth Commission (on immigration, 2000-2001) or the Weizsäcker Commission (on the armed forces, 1999-2000) during the red-green coalition government (1998-2005) are still widely remembered. More recently, the Weise Commission (on the armed forces, yet again, 2010) or the Issing Commission (on a new architecture of the financial markets, 2008-2011) were installed. Following the catastrophic events in Fukushima, even two advisory bodies were put to task by the German government: one permanent council on reactor security and an ad hoc “Ethics Commission for a Safe Energy Supply” (2011). And most recently, the draft bill for finding a site for permanent nuclear waste storage (submitted by the minister of the environment in March 2013) provisioned an expert commission to answer fundamental questions for the permanent storage of nuclear waste, which led to a public outcry by the president of the Bundestag warning of a misuse of parliament1.

While they are – and have been for long – routine instruments of government both in Germany and The Netherlands, the role of advisory bodies in the political process has been strongly debated in recent years, leading to significant changes in their use: Regulation in The Netherlands, self-restraint in Germany. In 2004 a motion was accepted by the Dutch parliament urging government to use moderation in setting commissions. It followed a paper on their role by Member of Parliament Wijnand Duyvendak (GroenLinks, an opposition party at the time) and his political assistant detailing how commissions influence the policy process and criticizing deparlamentarisation. In their opinion – which Parliament adopted through the motion – expert commissions took away power from parliament by relocating the political debate and ‘precook’ policy decisions in commissions.2 That mostly former politicians were appointed to these commissions, the authors argued, made it very difficult for MPs to take dissenting opinions from the report since they would then create problems within their own party ranks.

At the same time, the debate on expert commissions in Germany took a similar turn: It was fueled by political actors (of the opposition party) and political observers who criticized that through the use of these instruments the government was able to sideline parliament, reducing it to an instance of mere ratification for readily negotiated package deals (cf. Adam 2001: 3; Papier 2003: 8). The use of commissions in Germany was often seen as one among a few developments (most notably European regulation and the role of the constitutional court) leading to deparlamentarisation and an “emigration of politics from the constitutional institutions” (Blumenthal 2003: 9). Yet following this discussion, no formal regulations were adopted in Germany – indeed no prominent calls for them were heard. Yet a notable reduction in the use of commissions has been obvious since the change of the governing coalition in 2005. This can be understood as an act of self-restraint.

In other words, the two neighboring parliamentary democracies Germany and The Netherlands have seen (1) the usage of the same instruments of policy advice leading to (2) a similar fundamental discussion about its role in the political process and the consequences for the separation of powers, but (3) adopted different approaches to regulating it. Thus the central puzzle to be investigated by this paper is: How does the regulation of policy advice influence its role in the political process? To approach an answer we will give an overview of the policy advice systems in the two countries with a special focus on commissions and councils, discuss their role in the political process and look at the effects of regulation and restraint. This paper draws on the authors’ separate studies for Germany (Siefken 2007) and The Netherlands (Schulz 2010; Schulz et al. 2008) bringing the results together for the first time.

2 Advisory systems compared

To study the influence of advisory bodies on the policy process it is important to understand the broader environment they work in: the advisory system (cf. Krevort 1993: 275). Policy advice reaches the political administrative system through numerous channels. There are advice givers both inside and outside of government and parliament; knowledge is actively pulled in by political actors when they set up permanent advisory organizations or when they contract reports to consultancies and research scientists. Some forms of policy advice are institutionalized, others are only regulated or just exist on an informal basis. But a lot of advice is also pushed into the political system, for example by interest groups and other advocates, NGOs, the media and – not to forget in a democratic society: the people. Finally, advice is not just sought and provided on matters of policy but also on politics (for example in communication or campaign strategies) and polity issues (such as constitutional questions, federal and electoral reform). To make things more complex, the different types of advice are sometimes hard to separate, and the same actors may speak in different channels simultaneously or consecutively. Looking at the big picture makes it clear why dealing with the various forms of advice is not only hard for politicians, but also a challenge for political scientists to study; many have complained about the lack of transparency and knowledge about it³, likening it to an “obscure jungle” (Murswieck 1994: 109).

Figure 1 gives an overview of the channels of policy advice in Germany by distinguishing their (primary) recipient on the one hand and their degree of formalization on the other. Of particular interest here is formalization: Some sources of policy advice are permanently institutionalized with clear rules and their own permanent staff. These are usually called internal policy advisors. Few sources of policy advice are externally regulated, that is they act under clear rules but without permanence: For Germany, only the legislative hearings come to mind who find their rules in the procedures of the parliament (GOBT) while they are always set up ad hoc by the respective parliamentary committees. A few sources, however, put themselves under regulation: Councils and commissions often set up their own rules of procedure, sometimes inspired by or imitating their predecessors (cf. Siefken 2007: 121); consulting companies and the news media or academic researchers act in a professional environment with its own structures and rules. Finally, there is a huge area of informal advice that is dispensed ad hoc and without institutional structures to government, parliament and society at large.

