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THE PALGRAVE HANDBOOK OF THE EUROPEAN ADMINISTRATIVE SYSTEM

Edited by Michael W. Bauer
and Jarle Trondal



The Palgrave Handbook of the European Administrative System

European Administrative Governance

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The Palgrave Handbook of the European Administrative System

Edited by

Michael W. Bauer

*Jean Monnet Professor and Chair of Comparative Public Administration and
Policy Analysis, German University of Administrative Sciences, Speyer, Germany*

Jarle Trondal

*University Professor, Department of Political Science and Management,
University of Agder, Norway, and ARENA Centre for European Studies,
University of Oslo, Norway*

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Acknowledgments

This volume is a primer on the European administrative system. It offers an examination of the nascent administrative system of the European Union (EU) and how it related to the executive branch of government of nation-states and international organizations. It shows that analyzing patterns and dynamics of the administrative capacities of the EU is essential for understanding how it shapes European public policy. Administrative capacities are thus not analyzed in isolation, but as structures that mobilize systematic bias in the production of public policy.

A variety of research questions on institutional change and continuity, decision-making behavior and processes, and public policy-making are addressed. Six principal questions are put center stage and discussed and empirically illuminated throughout: (1) To what extent, how, and under what conditions do administrative systems change and complement pre-existing public administration systems? (2) How enduring are administrative systems – in particular, how resilient is the European administrative system? (3) Do new administrative systems profoundly transform pre-existing administrative systems? Does the rise of a genuine European public administration system represent a profound institutional transformation or mere adjustment of well-known principles and practices of administrative organization and patterns of public policy making? (4) What are the implications of an emergent new European administrative system? Does it profoundly impact on well-known processes of administrative control, accountability, coordination, implementation, and policy learning? (5) How does the growth of administrative capacities square with the principle of democratic governance? How far does a European public administration system change public administration as an instrument of *national* democratic authority? Finally, (6) when does administrative capacity building add up to new polity formation? Does the sum of administrative capacities – and their inter-relationships – aggregate toward some kind of common administrative system? If so, this volume aims to unveil characteristics, elements, and dynamics of such a system.

Six laboratories for analysis are visited throughout this book: (1) core executive institutions such as the European Commission, the domestic branch of executive government as well as other international bureaucracies beyond the European Union (see Part II); (2) the EU's parliamentary administration, notably the European Parliament administration (see Part III); (3) the EU's 'intergovernmental' administration, such as the (Union) Council Secretariat (see Part IV); (4) judicial assemblies, notably the EU's Court administration (see

Part V); (5) executive sub-centers such as EU agencies and their relationships with member-state regulatory agencies and networks of national regulators (see Part VI); finally, (6) vertical and horizontal patterns of administrative interaction in the European administrative system (see Part VII). Part VIII draws conclusions and offers contours of future research agendas and challenges.

The editors owe debts to a vast collegium of scholars that has made important contributions to our common understanding of European administrative system. We would first like to acknowledge the contributors to this book. All experts in their field, they did not hesitate to take another commitment on their already busy agenda. We learned a lot from our discussions, and the chapters which emerged constitute as we think an excellent combination of topical overviews and cutting-edge material with respect to the European Administrative System. It has been a pleasure to work with each of them. We thank Professor Beate Kohler-Koch for her scholarly entrepreneurship in organizing CONNEX, the Network of Excellence on efficient and democratic governance in the European Union, funded under the EU Sixth Framework Programme of Research. We first came together in Mannheim during this program. In effect, this volume owes a great debt to CONNEX. Jarle Trondal would also particularly like to thank Professor Morten Egeberg for long-term extensive discussions, sharing of ideas, and research co-operation. We thank ARENA which hosted some of our most productive editorial meetings, and Professors Thomas Christiansen and Sophie Vanhoonacker for encouraging us to put this book together within the *European Administrative Governance* series. We are also grateful to the Permanent Study Group XIV of the European Group of Public Administration on 'EU Administration and Multilevel Governance'. In the workshops, in particular at the annual EGPA meetings, many papers published in this volume made their first appearance. We will not forget the productive and fruitful debates we had at these occasions.

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Contributors

Hartmut Aden is Professor of German and European Public Law at the Berlin School of Economics and Law, Germany (Hochschule für Wirtschaft und Recht Berlin). His research and publications cover questions related to multi-level governance in the fields of policing and internal security, environmental policy, human rights, and public finance in a trans-disciplinary legal and political/administrative science perspective.

Michael W. Bauer is Jean Monnet Professor and holds the Chair of Comparative Public Administration and Policy Analysis at the German University of Administrative Sciences in Speyer, Germany. He has worked extensively on issues of (multilevel) public administration at the European, the national, and the regional level. He is interested in the comparative analysis of administrative structures and the consequence on public policy making.

Stefan Becker is a research assistant at the Chair of Comparative Public Administration and Policy Analysis at the German University of Administrative Sciences in Speyer, Germany. His research interests revolve around the role of administrations in international and European policy making.

Arthur Benz is Professor of Comparative Politics and German Government at the Technische Universität Darmstadt, Germany. He has worked and published on multilevel governance, comparative federalism, and public administration and state theory.

Tannelie Blom is Professor at the Faculty of Arts and Social Sciences, Maastricht University, the Netherlands, holding a chair in the theory and politics of European integration. His main fields of research concern the role of bureaucracies in supra- and international policy making and democratization processes beyond the nation-state. Recent publications have dealt with the democratic deficit of the EU, with EU modes of governance, with European agencies, and EU administration.

Gijs Jan Brandsma is Assistant Professor at the Department of Governance (USG), University of Utrecht, the Netherlands. His research mainly focuses on European governance. He conducts empirical research into matters that have a strong normative bearing such as accountability, transparency, and secluded

decision making. He also offers training on the workings of the European Union.

Michelle Cini is Professor of European Politics at the University of Bristol, UK. Her research has focused primarily on the internal politics of the European Union, and particularly on the European Commission. She has been especially interested in the politics of reform within the EU and on issues of organizational and administrative culture. She has increasingly been drawn to research on issues of ethics and integrity. She is now applying these insights (with Dr N. Perez-Solorzano) to the case of EU lobbying regulation. She has also conducted research on EU public policy, particularly on competition and state aid policy, and on environmental policy.

Sara Connolly is Reader in Personnel Economics, Norwich Business School, University of East Anglia, UK. Her main research is in the broad field of personnel economics and investigates educational attainment, training, pay, and career progression. She was co-author of *The European Commission of the Twenty-First Century*.

Christoph Demmke is a policy analyst in the OECD, Paris. He was formerly Professor at the European Institute of Public Administration (EIPA), the Netherlands, Guest Professor at the College of Europe, Belgium, and advisor to the EU Presidency and national governments in the field of civil service reforms. His research has centered on the effects of reforms of civil services and HR policies in the European Union.

Mathias Dobbels holds a PhD in Political Science from Maastricht University, the Netherlands. He has worked at the Belgian Permanent Representation and has done research into the European Parliament, comitology and inter-institutional relations in general. The findings of his work have been published in *West European Politics*, the *Journal of European Public Policy*, the *European Law Journal*, and other publications.

Morten Egeberg is Professor of Political Science at the Department of Political Science and ARENA Centre for European Studies, University of Oslo, Norway. His main areas of academic interest include the role of organizational factors in political systems – such as the relationship between organizational and institutional forms on the one hand and decision-making processes on the other hand – but also changes in organizational and institutional forms. The research focuses especially on the European Commission, EU agencies, national executives, and the relationship between the EU level and the national level.

Edgar Grande holds the Chair in Comparative Politics, University of Munich, Germany. His research interests are focused on problems of governance, globalization, European integration, and the future of the nation-state.

Åse Gornitzka is Professor of Political Science at the Department of Political Science and at ARENA Centre for European Studies, University of Oslo, Norway. Her main fields of academic interests are in the transformation and sustainability of the European political order in the area of education and research policy, the dynamics of European-level governance sites, the role of expertise in EU policy making and the domestic impact of the EU's soft modes of governance.