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Source: authors’ composition

The Dutch landscape for policy advice is organized in quite a similar fashion (see figure 2). The interesting difference with Germany is that the primary recipient of the advice of councils are the government and parliament. There are three special councils in The Netherlands who are embedded in the constitution: the Council of State, the Court of Auditors and the Nationale Ombudsman. Councils are more (though not entirely) regulated externally than in Germany: All advisory councils are set up by law that states their tasks and functions and the number of their members. The obligation to set them up this way follows the “Kaderwet Adviescolleges”, a general law on advisory councils from 1997, which also prescribes some formal procedures for all councils: the obligation to have an advisory program to work from and to present this to government on a yearly basis. In practice these programs are the result of talks between the
government (or its ministers) and the councils. The law includes the obligation to present a self-evaluation to the government every four years, yet it does not specify what exactly this encompasses. In their dealings, the councils are also regulating themselves: setting up their own rules and procedures. Commissions, too, are internally regulated but are in the externally regulated category nonetheless: The “Kaderwet Adviescolleges” states that ad hoc commissions have to be set up by ministerial decree “with the agreement of the cabinet”

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In how they work, ad hoc commissions enjoy great freedom. Usually commissions set up their own procedures and work methods. As such they are internally regulated.

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**Figure 2: a general overview of the policy advice system in The Netherlands**

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Source: authors’ composition

Comprehensively analyzing these entire systems for the two countries is beyond the scope of this paper. Instead it focuses on one narrow segment of policy advice that the government creates to bring in outside expertise: commissions and councils. These are groups that are composed of experts from outside government and parliament who are put in charge of providing advice on a particular issue. If these groups are set up permanently they are councils, if they are just created to deal with a single question ad hoc, they are commissions (cf. Siefken 2007: 64 and Schulz 2010: 24). It is well worth noting that this distinction is for analytical purposes only. In German reality commissions can be found that analytically have to be qualified as councils (for example the Commission of Experts for Research and Innovation set up by the German Government in 2006 and providing yearly reports), “Working Groups” that must be counted as commissions (for example on nuclear waste disposal sites, “Arbeitskreis

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5 Cf. Kaderwet Adviescolleges (1 January 1997), article 6.
6 The Netherlands have several large technological research and development institutes like TNO, ECN and NLR.
Auswahlverfahren Endlagerstandorte”, 1999-2002) or as councils (the working group “Tax Revenue Forecasting” is a council that has existed since 19557). In The Netherlands the “Taskforce” Jeugdwerkloosheid (on youth unemployment between 2003 and 2007) is in its heart an ad hoc commission, though it existed for quite a long period of time. The variety of names in practice is not surprising, because such titles have historical reasons and tactical political implications, too. Because of the differences in how they regulate commissions, there is also a difference in the legal distinction between commission and council: In The Netherlands a council as generally seen as a permanent body advising on a certain policy domain where a commission is an ad hoc temporary body advising on a single policy issue (Schulz, 2010: 24). Germany has no such definition.

Apart from its manifest function to give sound knowledge and suggestions for action, all policy advice can serve a number of latent functions, too (cf. Merton 1975: 155). Most importantly among them are communicative and symbolic functions (in agenda setting or agenda cutting), legitimation functions (providing independent or scientific authority to a decision), negotiation functions (bringing about the consensus among the relevant interest groups) and delegation functions (fostering self-regulation among the actors in the respective policy subsystem)8. In order to understand the role of advisory bodies it is useful to judge them in regard to the full set of functions they fulfill (cf. Zegart 2004: 391). Before going into the details, a short overview over the use of commissions and councils in both countries is given to analyze the central similarities and differences between both systems.

2.1 Commissions and councils in The Netherlands

A count by the Scientific Council for Government Policy (WRR) in 1977 showed that The Netherlands had 368 permanent advisory councils. During the 1960s and 1970s the Dutch advisory system expanded due to growing complexity of societal problems, growth of the welfare state and most of all the will of government to cooperate with interest groups and trade unions in making policy. Thus these councils had not only advisory tasks but were also important platforms for deliberation between government and all sorts of societal groups.