Stephan Grohs is Assistant Professor at the Chair of Comparative Public Policy and Administration in the Department for Politics and Administration at the University of Konstanz, Germany. His work focuses on comparative public administration, international organizations, administrative reform, and local governance.

Miriam Hartlapp is Professor of Organization and Governance Studies, University of Bremen, Germany. Her research has centered on the European Commission and the internal dynamics of position formation. She has previously been Head of the completed Schumpeter Junior Research Group 'Position Formation in the EU Commission' at Wissenschaftszentrum Berlin für Sozialforschung (WZB).

Eva G. Heidbreder is Junior Professor at the University of Düsseldorf, Germany. She was visiting fellow in the Kolleg-Forschergruppe 'The Transformative Power of Europe'. Her project was embedded in the research cluster on compliance, conditionality, and beyond. Besides attaining her doctoral degree, from 2006 she worked at the EU's Robert Schuman Centre for Advanced Studies as assistant for the Action Committee for European Democracy (so-called Amato Group).

Herwig C. H. Hofmann is Professor of European and Transnational Public Law, Jean Monnet Chair in European Public Law at the University of Luxembourg. He teaches European and transnational constitutional, administrative and regulatory law as well as international economic law to Bachelor, Master and PhD students. He has been the founder of the Centre for European Law and has served as director of the 'priorité de recherche droit' and of the 'unité de recherche en droit'. His recent publication is the book *Administrative Law and Policy of the European Union* (2011; with Rowe and Türk).

Mathias Johannessen is a PhD candidate in Political Science at the Department of Political Science, University of Oslo, Norway.

Hussein Kassim is Professor of Political Science at the University of East Anglia, UK. His research investigates EU institutions, the relationship between the EU and the member states, especially the UK and 'Europe', and EU policy in competition and aviation. A recipient of grants from the British Academy, the ESRC and the Nuffield Foundation, he recently completed a major ESRC-funded project on the European Commission, the main findings of which are presented in *The European Commission of the Twenty-First Century* (2013).

Christoph Knill holds the Chair of Empirical Theories of Politics at the Department of Political Science, Ludwig-Maximilians-University, Munich, Germany. His main areas of research are comparative public administration and comparative public policy, in particular policy making in the European Union, environmental, higher education as well as morality policies.

Jeffrey Lewis is Professor of Political Science at Cleveland State University. His research centers on the European Union's decision-making process, and in particular how the Council's organizational culture impacts participating national officials.

Martina McCowan is a researcher at the Geschwister-Scholl-Institute for Political Science at Ludwig-Maximilians-University, Munich, Germany. Her main research interests are transnationalization and institutional change within public administration.

Tobias Kunstein completed his studies in Economics with special reference to Political Science at the University of Cologne, Germany, in 2007, having obtained the degree of Diplom-Volkswirt. Following an eight-month postgraduate internship at the European Central Bank in 2008, he joined the Jean Monnet Chair for European Politics in Cologne as a research associate. He received his PhD in 2013.

Maria Martens is, at the time of writing, Senior Advisor at the Norwegian Ministry of Foreign Affairs. She did her PhD at ARENA Centre for European Studies at the University of Oslo, Norway, with the thesis 'Organized Administrative Integration: The Role of Agencies in the European Administrative System'.

Zuzana Murdoch is a postdoctoral research fellow at the University of Bremen, Germany. She obtained her PhD at the Department of Political Science, University of Agder, Norway. She is a former visiting researcher at WZB in the research

project 'The Future of Fiscal Federalism'. Her research is mainly directed toward international organizations and the European Commission.

Christine Neuhold is Professor at the Department of Political Science, Faculty of Arts and Social Sciences, Maastricht University, the Netherlands. Since May 2013, she has held the Special Chair of EU Democratic Governance. As of September 2013, she is the director of the Graduate School of FASoS, Maastricht University, the Netherlands. She is a political scientist by training and holds her doctoral degree from the University of Vienna, Austria (awarded in 2000). She is a member of a research project on National Parliaments after the Lisbon Treaty (OPAL).

Edoardo Ongaro is Professor of International Public Services Management at Northumbria University Newcastle, UK. Previously he was at the SDA Bocconi School of Management. His research interest is in the field of public management and public administration. His studies are especially focused on the comparative analysis of public management reform, encompassing both national and supranational polities, and organization and strategic management in the public sector.

B. Guy Peters is Maurice Falk Professor of American Government at the University of Pittsburgh, US, and also Distinguished Professor of Comparative Governance at Zeppelin University, Germany. He has published extensively on comparative public policy and comparative public administration.

Bob Reinalda is Senior Researcher at Radboud University Nijmegen, the Netherlands. He has published extensively on international organizations, among others in *Routledge History of International Organization* (2009) and *Routledge Handbook of International Organization* (2013).

Ulf Sverdrup is Director of the Norwegian Institute of International Affairs (NUPI). He has previously been professor and associate professor at Norwegian School of Management and research professor/senior researcher at ARENA, Center for European Studies, University of Oslo, Norway.

Jarle Trondal is Professor of Political Science and Public Administration at the Department of Political Science, University of Agder, Norway. He is also Professor of European Studies at ARENA Centre for European Studies, University of Oslo, Norway, and Honorary Professor at the University of Copenhagen, Denmark. His main research interests are in public administration, organizational studies, and the study of European political order transformation.

Peter Valant is currently employed as Marie Curie Experienced Researcher under the European Commission's FP 7 and pursues his dissertation project in the field of EU human rights. Under the framework of EXACT – the Marie Curie ITN on EU external action – Peter worked at the Jean Monnet Chair of Prof. Dr Wessels (University of Cologne) and for the Trans European Policy Studies Association (TEPSA) in Brussels. His main research interests include EU external action, EU human rights, and EU constitutional affairs.

Sophie Vanhoonacker is Jean Monnet Professor and Head of the Politics Department at Maastricht University, the Netherlands. She teaches various graduate and undergraduate courses on EU institutions/decision making and on EU foreign policy. She has a chair in Administrative Governance that examines the role and influence of bureaucratic actors in multi-layered, polycentric systems of decision making. She is also co-director of the Maastricht Centre for European Governance. Her own research focuses primarily on the role of the bureaucracy in the European foreign policy process, a topic on which she has published internationally.

Nina Merethe Vestlund is a PhD candidate at ARENA Centre for European Studies, University of Oslo, Norway. Her PhD project investigates how global, European, and national institutional structures shape the behavior of regulatory agency officials within the pharmaceutical area.

Wolfgang Wessels holds the Jean Monnet Chair at the Department of Political Science and European Studies, University of Cologne, Germany. In 2011 he was awarded the Lifetime Achievement in Contemporary European Studies by the University Association for Contemporary European Studies (UACES). He is Vice-President of the German consortium for the foundation of the Turkish-German University, Istanbul, and chairperson of the Trans European Policy Studies Association (TEPSA), Brussels. His research interest is on the political system of the EU, stages and trends of integration history, evolution of the EU, development of national and European administrations, theories of European Integration, the EU and Germany, the EU in the international System, enlargement of the EU, and governance in the EU.

Anchrit Wille is a senior researcher at the Institute of Public Administration at Leiden University, the Netherlands. She obtained her PhD in Political Science from the University of Amsterdam, the Netherlands. She has published extensively on accountability and the political-administrative relationship. She is the author of *The Normalization of the European Commission: Politics and Bureaucracy in the EU Executive* (2013), an in-depth case study of the evolution of the most important EU's institutions.

Abbreviations and Acronyms

AD	Administrator (a function group in the EU civil service system)
ADMIN	Directorate-General for Personnel and Administration of the European Commission
AESGP	Association of the European Self-Medication Industry
AGRI	Directorate-General for Agriculture and Rural Development of the European Commission
AST	'Assistant' (a function group in the EU civil service system)
BEUC	Bureau Européen des Unions de Consommateurs (European Consumers' Organization)
BUDG	Directorate-General for Budget of the European Commission
CAP	Common Agriculture Policy
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
CoE	Council of Europe
COMM	Directorate-General for Communication of the European Commission
COMP	Directorate-General for Competition of the European Commission
COREPER	Committee of Permanent Representatives
COREU	Correspondance Européenne
CSCE	Conference on Security and Cooperation in Europe
CSDP	Common Security and Defense Policy
DEV	Directorate-General Development and Relations with African, Caribbean and Pacific States of the European Commission
DG	Directorate-General
EAC	Directorate-General for Education and Culture of the European Commission
EAS	European Administrative Space
ECs	Expert committees
ECA	European Court of Auditors
ECFIN	Directorate-General for Economic and Financial Affairs of the European Commission
ECSC	European Coal and Steel Community
EEA	European Economic Area
EEAS	European External Action Service
EEC	European Economic Community
EFC	Economic and Financial Committee

EFPIA	European Federation of Pharmaceutical Industries and Associations
ELARG	Directorate-General for Enlargement of the European Commission
EMA	European Medicines Agency
EMPL	Directorate-General for Employment, Social Affairs and Equal Opportunities of the European Commission
EMU	Economic and Monetary Union of the European Union
ENTR	Directorate-General for Enterprise and Industry of the European Commission
ENV	Directorate-General for Environment of the European Commission
EP	European Parliament
EPC	European Political Cooperation
EPF	European Patients Forum
EPHA	European Public Health Alliance
ESDP	European Security and Defense Policy
ESFS	European System of Financial Supervision
ESM	European Stability Mechanism
EU	European Union
EUCIQ	European Commission in Question
EUPAN	European Public Administration Network
Euratom	European Atomic Energy Community
FAO	Food and Agricultural Organization
FTT	Financial Transaction Tax
GAC	General Affairs Council
GATT	General Agreement on Tariffs and Trade
HR	Human Resources
IGO	Intergovernmental Organization
ILO	International Labor Organization
IMF	International Monetary Fund
IMI	Internal Market Information System
INFSO	Information Society and Media
INTCEN	Intelligence Analysis Centre
IO	International Organization
IR	International Relations
JLS	Justice, Freedom, and Security
JRC	Joint Research Center
MARE	Maritime Affairs and Fisheries
MARKT	Directorate-General for Internal Market and Services of the European Commission
MEP	Member of the European Parliament

MF	Multi-Annual Financial Framework
MLA	Multilevel administration
MLG	Multilevel governance
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
NPM	New Public Management
NWS	Neo-Weberian State
OECD	Organization for Economic Cooperation and Development
OEEC	Organization for European Economic Cooperation
OLAF	Office de Lutte Anti-Fraude (European Anti-Fraud Office)
OLP	Ordinary Legislative Procedure
OMC	Open Method of Coordination
PSC	Political and Security Committee
QMV	Qualified Majority Voting
REGIO	Directorate-General for Regional Policy of the European Commission
RELEX	Directorate-General for External Relations of the European Commission
RTD	Directorate-General for Research and Innovation of the European Commission
SAI	Supreme Audit Institution
SANCO	Directorate-General for Health and Consumers of the European Commission
SecGen	Secretariat General
SNE	Seconded national expert
TAXUD	Directorate-General for Taxation and Customs Union of the European Commission
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TRADE	Directorate-General for Trade of the European Commission
TREN	Directorate-General for Energy and Transport of the European Commission
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
VAT	Value Added Tax

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The Administrative System of the European Union

Michael W. Bauer and Jarle Trondal

Introduction¹

This volume is a primer on the European Union (EU) administrative system. It offers a wide-ranging analysis, notably on how EU administrative capacities relate to pre-existing institutional constellations at global, national, and subnational levels of government, and contribute to a system transformation of existing (largely nation-state) administrative orders. The intellectual foundations of the endeavor lie in the fields of administrative sciences, organizational and institutional theories, and theories of decision-making and the policy-making process. This introductory chapter aims to set the stage regarding the core aims of the volume, scholarly relevance, and a research agenda. It attempts to develop a perspective of public administration as the core characteristics and elements of the EU's emerging political system. We argue that analyzing the patterns and dynamics of the administrative capacities of the EU is essential in understanding how the EU shapes European public policy. Administrative capacities are thus not analyzed in isolation, but as structures that mobilize systematic bias in the production of public policy (Arellano-Gault et al., 2013, 154; Schattschneider, 1975).

This volume addresses a variety of research questions on institutional change and continuity, decision-making behavior and processes, and public policy making. Six broader research questions are placed center stage and are discussed and empirically illuminated throughout the individual chapters:

- To what extent, how, and under what conditions do administrative systems change and complement pre-existing public administration systems? More specifically, we ask to what extent, how, and under what conditions the emergent European public administration system challenges and complements crucial functions of pre-existing, that is national, public administration systems.

- How enduring are administrative systems? More specifically, we ask to what extent the characteristics, elements, and dynamics of an emergent European administrative system are fairly stable or subject to abrupt change. In short, how unsettled and emergent is the European administrative system?
- Do new administrative systems profoundly transform pre-existing administrative systems? More specifically, we ask if the rise of a genuine European public administration system represents a profound institutional transformation, or merely an adjustment of well-known principles and practices of administrative organization and patterns of public policy making.
- What are the principled implications of an emergent new European administrative system? More specifically, we ask how a European public administration system impacts on well-known processes of administrative control, accountability, coordination, implementation, and policy learning.
- How does the growth of administrative capacities equate with the principle of democratic governance? More specifically, we ask how a European public administration system may change public administration as an instrument of *national* democratic authority. How far and with what effects does policy making in a multilevel administrative system change the role and power of core executive institutions and correspondingly weaken parliamentary oversight?
- Finally, when does administrative capacity building equate to new polity formation? More specifically, we ask to what extent the rise of a European administrative system contributes to system transformation. Does the sum of administrative capacities – and their inter-relationships – aggregate to some kind of common administrative system? If so, this volume aims to unveil the characteristics, elements, and dynamics of such a system.

Our point of departure is the observation that the European integration project that has become the EU has transformed and keeps transforming itself and its member states. In more than 60 years of cooperation, a multilevel political and administrative system has emerged that is characterized by institutional innovation and imitation, and organizational fragmentation and integration, as well as institutional continuity and change. Of course, any political system tends to adjust – more or less effectively – to changing technical, socioeconomic, and cultural environments (Cerny, 2006; Thornton et al., 2012). However, the scope, scale, and intensity of change that has been evident in the EU make it a particularly interesting case to study.² Thus, the EU can be understood as a system that provides specific challenges and particular conditions to cope with or suffer from institutional change. Against this background, this chapter is concerned with what may be called the ‘administrative dimension’ of the emerging multilevel political system of the EU. Five concerns underpin the relevance of choosing such a focus.

A first reason for focusing on the administrative face of the EU relates to the fact that the EU is neither a republican democracy nor a fully-fledged state. Its supranational legal order is uniquely dense and sophisticated, but there is, for example, no common administrative law as we know it from nation-states. Other differences concern the fact that it is national legislators that largely transpose EU legislation, with national contributions basically financing the EU budget, and national public administrations and national courts practicing and supervising EU public policies. In other words, peculiarities of the division of tasks between national and supranational levels of government underscore some unique features of the EU administrative system. However, the separation of authority between levels of government appears more pronounced, that is its various levels are more independent from each other, than seems to be the case in any national federal system.