It was the Vonhoff Commission (on the structuring of central government) in the early 1980s stated that the governmental advisory system had gotten out of hand and recommended to revise it. Moreover, the double function of both advising and deliberating was already at that time considered an ill marriage leading to ‘deparliamentarisation’ of the policy process. After this conclusion and after the government was urged by parliament to refrain from introducing any more councils and to reconsider the need for those in existence, government set up the Van der Ploeg Commission in 1984 to investigate ways to make the advisory system more efficient and effective from the parliament’s point of view. The commission recommended to reduce the number of advisory councils and periodically evaluate how they function. The decrease in the

number of councils became an issue in the early 1990’s again, as a government-wide efficiency operation resulted in both a new positioning of government towards society and the private sector leading to privatization of government services (like mail services and public transport) and rethinking government processes to be more efficient than before. As part of this efficiency operation, in 1997 a new law became active that eradicated almost all of the former permanent councils leaving only 26 in existence. By law, the task of these councils is to advise government on matters of policy. This specific description of the task intended to break with the former function of councils to also be a platform for deliberation for a field of interest parties (also see Hoppe and Halffman, 2004: 34-35).

Since there had been so many permanent councils throughout the ’60s, ’70s and ’80s, the attention for ad hoc commissions both in politics and academia was small. No extensive research or data series on the number of ad hoc expert commissions before the law of 1997 exists. Still, there have been such commissions in different periods. For example several Dutch laws during the 19th century have been prepared by commissions and after the Second World War, commissions were used to integrate former resistance fighters into policy making. There is no central register of all ad hoc commissions in The Netherlands but since the installation of a commission by ministerial decree is usually formally made public through the official state newspaper (Staatsblad) the existence of many commissions can be traced.

So, after the number of permanent councils was drastically reduced in 1997, a large number of ad hoc commissions was set up: Between 1995 and 2005, Dutch government departments installed at least 290 commissions. The Duyvendak paper mentioned above reacted to this growth and urged restraint in setting up advisory commissions. But despite parliament adopting this through a motion, the number of commissions did not drop significantly.

The fluctuation in the number of commissions in each year in The Netherlands shows a connection with government periods (cf. Schulz and Van Twist 2010: 303). Where the Wim Kok administrations I and II (between 1995 and 2002) set up and average of 21 commissions per year, the Jan Peters Balkenende administrations I and II (between 2002 and 2006) set up 36 commissions per year on average. In general, the Kok administrations (left liberal coalition) are seen as rather stable governments (in terms of coalition struggles) where the Balkenende administrations (conservative) are considered to have been a rather unstable coalitions ultimately resulting in their resignations.

Figure 3 shows this distinction between the Kok and Balkenende Administrations. It also reveals that most commissions were set up by the ministries of education, home affairs (interior), justice and health. The growth in the number of commissions on Home Affairs during the Balkenende administrations is due to 14 – one for each department – commissions analyzing government’s tasks and to advise on the future role of government in society. Education is a policy field that by constitutional guarantee enjoys great autonomy in The Netherlands. Thus changes are usually made through consensus which is facilitated by expert commissions.
2.2 Commissions and councils in Germany

Commissions and councils have been known in Germany for a long time. In the early 19th century administrative reformers Karl vom Stein and Karl-August von Hardenberg suggested to add to the ministries technical and scientific commissions of experts from science and practice (cf. Unkelbach 2001: 8). During the industrialization, the so called steam boiler committees ("Dampfkesselausschüsse") were set up to avert explosive disaster and compensate for the lack of engineering expertise from the point of view of public administration – and to avoid regulation from the industry perspective (cf. Roßnagel 2001: 619). So the seed of advice through councils and commissions in Germany lies in technological issues, but it quickly expanded toward economic and social affairs: A council on the economy was installed in 1880, a council on emigration in 1897 and one on health in 1900 (cf. Unkelbach 2001: 9).

The development of advisory councils and committees in the Federal Republic of Germany has not been monitored comprehensively because they have always been considered as matters within the organizational authority of the individual ministries. However, there are a few sources to shed light on the development: answers to parliamentary questions, data collections by the court of auditors or academic researchers and – since 1990 – a report for each electoral period on the representation of women in advisory and supervisory bodies which includes all “meaningful” councils and commissions and is compiled as a tool of gender mainstreaming.
Bringing these data together, figure 4 shows that just like in The Netherlands a quantitative maximum was reached in the mid-1970s with a total of 358 commissions and councils. In Germany there has never been any meaningful attempt to regulate these instruments. It seems more like they were going in and out of fashion. For example, policy advice was considered “modern” during the coalition government of the Social Democrats and the Liberals between 1969 and 1983 (cf. Münkel 2004: 278) – a period that is generally described as full of “planning euphoria” and wishes to rationalize politics through “PSI” (“professional social inquiry”, Lindblom/ Cohen 1979: 10). The figure also shows that – based on the same type of report since 1990 the number of councils and commissions has been quite stable between 134 and 143. This contradicts many observers’ impressions that the government of Gerhard Schröder was employing them like never before and suffering from “commissionitis” (Ramsauer 2000: 7 and Leersch 2001: 3).

So the above mentioned discussion of the role of commissions in the years 2000 to 2002 was not caused by a quantitative increase in their use. A frequency analysis shows the media attention it received during that time (see figure 5) which has every characteristic of a “media event”, and indeed it was strategically used and put into scene as political tool by members of the administration. For example, minister of the chancellery Frank-Walter Steinmeier (2001: 265) stated that commissions were “examples of a new, results-oriented culture of dialogue” and in his memoirs, Chancellor Gerhard Schröder (2006: 57, 89, 105) wrote that the function of these
advisory bodies was to generate consensus among the involved interests and to discuss issues more objectively. Indeed, the use of expert commissions to bring about consensus is seen as a “trademark” of the style of the (early) Schröder government (cf. Murswieck 2003: 119). It is thus plausible that during that time, not only was there higher attention but also did different functions of policy advice come to the fore – namely consensus building as members of the governing coalition stressed or symbolic politics as critics complained.

Figure 5: media articles about expert commissions in Germany 1995 to 2012

Looking at the use of advisory bodies in Germany by policy field reveals that they exist in almost all ministries and that the highest number was in the departments of health, research and labor, each of them having 14 or more commissions or councils (see figure 6). A detailed analysis separating councils from commissions shows how these two types are related: Some of the ministries with a high number of councils have only set up few commissions (for example the departments of environment and labor) and vice versa: ministries with a low number of permanent councils have set up a high number of commissions (e.g. infrastructure and justice). But there are also ministries that score quite high for both bodies (finance, education, health and defense). So there is no clear-cut relationship but indications for (1) a possibility to replace one form of advice through another and (2) a policy-specific demand for advice.
As a consequence of the discussion about commissions, no step towards a general regulation of expert advice was made, there was not even a considerable call for it. Still today, there are only few general rules governing government commissions:

- The coalition agreements 2005 and 2009 only state that the seats on commissions and councils are filled in agreement (“im Einvernehmen”) of the coalition partners, the one from 2009 added “according to a fixed key”\textsuperscript{9}.
- The joint rules of procedure for all ministries (“Gemeinsame Geschäftsordnung”) makes no mention of commissions or councils.
- The share of women in advisory bodies has to be reported once per legislative period.

But the involved actors had also learned their lessons from the debate:

- Government practiced clear restraint and installed fewer commissions than before, especially such with a high publicity. To replace them, it used summits as functional equivalents (see below).

• Opposition parties and interest groups started to install their own counter-commissions, for example the “Herzog Commission” by the CDU to mirror the work of the “Rürup Commission” and probably neutralize them.

• Policy advisers developed codices for their own behavior, some of them from a more scientific perspective (cf. BBAW 2008), others from a commercial one (degepol n.d.).

![Figure 7: distribution of advisory commissions and councils in Germany by ministry](image-url)

Figure 7: distribution of advisory commissions and councils in Germany by ministry

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Source: authors’ composition, data based on Siefken 2007: 285; the graphs show the distribution of councils reported for 2001 by ministry (n = 125) and of commissions 1998 – 2005 (n = 25).

All in all, commissions and councils are a long established and frequently used tool of policy advice in Germany. It can be hypothesized that they have temporarily been used for other functions than usual – or in other ways – and the following chapter will shed more light on that.

2.3 Comparison of commissions and councils in the advisory systems

Looking at Germany and The Netherlands shows a plausible link between the organization of ad hoc commissions and permanent councils. The more councils government has set up, the less likely it is to install advisory commissions next to it. Thus in Germany a department that has few councils sets up a lot of commissions and in The Netherlands government as a whole having abolished most of its councils sets up a considerable number of commissions. This is further elaborated on in figure 8.
Still, the existence of councils with certain advisory domains has by now means proven to be a barrier for government to still set up commissions on topics it has already been advised on by a council. In the Netherlands for example government set up the Kok Commission (on the future structuring of the Randstad provinces) while at the same time its own Council for Public Administration (Rob) advised on the very same matter. Apparently there were reasons for the government to see the advice of the council alone as insufficient in the policy process. The advice of a commission headed by former prime minister Wim Kok would outweigh the advice of the permanent council. This suggests that both councils and commissions have a different bearing on the policy process and that even when both sorts of entities advise on the same matter, there is still a difference in influence on the policy process.

When it comes to the policy domains commissions are set up for some similarity appears (see figure 9). Though Germany has more councils and The Netherlands have more commissions, in both countries policy advice (by either commissions or councils) is sought in the same domains. Especially education and health are high ranking departments in both countries that government sets up quite and extensive amount of commissions and councils. An explanation for this might be that in Germany the Bundesländer have full autonomy with regard to educational policies and systems. Thus the federal government might often use commissions and councils in an advisory capacity to reach across these internal borders. In The Netherlands, too, the educational domain enjoys a lot of autonomy forcing the government to deliberate in order to facilitate changes. Foreign affairs on the other hand are because of their sensitive nature a department for which in both countries little councils and commissions exist. This does by no means suggest that both countries have the same need for advice on all of its policy domains. It does however suggest that when circumstances on policy fields between countries are comparable (e.g. with regard to the autonomy of outside parties in these fields) government is more or less likely to set up commissions in these fields.