This manifest separation gives rise to a number of specific characteristics and challenges. For example, enforcement of EU policies is less determined by unified rules and procedures and thus tends to be much more precarious and also more costly than in national systems. Therefore, it is easy to see why joint convictions and values, and common operating procedures, become important in safeguarding a cohesive implementation in the various national constituencies. As it is the bureaucratic apparatuses at various levels which prepare policy solutions, organize the decision making, and conduct implementation, the concern arises that democratically unresponsive and anonymous bureaucrats *de facto* decide without proper political guidelines about issues that majorly affect national ways of life and the redistributive choices of European societies (Habermas, 2012).

A second and related concern about administrative power in the EU stems from the particular decision-making logic developed at supranational level. The standard legislative process in the EU requires a proposal from the Commission, a broad majority in the Council, and the approval of the European Parliament (Stie, 2013). The efficiency of that procedure has been praised. However, once the high consensual hurdle has been jumped, the very same consensual requirements prevent the subsequent adaptation of supranational legislation. Even if political preferences subsequently change, a coalition between the Commission and a small number of member states can relatively easily defend the status quo (Scharpf, 2006). In other words, EU legislation is much less reversible than national legislation; one effect of this is that the ‘custodians’ at supranational and national levels increasingly become central players because they ‘administer’ the status quo with the prevailing legislative stability playing into their hands (Ellinas and Suleiman, 2012). Moreover, in many EU policy areas (monetary policy, competition policy, or areas where the open method of coordination is applied) representative politicians tend to be cut out and special appointees are empowered instead – such as European judges and

bureaucratic experts. It is evident that in view of these observations the conditions, structures, and forms of interaction under which public administration in the EU functions need to be thoroughly studied.³

Thirdly, public administration as a subdiscipline needs to pay more attention to ongoing transformations of bureaucratic interaction in the EU. The administrative reality of the EU – perhaps with the exception of work concerning the European Commission – remains under-studied even though it has received increased academic attention in recent years (for example, Kassim et al., 2013). Public administration scholars thus still have only an imperfect and partial understanding of how the supranational administrations function, how bureaucratic interactions occur horizontally and vertically among various political layers, how administrative structures across levels are developing, how precisely supranational administrative actors cultivate and use resources, and how national bureaucratic structures and actors adapt to and exploit respective constellations. From an administrative science perspective, it is of great importance to come to grips with the contemporary bureaucratic reality and administrative change in the EU. Even more so since mapping and explaining administrative patterns and variations, be they structural or attitudinal, allow significant insights into a fluid multilevel political system, the constituents of which have been forged by the varied paths taken in the past and which have accompanied diverse national traditions, institutional arrangements, cultures, and styles. How such diversity is bound together and how it combines needs to be disentangled.

Fourthly, there is also a broader theoretical interest behind analyzing the patterns and dynamics of the EU administrative system. This more general theoretical interest is related to the challenge that the emerging EU administrative system poses for the discipline of public administration which has been largely locked in ‘national laboratories’. Theoretical lessons from social sciences are arguably affected by the empirical laboratories available to scholars. The domain of public administration may possibly gain new theoretical advances by challenging methodological nationalism. As new forms of political and administrative orders emerge, they need to be appropriately analyzed and interpreted in view of the changes they carry for executive politics and bureaucratic interaction. How public administration functions in a world characterized by the blurring of administrative boundaries, increasing interdependence, and decreasing capacities of national administrations to provide a common good is still far from well understood. The emerging public administration of the EU, in which such kinds of structural changes are arguably most advanced, appears the appropriate area for sharpening our analytical tools and for learning new theoretical lessons in public administration. Such an exercise also adds to the effort of bringing public organizations into greater focus in organizational sciences and thus building bridges between

organizational studies and public administration (see Arellano-Gault et al., 2013, 152; Bozeman, 2013).

Fifthly, mapping and explaining changes in the EU administrative order must not, however, be seen as an end in itself. While recording and accurately describing administrative patterns and dynamics are of crucial value, the prime aim is to decode the consequences of administrative realities for public policy. Against this background, this chapter attempts to develop a perspective of public administration as a core dimension of the EU's emerging political system. We argue that analyzing the patterns and dynamics of the administrative capacities of the EU is essential in understanding how the EU shapes European public policy.

The chapter is laid out as follows. The next section offers rationales for studying the EU as an administrative system. The third section reviews the existing literature and attempts to 'order' the various works into distinct scholarly approaches and agendas. Against the background of the analysis of the state of the art of scholarly thinking, we then consider the elements constituting the most specific characteristic of EU administration, fourth section. By combining approaches of multilevel governance and system theory, a 'system perspective' as an appropriate framework for studying EU administration is offered; the aim is not to prescribe a particular theory in order to analyze EU administration, but rather to outline a broad frame for analysis that may encourage the accumulation of knowledge from the case studies presented throughout this volume. The chapter closes with the skeleton of the research agenda in the fifth section and a brief outline of the structure of the volume in the sixth section.

Studying administrative systems

The significance of administrative systems, structures, and dynamics is often taken for granted during historical periods of stability. As envisaged already by Saint-Simon (1964, 35–38) in 1814, a necessary factor in building political order is the establishment of common institutions, including a permanent congress independent of national governments serving the common interest. During periods of crisis, however, existing political and administrative arrangements tend to be subject to debate, contestation, and demands for major reform. Periods of turbulence are sometimes also accompanied by calls for pre-existing political solutions; new problems may call for familiar answers. The financial crisis that hit Europe in 2008 illustrates that in order to understand administrative systems, we need to understand how formal organizations emerge, change, learn, and disappear. It is equally important to understand how organizations, and different modes of organizing, affect decision making, cooperation, and conflict as well as political outcomes.

However, studies of *unsettled* systems such as the EU have been – at least in this respect – much less attended to in scholarship. Since the classic administrative school of Luther Gulick (1937) and up to recent public administration and comparative government literature (Olsen, 2010), scholars have largely dealt with *settled* administrative systems. This volume aims to contribute to our understanding of the rise of the European administrative system as a ‘system in the making’ – regarding both its major causes and its consequences. The analytical point of departure is thus the European administrative system, and unfinished and evolutionary polity. Given the rise of an emergent administrative system in the EU, one scholarly challenge is thus to empirically recognize it. An even greater challenge, of course, is to explain it and to assess its likely consequences. This volume contributes to both challenges.

From a public administration perspective, questions of an emerging executive system in Europe are of increasing interest. The focal point of small- and large-scale changes to Europe’s inherent administrative systems is indeed the EU bureaucracy which supplies the EU with administrative capacity – basically making the EU able to act fairly independently of member-state interests (Trondal, 2013). While EU institutions are frequently the objective of a number of pertinent scientific publications (Cini and Borragàn, 2013; Jones et al., 2012; Wallace et al., 2010), the administrative dimension of the EU polity has so far – to our knowledge – received far less systematic consideration.⁴

Essential to this volume is that the arrival of a living European administrative system may be observed both when institutions are created and reformed and during everyday decision-making processes. The nuts and bolts of an emergent European administrative system may be observed by how trade-offs between institutions, decision-making processes, and accountability dynamics are handled by actors in everyday decision making, as well as in periods of institutional creation, reformation, and dismantling (Wilson, 1989, 327). In order to offer a comprehensive analysis of the components of an emergent European administrative system, this book applies three sets of dependent variables:

- (1) *Organizational formation and change*: That is, the establishment and institutionalization of relatively independent administrative capacities of a European administrative system (for example, the recruitment of staff, establishment of administrative procedures, installation of management boards and teams of directors, emergence of new agencies, and so on).
- (2) *Decision-making and behavioral dynamics* among civil servants within core executive institutions and executive subcenters. Although politicians formally decide on issues considered to be of political importance, power and influence are also inherently linked to what takes place at other stages of the policy process, stages at which bureaucracy tends to play a crucial role. Thus, the exercise of discretion that may have policy implications could

also be found at the agenda-setting stage, at the stage in which various policy alternatives are elaborated, during policy implementation, and, finally, when interpretations of the effects of public policies are fed back into new policy processes (Olsen, 2007; Page and Jenkins, 2005). In a sense, decision making can be seen as endless streams of premises, of which some may become relevant for decision making and from which choices *occasionally* happen (March, 1994; Simon, 1957).