There also might be an influence of the actors involved in a coalition government. Yet we do not find indication for a simple ideology-based divide which is sometimes hypothesized in the literature: As councils take longer to set up or abolish, such a preference should be more visible by the commissions. But while in Germany, there seems to have been a rise in the use of this instrument during the social-democratic coalition government 1998 to 2005, in The Netherlands...
the opposite is the case: The conservative coalition set up 71% more commissions than the left liberal coalition before it. Obviously, other explanations come into play, too, such as the stability of the government or the size of the coalition majority.

Figure 9: advisory bodies by domain in The Netherlands and Germany

Source: authors’ composition, data based on 233 commissions in The Netherlands (1995 - 2005) and 123 commissions and councils in Germany (2001). To compare councils (Germany) with commission (NL) for policy-specific advice is possible, because the number of commissions (Germany) and councils (NL) is so small that it would not change the overall picture. Domain are aggregated to allow for comparison between Germany and The Netherlands with different ministerial responsibilities.

3 The work of advisory commissions and their influence on the policy process

To take a closer look at the functions of advisory bodies and their role in the policy process it is necessary to go beyond the quantitative analysis and address matters through a more qualitative approach. This requires detailed case studies the results of which are the base for the following discussion. Looking at the commissions only is useful because it narrows the field and as they are set up ad hoc they do not develop the typical staying power of permanent organizations – so their functions can better be determined. At the very least these ad hoc commissions are instruments that government can to some extent mold to specific needs in different contexts. The analysis for the German case is based on detailed studies of Siefken (2007) for the expert commissions in Germany in the 14th and 15th legislative period of the Bundestag (1998 to 2005), i.e. the governing of the red-green coalition. Examples from the time afterwards are added for illustration but they are not included in the graphs and numbers. The analysis for the Dutch case is based on detailed studies of Schulz et al (2008) and Schulz (2010) that draws from empirical studies over the period of 1995 to 2005. In this analytical comparison we will take a look at: the reasons for setting up commissions, their composition and the results.
3.1 Reasons for setting up commissions

In Germany, expert commissions have been set up on different occasions. The majority of them (58 %) were installed in reaction to an external event such as the hostile takeover of Mannesmann AG by British Vodafone Air Touch (2000), a scandal in the federal labor office (2001) or the wreckage of the burning freight ship “Pallas” (1998). 26 % of the governmental commissions had been suggested by other bodies, half out of parliament, half out of councils or scientific groups. Adding these two groups together shows that in Germany, expert commissions were used as a reactive instrument of policy advice (84 %), probably because they can be speedily installed by the government alone. As mentioned, after the Fukushima accidents, an expert commission was installed on ethical questions, while an existing council was charged with determining the risks of power plants in Germany.

But setting up an expert commission is not only a reactive instrument, but can also be proactive: In a few cases, they had been stipulated in the coalition agreement. This could also be found later: The treaty between CDU/CSU und FDP from 2009 included the plan to set up six expert commissions 10, namely on

- the reform of communal finances; it was installed in February 2010 and concluded its work in June 2011;
- the reform of value-added taxes, which was set up in two steps: first a group of academic experts gave general suggestions, second a group of politicians was installed to develop steps for concrete action but never assembled;
- the fight against poverty in old age; this commission was planned for 2011 but then cancelled after disagreement about its composition;
- the financing of health insurance, set up in 2010 comprised only members of the cabinet, so it does not count as an expert advisory commission in this paper.

• the future of the Federal Commissioner for the Records of the State Security Service of the former GDR, which was not installed.
• the reform of the armed forces, which was set up in April 2010 and submitted its report in October 2010.

So in the current coalition, of the six expert commissions stipulated in the coalition agreement, only three were actually set up. Interestingly, the treaty of the grand coalition 2005 only mentioned one commission that already existed and was to be continued, but there was no plan for any new ones. This might have to do with the super-majority of 73 % of parliamentary seats that coalition enjoyed which made other channels of creating consensus less necessary than during "normal" coalitions.

Not found in the German political system are expert commissions for the evaluation of laws. Mandatory evaluations are still the exception in Germany, in 2003, they were included in only 9 % of (new) laws, 2006 in 7 % (cf. Veit 2010: 177). And if laws are evaluated, this is usually done by public or private research organizations or consulting companies but not by expert commissions.

It is also not common to use commissions as an instrument of symbolic response to crises as in other countries like the United States or the United Kingdom. Other instruments of advice may be used for this function; mostly parliamentary investigating committees (cf. Siefken 2007: 315).

In The Netherlands almost half (48 %) of all ad hoc commissions are set up simply because there is a need for expert advice on technical matters that cannot be resolved with the internal knowledge of government agencies alone. It is simply the necessity to bring in experts to help solve a non-political debated and rather technical issue. Examples are the broad band experiments (Van der Doef Commission, 2002), the treatment of heroin addicts (Van Ree Commission, 1996), the rates of bailiffs (Van der Winkel Commission, 2000) and the zoning of chambers of commerce and fabrics (Epema Commission, 1996). Sometimes it is mandatory for government to perform evaluation and commissions are frequently set up to do these evaluations, as was the case for the evaluation of police organization (Leemhuis Commission, 2004). All of these commissions are mostly unknown to the public since they work on matters without media attention.
Another major reason for setting up commissions is the uncertainty the future holds for all government policy (24%). Whether it is chances or threats that need to be addressed the future and looking ahead is an important reason for setting up commissions. Examples are the future of ICT and government (Wallage Commission, 2000), the chances of bioterrorism (Terlouw Commission, 1999) and (more recent) the threats of climate change for water levels (Veerman Commission, 2007). And then there are the more well-known commissions on topical issues (13%) like the fire in a café in Volendam that left 14 dead and 180 wounded (commission Alders, 2001) and systems crisis (15%) like the alleged misappropriation of ESF subsidies (commission De Koning, 2001). Like in the United States and the United Kingdom these commissions are not only set up to find out what really happened; they also have symbolic functions, for example to show government action.

### 3.2 Composition of advisory commissions

In studying policy advice, an ex-ante restriction of who counts as an expert is not helpful, because political practice has it that advisory commissions are composed as a mix of scientists, interest group representatives, business leaders and public servants or politicians. In Germany, only about 30% of experts are from academia in the broader sense, but 26% are politicians or public servants, 15% have a business background and 13% are representatives of interest groups (see figure 12). This brings together a broad diversity of perspectives on the issues at hand, both from a theoretical as well as a practical background. By including interest groups and politicians, implementation of suggestions might also be facilitated. Obviously, not all commissions are the same. There are a few that are solely composed of scholars and scientists, for example the one on lifelong learning (2001 – 2004), while the seats on commission about the wreckage of the Pallas ship were mostly filled with public servants (1999-2000). But most commissions in Germany are mixed and show a clear corporatist orientation, as does policy advice in Northern and Central Europe generally (cf. Renn 1995: 152).
Looking at the composition makes it clear that expert commissions are not just a tool for bridging the gap between “truth” and “power”, but they also serve as a forum for (pre-)negotiation among political actors, much like an incubator to sort out similarities and differences of positions and maybe even to reconcile them partially.

Figure 12: composition of expert commissions in Germany 1998 – 2005

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business</td>
<td>56</td>
<td>15%</td>
</tr>
<tr>
<td>Academia / Science</td>
<td>112</td>
<td>30%</td>
</tr>
<tr>
<td>Politics / Public Service</td>
<td>100</td>
<td>26%</td>
</tr>
<tr>
<td>Interest Groups</td>
<td>49</td>
<td>13%</td>
</tr>
<tr>
<td>Others</td>
<td>61</td>
<td>16%</td>
</tr>
</tbody>
</table>


In The Netherlands the research on composition has focused on both the backgrounds of the chairpersons (since they have an important role in the functioning and image of the commission) and the reasons for choosing certain chairpersons and members for a specific commission. The Dutch ad hoc commissions for the most part have chairpersons that have a background in politics and administration (see figure 13). A previous career in the judicial system or even in the business sector is a rather unusual feature for a commission chairperson: Many are former members of parliament and had administrative responsibilities in government. Academic professors are also frequently chairpersons of commissions.

In composing the commission as a whole the knowledge, expertise, authority, representativeness for a certain field of interest and political affiliation are in practice reasons for selecting specific members (cf. Schulz, 2010: 65-67). The Dutch case shows that the match between composition and the reasons for setting up a commission is important. In the case of the Berkhout commission (2002) on reducing airplane noise, a mismatch became visible when a highly skilled expert commission composed of academics gave back its assignment to the minister after the commission did not want to alter its report in order to accommodate the minister’s need in the political process. The experts had devised a system that in their opinion was exactly what the country needed, yet the report on this would not help the minister in her political struggle in parliament because of the resistance there. Commission Eversdijk was formed to replace commission Berkhout.
3.3 Results of advisory commissions

The variety on issues and composition of expert commissions in Germany forbids a general conclusion about their role in the political process. But based on detailed case studies it has to be noted that they did not fundamentally change the political process. They may have an influence on the agenda and help change actor constellations – not to forget: bring information into political decision making (cf. Siefken 2007: 319). Case studies have shown that the fear that they reduce parliament to an instance of ratification is overblown. First of all, commissions in Germany hardly ever write draft bills at all. Secondly, the regular process of lawmaking has always happened in its usual complexity after a commission report (cf. Siefken 2007: 323). Thus commissions in Germany are to be located in the early stages of the policy cycle.