- (3) *Impact on policy making*: Finally a crucial question is how, to what extent, and under what conditions do (i) organizational change and formation and (ii) decision-making and behavioral dynamics affect public policy.

Unveiling how an emergent European administrative system operates – including its institutional components – implies focusing on administrative governance within and among different administrative institutions. However, what do we mean by administrative governance? Despite great variation in its use (for example, Fukuyama, 2013) and a conceptual morass (Olsen, 2009, 192), the administrative governance concept has faced (at least) two difficulties in much of the contemporary literature: firstly, the problem of conceptual stretching, and secondly, the problem of the reductionist trap. The first difficulty of conceptual stretching has made administrative governance a ‘catch-all’ concept claiming universal or near universal application (Fredrickson, 2005, 282; Pollitt and Hupe, 2011). One illustration of this is how the World Bank conceives of governance: it has offered a rather broad understanding of governance where it is comprised of the traditions and institutions by which authority in a country is conducted. The trouble with this is that ‘such a definition is just about as broad as any definitions of “politics”’ (Pollitt, 2010, 97). Conceptual stretching runs the risk of emptying the very meaning of administrative governance all together. At the opposite end of the spectrum is the reductionist literature that proposes narrow criteria that are deemed necessary and sufficient for capturing administrative governance. This reductionist literature faces a second difficulty quite common in much of the administrative governance literature, aimed at typologizing and classifying particular administrative governance systems in particular periods of time (Bevir, 2009). One essential argument in this literature has been that administrative governance has certain – often conceived of as ‘new’ – characteristics, such as the blurring of the public–private distinction, a proliferation of largely horizontal administrative networks, and the fact that it happens without any executive center and with one final center of authority (for example, Kjær, 2011; Rhodes, 1997). This literature has also often been trapped in the ‘tyranny of dichotomies’ between stylized ideal types such as ‘old’ and ‘new’ modes of governance (Olsen, 2009, 195). This type of definition is reductionist in that it claims that real-world phenomena have to

fulfill a predefined and limited set of criteria in order to be subsumed under the umbrella of administrative governance.

This volume follows a definition of administrative governance that tries to avoid these conventional difficulties – as well as to escape the ‘tyranny of dichotomies’ – by occupying a middle-ground conceptualization (Olsen, 2009, 192). In short, administrative governance basically encompasses the multidimensional set of decision-making processes, behavioral patterns, and accountability practices taking place within and among government institutions and between politico-administrative actors and societal groups at any time. Administrative governance shapes relationships of authority and power within and among government institutions and thus frames ‘politics that are binding on individuals and collective actors’ (Hanf and Jensen, 1998, 3). Such a definition does not a priori assume any substantive governance characteristics, as is the case, for example, in Rhodes’ seminal definition of governance (1997, 109). According to our middle-range account, administrative governance concerns activities such as administrative actors’ allocation of attention, their distribution of contacts, and the emphasis they give to particular concerns and considerations. These activities are likely to vary across time and space, thus broadly speaking being context sensitive and not reducible to simple dichotomies. The theoretical potential of such a definition is thus more extensive.

Administrative governance is often portrayed as sequenced in stages (see Knill and Grohs, this volume). Firstly, ministerial units and committees – specialized in obtaining information about particular policies – propose preliminary drafts and settle first compromises. Ministerial leadership then refines the proposal and reports to the ministerial level. Finally, the parliament decides. Subsequent steps include implementation, evaluation, and learning from experience. This sequential model portrays governance as sliced into an administrative and a political stage. Empirical observations, however, suggest that this dichotomy may be overly unrealistic (for example, Olsen, 1983, 2010). Decision stages are often less sequential and hierarchically nested, and more sectorally interconnected and hierarchically decoupled. Stages of decision making are also often mutually interconnected. The agenda-setting stage may be followed by a formal decision-making stage, which leads to the implementation stage, during which additional problems may be discovered and fed back into new government initiatives. Thus, contrary to the sequential approach outlined above, the different stages in circular governance processes may be mutually integrated and therefore difficult to disentangle.

As politicians delegate policy-making responsibilities to non-majoritarian institutions, they may easily lose control over certain parts of agenda-setting and implementation processes. Ministers sometimes rubber-stamp decisions made more or less *autonomously* by such institutions. Power is often vested

not in the formal vote in parliament but at the *agenda-setting* stage of the decision-making cycle as well as at the *implementation* stage. The important premises of parliamentary vote are routinely inserted throughout the whole decision-making cycle. Students of the executive branch of government generally focus on the role of bureaucracies in addition to that of executive politicians. Although politicians at the top formally decide on issues considered to be of political importance, power and influence are also inherently linked to what takes place at other stages of the policy process, stages at which bureaucracy tends to play a crucial role. Thus, the exercise of discretion that may have policy implications could also be found at the agenda-setting stage, at the stage in which various policy alternatives are elaborated, during policy implementation, and, finally, when interpretations of the effects of public policies are fed back into new policy processes (Olsen, 2007; Page and Jenkins, 2005). In a sense then, administrative governance can be seen as endless streams of premises from which choices occasionally happen (Simon, 1957).

In summary, the rise of a European administrative system is assumed to profoundly rebalance existing decision-making and accountability practices, refocusing adherence to organizational goals, shifting institutional powers, and ultimately transforming public policy. This requires conducting parallel research into five different corners of the EU administrative system:

- Core executive institutions such as the European Commission, and the domestic branch of executive government, as well as other international bureaucracies beyond the EU (see Part II of this volume).
- The EU's parliamentary administration, notably the European Parliament administration (see Part III of this volume).
- The EU's 'intergovernmental' administration, such as the (Union) Council Secretariat (see Part IV of this volume).
- Judicial assemblies, notably the EU's Court administration (see Part V of this volume).
- Executive subcenters such as EU agencies (see Part VI of this volume).

Analyzing EU public administration: Debates and approaches

Academic interest in the administrative dimension of the European integration process grew in the aftermath of the European Single Act and the completion of the common market. It is thus perhaps no coincidence that the area from which this scholarly interest initially emerged was a question concerning the coherent and uniform national implementation of policies agreed upon at the EU level (Siedentopf and Ziller, 1988). It was the problem of 'making European policies work' coherently and timely, where the differential reality of national public administration systems came to the forefront (Knill, 2001).

Some core debates that have been putting the European administrative issues center stage shall be briefly summarized. We have ordered the research agenda into four clusters or areas of debate: (i) Multilevel administration (MLA) and European administrative space (EAS), (ii) the constructivist and anthropological ‘turns’, (iii) a European executive order, and (iv) comparative public policy analysis.

Multilevel administration (MLA) and the European administrative space (EAS)

A core part of the literature on the European administrative system has centered on the emergence of a multilevel administrative system, sometimes characterized as a European administrative space (EAS). This scholarship can be split into two-dimensional subdebates. Firstly, a political-science-based literature that tries to theoretically conceptualize multilevel governance (MLG) more broadly (Benz, 2012; Hooghe and Marks, 2001; Marks, 1993), and a more recent public-administration-based literature that aims to understand the EU as a multilevel administrative system (MLA) (for example, Egeberg, 2006; Trondal, 2007). While the MLG literature largely conceptualized domestic – or regional – governments as coherent political-administrative entities, the MLA literature tried to unpack the organizational components of governments and studied the conditions under which different components of government systems may interact across levels of government. The MLA literature thus suggests conditions under which multilevel administrative processes are likely to occur, such as the emancipation of a strong European executive institution (the Commission) and the domestic fragmentation of government systems (Egeberg, 2006). The second scholarship on multilevel administration is largely legal, as recently summarized by Hofmann and Turk (2006). Political science, public administration, and legal scholarship, however, bring to bear complementing understandings of the European administrative space (see below).