Based on deeper analysis of various criteria, three types of commissions can be distinguished (cf. Siefken 2007: 309) by ranking them on the scales of orientation towards the public and towards academia (see figure 8). From that, three distinct groups are inferred: Commissions with a primary orientation towards academia (group 1), those with a primary orientation towards the public (group 2) and a third group that scores low on both counts and is mostly oriented towards administration and the respective policy field itself (group 3). This fits with the different roles of presidential commissions identified for the U.S.: agenda commissions, information commissions and political constellation commissions (cf. Zegart 2004: 375).
Since 2005, there have been quite a few commissions and councils. But none has reached the publicity of those in the red-green coalition (like group 2). It is probably “back to business as usual”, i.e. after a period of withdrawal from this instrument of policy advice after the change in government (in 2005), they are regularly used for policy advice to the ministries (group 3). Only the Weise-Commission on the reform of the armed forces (2010) has received a broader public attention and would receive a score of three on the publicity axis in figure 14. Even the commission on “hot topics of the day” such as Fukushima and the Financial Market Architecture found much less attention.

The function of those commissions in group 2 meanwhile has been realized through different instruments since 2005: “Summits” have been set up by the government on diverse issues: integration (2006 – 2008), information technology (since 2006), value-based education (2006), a national energy strategy (2006 – 2007) or islam (since 2006), women (2013) and demographic change (2013). By count of the opposition party SPD, the Merkel government has organized 45
summits in 45 months. They consist of a great number of people (up to 800), have a large share (up to a third) of members from the political system and participants may change from one meeting to the next (cf. Krick 2010: 238) which makes it easier for the respective ministry to influence the summit results (cf. Schneider 2006: 787). However, it is important to note that they are not one-time meetings but often have working structures to prepare reports or deal with issues in depth. Based on a detailed case study it has been shown that governing with summits does not serve for neutralizing veto positions of involved interest groups but puts a clear premium on symbolic politics (cf. Krick 2010: 259) – so they are less about making than communicating policies – or politics. The growth of these new instruments of advice can be attributed to a temporary self-restraint in the use of commissions – not as a consequence of regulation but because after the change in government, members of the new coalition did not want to use the trademark tools of the previous one.

![Figure 15: results of commission advice in The Netherlands](image)

**Expert commissions in The Netherlands in general have a large influence on the policy process (see figure 15). While every commission has a different effect on policy making, their overall influence is undeniable: Four out of five commissions lead to new or adjusted policy (or both). 20% of all commissions led to the setting up of yet another commission. Recently the commission on financial mismanagement within schooling conglomerate Amarantis (De Wit Commission, 2012) led to the installation of a commission investigating potential fraud by former Amarantis officials (Halsema Commission, 2012) which in turn was tailed by a commission to prepare a moral compass for officials in public organizations (Halsema Commission, 2013).**

With regard to specific effects of commissions on the policy process, different types of commissions are active in and have a bearing on different phases of the policy process (cf.

Political commissions that try to influence the agenda can be found in the early stages of the policy process; they often look into delicate matters like the Wiegel commission in 1994 tasked to answer the question how governments departments could be reorganized more effectively and efficiently after the Queens Commissioner in the province of Friesland, Hans Wiegel, made it a political issue through the media – setting up that commission was just as much a way to calm down the debate as it was a way to get advice on how to deal with the matter itself. Taskforces are more likely to be found in the execution stage of the policy process. They try to actually contribute to societal change will at the same time advising government. For example the taskforce for youth unemployment (commission De Boer, 2003-2007) tried itself to set up learning courses to enhance accessibility to the labor market. In quite the same fashion, evaluation commissions determine lessons for the future, like the Günter Commission (1999) for the Law on Youth Care or the Havermans Commission (2004) for the General Intelligence and Security Service. They must be positioned more to ward the end of the policy process and have a function of determining learning points. Thus different types of commissions have their influence in different stages of the policy process.

3.4 Comparison of commissions in the policy process

When it comes to the use of expert commissions, Germany and The Netherlands are quite similar in some regards and different in others. Reasons for setting up commissions are rather comparable as is the way the commissions are composed and who chairs them (see figure 16).

When it comes to the results and effects of commissions a different situation is apparent. In Germany commissions can be found almost exclusively in the early phases of policy making, setting the agenda, preparing “solutions” and serving as a tool for pre-negotiation having rather small immediate effects on policy. The Netherlands have quite a lot of commissions that do
exactly the same thing: try to influence policy making and setting the agenda. But this is only one specific type of commissions. Other types of commissions have influences on other phases of the policy process, namely in implementation and evaluation, too (see figure 17).

<table>
<thead>
<tr>
<th>Function</th>
<th>Germany</th>
<th>The Netherlands</th>
</tr>
</thead>
<tbody>
<tr>
<td>symbolic response</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>agenda setting</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>policy advice</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>consensus building</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>implementation</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>evaluation</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

Still, some reflective remarks need to be made here. The fact that policy changes after the work of a commission (be it from direct influence of indirect agenda building) does not necessarily mean that it changes because of the work of a commission. The commission advises on the direction of the change where the necessity for it is often warranted by other factors like societal change, incidents and other developments.

4 Regulating advisory bodies in the policy process

Bringing together the experiences in Germany and The Netherlands shows that while there was a similar amount of commissions and councils to start with and a political debate about the implication of expert advice for the separation of powers along the same line, the approach to regulating them were different.

It is reminiscent of the situation in the United States in the mid 1970s. Advisory commissions there have been around since the late 18th century (cf. Petracca 1986: 83) and found a great expansion during the presidency of Theodore Roosevelt, who is generally credited as “father of the commissions” (cf. Wolanin 1975: 5). During the late 1960s and early 1970s observers criticized a lack of transparency about them (cf. Bell 1966: 6), their use for tactical and symbolic gains (cf. Sulzner 1971: 439) and decried that they limited the power of parliament (cf. Tutchings 1979: 24). As a result, commissions were highly regulated through the “Federal Advisory Commission Act” of 1972 which determines that commissions can be initiated both by the President and Congress, and notwithstanding the initiative both powers always will have a say in filling the commission seats. It also mandated broad reporting requirements to be fulfilled through the yearly publication of the “Encyclopedia of Governmental Advisory Organizations” that contains a short description of composition, topic and organization of all commissions since 1973 (cf. Batten 2012). By now, more than 7,600 commissions and councils (i.e. 200 per year, on average) are included which is a great source for research. A study for the time period of 1993 to 1999 showed that from the 562 expert commissions and councils installed, half were set
up by Congress, a quarter by the President and a quarter by other organizations such as states and courts (cf. Campbell 2002: 5).

Looking at both Germany and The Netherlands we see that over time the debate on deparlamentarisation as a consequence of governing by commission has not come to an end. We may conclude that commissions are hard to regulate in Germany and The Netherlands: Criticism in Germany did lead to some temporary restraint on their use, but not to their abolishment. In a similar fashion, attempts to regulate in The Netherlands have not reduced the number of commissions drastically. Both after 1997 (passing of a law on advisory bodies and commissions) and after 2004 (accepted motion to urge government to reduce the number of commissions), there have been numerous commissions.

Studying the advisory systems in both countries with emphasis on the role of commissions suggests that over time neither number nor functions of ad hoc advisory bodies are significantly altered by regulation or self-restraint. This would mean that governing by commission is an unavoidable and integrated part of government as a whole. Public interest in the phenomenon may differ over time but government will always make use of commissions. And though for the German case research shows that deparlamentarisation is not evident because of the work of commissions, both in Germany and The Netherlands the debate on it can never be decisively finished. Governing by commission in itself has an interesting paradox as research in The Netherlands shows. All involved, both government and opposition parties, contest the use of commissions as an unwelcome phenomenon: Opposition will criticize because government uses a commission in a situation it does not know how to get out, government promises it will always attempt to keep the number of commissions to a bare minimum because it can never admit that it cannot govern without some maneuvering using commissions.

Political decision making needs an area of informal coordination and mechanisms of policy advice. Commissions serve as one such area to communicate with experts and stakeholders and can move both policy and politics forward. Indeed from all channels of informal advice, commissions are actually quite formal (cf. Jann 2004: 10): They have a clear mandate, a defined timetable, a coherent membership, fixed internal rules and they submit a report that is usually made public afterwards. A realistic view must take into account that the possibilities of regulating policy advice are limited. The choice is therefore not between self-restraint and regulation as good or bad (or any other steering mechanism for that matter) but between regulatory alternatives that are fitting in light of the countries specific cultural and regulatory preferences.

The fact that commissions are an integrated part of government (and of governing) puts the debate into a new perspective. Discussing the functioning of commissions within government as deparlamentarisation is in itself a political act which might be necessary from a separation of powers perspective. But trying to reduce the use of expert commissions would only be a short success and lead to other arrangements of policy advice that might be more informal and less multi-functional than commissions.
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