It has been argued that an EAS can be understood as a process of institutionalization of common administrative capacity (Trondal and Peters, 2013). This institutionalization has both normative content and some structural manifestations. Despite advances in contemporary research on the EAS, however, no widespread understanding of its meaning, mechanisms, and significance yet exists. Contemporary scholarship has diverse understandings of the EAS. Questions have centered on what such a space contains, whether there are one or several spaces, what has caused its emergence, whether there is convergence, and what implications such space(s) may have for domestic government institutions and processes (see Heidbreder, 2011). Essential to this literature is that the ‘space’ metaphor has no ‘spatial’ connotations attached. We have seen basically two waves of study of EAS (‘EAS I’ and ‘EAS II’). Chapter 5 of

this volume proposes two conceptual accounts of the EAS: 'EAS I' basically features the *convergence* of administrative systems and policies. This account builds on the fields of comparative government and comparative public administration (Siedentopf and Ziller, 1988), studying, for example, the origins and spread of common administrative traditions (for example, Knill, 2001; Meyer-Sahling and Yesilkagit, 2011) and public management practices (for example, Christensen and Læg Reid, 2011). The EAS was conceived of as featuring the convergence of administrative systems around some shared forms. By contrast, 'EAS II' features an emergent common administrative order in Europe through the development of new institutional constellations and configurations. This second line of research emphasizes *new patterns* of integration of public administration. One early contribution to this line of research was an 'Italian law school' studying administrative *engrenage* (Berlin et al., 1987; Cassese, 1987; Chiti, 2004; Franchini, 2004), later followed by Hofmann and Turk (2006). Research has been preoccupied with understanding both the European administrative capacity building (for example, Egeberg, 2006; Rittberger and Wonka, 2011) and the interconnected nature of the European public administration (for example, Curtin and Egeberg, 2008; Egeberg, 2010; Egeberg and Trondal, 2009). Illustrative of the latter approach, Hofmann and Turk (2006) conceive of the EAS as the emergence of a multilevel and nested, though sometimes loosely coupled (Benz, 2012), network administration where institutions at different levels of government 'are linked together in the performance of tasks' (Hofmann and Turk, 2006, 583; see also Eising and Kohler-Koch, 1999).

Related to the danger of conceptual stretching mentioned above, the literature on multilevel EU administration has partly overlapped with the literature on 'new modes of governance' (for example, the NEWGOV integrated project) and on the EU as a 'networked system of governance' (for example, Eising and Kohler-Koch, 1999). This literature has, however, brought two essential analytical dimensions to the forefront of the debate: territory/place and time/temporality. Firstly, an emergent European administrative system has been conceived of as contributing to a deterritorialization of executive politics in Europe in the sense that territorial actors have become relatively less important, that territorial concerns are relatively less attended to by decision makers, and that cleavages and conflict in public policy are organized less along territorial lines and relatively more along sectoral and party political lines (for example, Bartolini, 2005; Hix, 2005). Secondly, Goetz (2010) has reminded us that multilevel governance is not only organized territorially and sectorally, that is in space, but also in time. He has introduced issues such as the sequencing of politics, the rhythms and tempo of politics, and so on and how these may overlap and collide in multilevel administrative systems (see also Ekengren, 2002).

The constructivist and anthropological ‘turns’

The EU administrations are run by a body of staff from diverse national and cultural backgrounds (for example, Ban 2013). This heterogeneity has attracted scholars from ethnology and anthropology since the early 1990s (Abélès and Bellier, 1996; Bellier, 1995; McDonald, 1997). The objects of their work were in particular the existence and persistence of national stereotypes in multinational bureaucracies, the causes of departmental socialization, and the endurance of supranational socialization among national decision makers that interact with Brussels. A chief concern has been to gauge the extent to which diverse nationalities working together in Brussels may develop some kind of common belief systems, roles, and identities that transcend pre-existing identities, roles, and beliefs. In short, does working ‘for Europe’ actually influence an individual’s support for the European integration project?

At macro-level, this strand of literature has been preoccupied with understanding the social cement of the EU polity and with different attitudinal images of Europe. Liesbet Hooghe’s (for example, 2001, 2005) seminal studies on ‘images of Europe’ among Commission officials have offered important insights. She found little evidence that working within supranational administrations has a profound impact on individuals’ attitudes. Pro-European socialization effects could empirically only be identified among officials that joined – in that case the European Commission – early on in their professional career (Hooghe, 2001). Recent works surveying (mostly again) Commission officials expanded this research agenda (Ban 2013; Ellinas and Suleiman, 2012; Kassim et al., 2013; Suvarierol, 2007). The research focus in this area, however, switched from mapping and explaining individual professional attitudes to trying to establish a ‘link’ between aggregated individual preferences and organizational variables or even policy outcomes (Bauer, 2012; Ellinas and Suleiman, 2012; Hartlapp et al., forthcoming). However, isolating this ‘link’ remains a key challenge in this emergent literature.

Another group of scholars started to ask slightly different questions, focusing less on the organizational architecture of administrative systems and more on actor-level dynamics. A new strand of anthropological, institutionalist, and constructivist scholarship emerged and started to ask questions such as whether EU institutions and the myriad of committee and expert meetings manage to redirect or transform the loyalties and roles played by civil servants. This ‘constructivist turn’ in the scholarship largely rediscovered the old neo-functionalist claim on loyalty transfer (Ruggie et al., 2005). The transformative power of EU institutions was assessed by the extent to which actors/decision makers adopted a ‘supranational’ set of identities, beliefs, and role perceptions (‘actor-level supranationalism’). In this literature a supranational role implied a ‘shift of loyalty’ and a ‘sense of community’ that became integral and endogenous to

actors' self-perceptions (Deutsch et al., 1957, 5–6; Haas, 1958, 16; Herrmann et al., 2004, 6). Whereas recent social constructivist literature has carefully theorized, operationalized, and empirically illustrated processes of pre-socialization and re-socialization, scholarship applying institutional and organizational theory approaches has also emphasized how actor-level supranationalism may reflect the organizational structures – notably at EU level – within which social interaction occurs (Checkel, 2005; Egeberg, 2006; Olsen, 2010; Trondal, 2010).

Actor-level supranationalism may arguably strengthen the autonomy of EU institutions vis-à-vis member-state governments, augmenting EU institutions' ability to upgrade common interests and to facilitate coordinated decision-making processes. In this literature actor-level supranationalism denotes that a shared system of rules, norms, principles, and codes of conduct is inducted, internalized, and taken for granted by actors. This is consistent with the 'type II socialization' as suggested by Checkel (2005, 804) whereby actors acquire a collective interest and a positional 'organizational personality' inside EU institutions that is distinct from any national, professional, and departmental roles previously internalized (Searing, 1991, 1249; Simon, 1957, 278). A role perception is a generalized recipe for action as well as a normative system of self-reference that provides *spontaneous* feelings of allegiance to organized communities (Bevir et al., 2003, 4; Mayntz, 1999, 83).

One lively part of this scholarship has been the EU committee studies. Some scholars assume that EU decision makers become re-socialized in such committees as far as their role perceptions are concerned (for example, Franklin and Scarrow, 1999; Hayes-Renshaw and Wallace, 1997, 235; Joerges, 1999, 320; Laffan et al., 1999, 87; Scully, 2002; Weiler, 1999, 342). A common assertion among these scholars is that an *esprit de corps* emerges within EU committees (for example, Berlin et al., 1987), especially if the committee participants interact fairly frequently and intensively (for example, Haas, 1958; Lewis, 2005). Recent research suggests that national officials attending EU committees are socialized into an 'EU identity' (Banducci and Radaelli, 2008). In contrast, Wessels (1998, 227) and Hooghe (2005) have argued that no loyalty transfers take place at EU level or through EU committees. However, few systematic empirical observations are available to confirm or reject these assertions. This lack of empirical scholarship partly reflects the methodological problems that have plagued contemporary neo-functional scholar-ship, particularly the problem of 'controlling for' pre-socialization of actors outside the EU system (Niemann, 2006; Pollack, 1998). Nevertheless, studies confirm that EU committees serve to direct the attention, energy, contacts, coordination behavior, and loyalties of national civil servants. The decision-making and agenda-setting processes within national governments are increasingly integrated into the EU agenda-setting stage (Larsson and Trondal, 2006). However, Trondal (2006) also shows that the re-socializing powers of the EU committees

are mediated by the domestic government institutions embedding the EU committee participants.

EU committee scholarship has also shown how different EU committees affect participants differently. Interestingly, research demonstrates that the intergovernmental Council has important supranational traits by developing shared norms and collective identities among some participants. The Council has institutionalized small supranational and deliberative ‘clubs’ within and around the Committee for Permanent Representatives of member states to the EU (COREPER) and the Council working groups (for example, Lewis, 2005). Actor-level supranationalism is in fact stronger in the Council working groups than in Commission expert groups – among those officials who interact and socialize fairly intensively and informally (Egeberg et al., 2003). Egeberg et al. (2003) also demonstrate that deliberative dynamics are not omnipotent within the comitology committees as asserted by Joerges and Neyer (1997), but that the Commission expert committees have stronger deliberative *modus operandi*. This research thus challenges previous expectations of administrative fusion and bureaucratic *engrenage* (Wessels, 1998) by reporting different decision-making dynamics within different EU committees, and also how the ‘EU effect’ is mediated and filtered by the domestic government institutions embedding EU committee participants on a more full-time basis.

A European executive order

A more recent strand of scholarship has attempted to conceptually and empirically understand the emergence of what is conceived of as a ‘European executive order’. Two dimensions have been suggested for conceptualizing such an order: firstly, organizational formation and change, that is, the establishment and institutionalization of relatively independent organizational capacities within a new European political order; secondly, behavioral effects among civil servants within core executive institutions and executive subcenters, and between these executive institutions and the European Parliament. A key argument has been that a common political order consists of a *compound* set of decision-making and accountability dynamics that are biased toward basically non-territorial dynamics (for example, Haas, 1992; Lieberman, 2002; Radaelli, 1999). This literature has been theoretically informed by organizational theory. An organizational approach argues that the rise of a European executive order is profoundly shaped by pre-existing institutional orders – by the ‘genetic soup’ of pre-existing organizational structures (Olsen, 2010, 96). Executive orders do not emerge solely as organizational solutions to functional needs, as the result of wilful design, as a reaction to external crises, or as local translations of global institutionalized standards and ideas. An organizational perspective ascribes an autonomous role for pre-existing organizational structures (or orders) to explain the emergence and institutionalization of new organizational structures, and

their effects. Political institutions create elements of robustness, and concepts such as 'historical inefficiency' and 'path dependence' suggest that the match between environments and new institutional structures is not automatic and precise (Olsen, 2010). New governing arrangements – such as an emergent European executive order – are expected to be extorted from and mediated by pre-established institutional frameworks that empower and constrain political actors (Olsen, 2010; Skowronek, 1982).

Comparative public policy analysis

The 1990s saw a growing interest in applying tools, concepts, and theories of public policy analysis to the emerging EU multilevel system. Policy studies have already been part of the repertoire of integration analysis for some time (for example, Wallace et al., 2010). However, with the classical dialogue between intergovernmentalism and neo-functionalism losing steam, and with the EU's post-Maastricht expansion into ever more policy areas, comparative and policy-analytic theorizing came to be seen as a promising route to understanding the 'nature of the beast' (Risse-Kappen, 1996). It is easy to see why intergovernmentalism and neo-functionalism (and their respective heirs) lost appeal. In essence, these positions were geared toward explaining system development at the macro-level (Peterson, 2008). However, the international relations' conceptual lenses were increasingly found to be unsuitable, as 'the purpose of EU studies should be to say something about politics more generally, rather than developing a series of specific claims about the EU' (Rosamond, 2000, 110). Studying the policy process in the EU by focusing on policy networks, decision traps, epistemic communities, interorganizational relationships, and the like – as pioneered by researchers such as Helen and William Wallace, Jeremy Richardson, and others – promised to offer new insights and also greater potential for theoretical advancement (Jørgensen et al., 2007).

In the event, varieties of the new institutionalism as well as policy network analysis came to dominate the scene. Furthermore, the international relations question of how national politics would influence supranational system development was not just set aside but actually turned around. With the question of the 'domestic impact of Europe' on procedural, institutional, and organizational changes 'at home', the Europeanization focus within the broader EU policy-making debate emerged (Börzel, 2002; Graziano and Vink, 2007; Héritier et al., 2001; Knill, 2001). Needless to say, questions of implementation and compliance as well as those from the governance debate have particularly attracted scholarly efforts. To summarize even only the outlines of this debate and how it changed during the 2000s is outside the remit of this volume (but see Jørgensen et al., 2007). For our purpose it is, however, important to note that organizational and administrative variables often figure prominently in the

Europeanization debate and in the studies of EU policy making. For example, Adrienne Héritier (1999) investigated the cunning strategies of the European Commission administration to influence policy choices; furthermore, studies of the powers of this supranational 'agent' to 'call the tune without paying the piper' (Bauer, 2001; Cram, 1993) now fill library shelves. However, in these studies organizational and administrative factors are referred to as 'independent' rather than as 'dependent' variables. Administrative variables are brought into the analysis in order to explain policy change or persistence. Public administration factors thus have a different status in the analysis of EU multilevel policy making than in the other research programs discussed in this section: these factors are focused on insofar as their variation helps to explain differential policy outputs or even outcomes (Héritier et al., 2001; Knill, 2001).

In summary, the accumulated literature on multilevel administration, sociological or anthropological studies, conceptualizations of the executive order, and public policy analytical scholarship have provided impressive insights regarding the public administration system of the EU. To a large extent, however, the collected insights remain fairly 'isolated'; a common public administration research program is missing. The integration and accumulation of theoretical insights thus seems a remote objective. However, developing some joint notions to allow the presentation and subsequent ordering of results and insights produced by individual studies does appear possible. We suggest developing the notion of the European administrative system as a framework for allowing a comprehensive empirical analysis and the theoretical integration of empirical results. We will come back to this below; however, it is to the clarification of the particularities that are the hallmark of the EU multilevel administration that we now have to turn.

Characteristics of the EU administrative system

What then are the crucial characteristics of the emergent European administrative system? What are the elements that are different – be it in kind or degree – in this administrative system, compared to what we know of national or international administrations, which thus deserve particular attention? If the aim is to advance our theoretical understanding, we are well advised to start considering such differences. Only by focusing on key differences may we be able to sharpen our analytical lenses and our theoretical tools in order to appropriately appreciate and analyze the emerging EU public administration system and its effects on public policy. We identify four such crucial structural differences: the multilevel character of the system, the incongruence of competences, the role of networks, and demographic heterogeneity. We do not claim that this list is exhaustive; we do, however, claim that without considering these elements, grasping the particularities of the European administrative systems is unlikely.

The multilevel character of the EU administrative system

The multilevel character of the EU system has been intensively discussed (Marks, 1993; Piattoni, 2010). Referring to the EU as a multilevel system has become so colloquial that the term often gets used rather metaphorically, thereby hollowing out its analytical value. This has perhaps contributed to the fact that the mechanisms which fuel the transformatory potential of the multilevel constellation of EU policy making remain vague and poorly understood – in particular in view of their impact on the administrative dimension. This volume proposes that a ‘level’ indeed refers to the existence of separate and relatively independent sets of institutions, personnel, rules, finances, and so on. With regard to administrative interaction, ‘multilevelness’ is thus also a common feature within national political systems – obviously being more pronounced in federal states but also present to some degree in unitary states (Benz, 2012; Hooghe et al., 2010). This means that with a supranational level in the form of the Commission, the Council, EU agencies, and so on being ‘added on’ to existing national structures, a qualitative shift comes along. This qualitative shift is constituted by the fact that the new supranational layer is not characterized by an individual national institutional context. This means that in its concrete institutional set-up it remains alien to most national systems and does not always integrate well into existing national systems of executive government and parliamentary accountability.

Multilevel in this administrative context means that a new platform emerges that interlinks the national institutional set-up with other corners of the EU system. This platform consists of the paradoxical mix of institutional independence and institutional interconnectedness across levels of government. It consists of separate institutions (such as the Commission) that are able to act (potentially) relatively independently from member-state governments, and at the same time of an institutional interconnectedness between the very same institutions across levels of governments. Understanding the dynamics of this paradoxical mix – of administrative independence and interdependence – is essential in order to gain an adequate understanding of the multilevel character of the EU administrative system.

The incongruence of competences

Looking at the emerging multilevel structure from a public policy production perspective, the problem of the incongruence of institutional powers and policy competences comes to the fore. This incongruence becomes problematic when the various constituent communities of the system expect uniform rules to solve common societal problems. However, there are often no suitable, let alone consensually pre-established, common standards or procedures of how to ‘organize’ the political struggle. Incongruence and interdependence – if the

aim is the production of *Pareto optimal* policy solutions – are thus different sides of the same problem. The internal market may serve as an illustration. Despite the (perceived) need for unified EU-wide rules, the bulk of formal powers and the institutional focus of regulatory activities continue to be located at national level (Eberlein and Grande, 2005, 89; Schmidt, 2000). Clashes, as in the case of the Services Directive, thus appear inevitable. Fritz W. Scharpf (1985) identified another pathology under the label ‘joint decision trap’ likely to emerge in such multilevel constellations.

The national or subnational levels hold crucial regulatory powers and political resources; they are – depending on the policy area – not de jure or de facto subordinated to the supranational level. We thus expect characteristic dynamics to emerge in that system connected with *incongruences* of administrative and political structures, political time cycles, differential resources, and capacities to formulate or implement joint policies at national and subnational levels (Curtin and Egeberg, 2008; Goetz, 2010).

The role of networks

Precisely because the political value of hierarchical resources and formal offices become relativized, political relationships become much more instable than in national contexts; the actor constellations – that is, the relevant participants to formulate, decide, and implement political choices – are increasingly fluid. Moreover, the actor constellations are fragmented and characterized by what has been conceived of as ‘polycentricity’ (Ostrom, 1999). Actors thus engage in exchange in transnational ‘networks’ on a more equal footing than they probably could in their respective national systems, making bargaining an essential mode of interaction. The networks are characterized by a great heterogeneity of participants: policy stakeholders, beneficiaries, civil society groups, and so on. Thus, depending on the policy problem at stake, multiple principals, multiple agents, and private actors engage jointly in policy production and implementation (Rhodes, 1997).

The co-evolving nature of such networks or administrative subsystems – relatively independent (that is, decoupled) subunits of government systems – are likely to mutually recouple across levels of government. A catalyst for this to happen is both the emancipation of the Commission as a strong and independent European executive institution and the fragmentation and disintegration of government institutions at national level (Egeberg, 2006).

Demographic heterogeneity

The model of the *representative bureaucracy* assumes that the demographic ‘baggage’ that civil servants bring with them into a bureaucracy profoundly shapes their behavior. It is also assumed that the ‘diversity of public sector workforce’ (Peters et al., 2013, 7) impacts on how public sector organizations perform, how

they are internally controlled, how legitimate they are perceived to be, and how they relate to the constituent populations (Andrews et al., 2005; Selden, 1998). Civil servants' former institutional affiliations, their educational backgrounds, their geographical origins, and so on are assumed to affect the way they act in office. The bureaucracy will thus change its performance according to the composition of staff. In short, what civil servants bring with them into the organization is of significance to its conduct. This is the picture of the embedded bureaucracy that broadly speaking reflects society (Peters et al., 2013).

A final essential feature of the EU administrative system is its 'cultural heterogeneity'. The problem of language and common national stereotypes are often seen as nothing more than the folklore of Europe. As such, these differences are perhaps of little significance. However, national formative or professional backgrounds will almost certainly characterize the understanding of problems and also restrict the solutions actors may think appropriate. Styles, traditions, and institutional experiences affect the mental maps of actors and thus most likely the range of solutions they support as applicable and suitable (Dyson, 1980; Richardson, 1982; Van Waarden, 1995). Appropriate policy solutions are thus far from 'self-understanding' but are dependent to a large extent on the backgrounds of the actors that attempt to develop them.

Potential consequences of the characteristics of the EU administrative system

The multilevel character, interdependence and incongruence, interaction in networks, and demographic heterogeneity are in our view essential characteristics of the emerging administrative system of the EU. The question is what are the likely consequences? How are administrative interactions in the EU system characterized by these constellations and features? Systematic answers are anticipated by the analyses conducted in subsequent chapters of this volume. The likely effects of these features are: the reinforcement of bargaining as a prime mode of interaction, informality, the evolutionary character of procedures and established administrative structures, and instability of relationships characterized by extensively long chains of delegation and the volatility of participants in administrative subsystems. Institutional or policy convergence is thus an unlikely implication. The question, however, is how we can identify and categorize the emerging differential administrative arrangement at work, and how it is possible to clarify the conditions under which these differential arrangements influence policy outputs in the EU.

The EU administrative system as a frame of analysis

The conception of the EU administration as a multilevel system provides, above all, a notion of a 'public policy production' process. Accordingly, the purpose of

the EU system can be conceived of as the distribution of values within advanced organized societies. Following such reasoning helps to discipline our analysis by distinguishing between relations at the macro-, meso-, and micro-levels. The macro-level concerns public administrations, their relationships with legislative and judiciary institutions and societal actors, and the relationship between administrators and outside experts. The meso-level concerns intra-organizational configurations and features of intra-organizational conflict, coordination, and choice. Finally, micro-level factors comprise motivational aspects of individual office holders, their mobility and education, and their ability to adapt, obstruct, and innovate. Such terminology is of heuristic value. It helps to identify elements, processes, structures, and individual agencies of relevance for further analysis. Furthermore, such a systemic perspective also encourages a certain restraint upon the analyst and the reader. The characteristics of the public administration subsystem are unlikely to be in themselves a self-sufficient explanation of policy outcomes, but rather part of an explanation that comprises the broader political system, that is, institutional and societal factors. Thus, it would be wise to limit expectations in view of what an analysis centered upon bureaucracy and organizational factors is able to explain. Public administration factors certainly need to be integrated into political analysis if the aim is to understand the dynamics and effects of the political system of the EU. However, an invaluable advantage of a 'public policy production perspective' is to bring existing interdependencies to the forefront; especially since the EU policy process is characterized by intersections, compound constellations, and interdependencies (see above). Against this background, these are some of the dimensions a study of the European administrative system involves:

- the conditions and effects of intra-organizational change and adaptation within supranational and national bureaucracies;
- the characteristics of change and the persistence of inter-organizational interaction;
- the impact of organizational variables upon continuity and changes of the policy-making process at various levels of government;
- the causes and effects of prevailing policy-making dynamics that may oscillate between technocratic problem solving and democratic accountability.

What appears promising is the integration of such analytical dimensions into a multilevel governance theory of the EU. Arthur Benz has laid some foundations for the development of such an administrative theory of complex federal-like multilevel systems (Benz, 2004). An essential element of such a theory is the observation that in the complex processes of policy making, hierarchical control is complemented by communication relationships between equal but functionally differentiated bureaucratic actors at various political

levels. Administrative hierarchies are supplemented or even replaced by bureaucratic coordination and cooperation relationships. Divergent concerns among bureaucrats may be reconciled at administrative subunit levels, never to reach the radar of elected office holders. Executive heads, although formally responsible, may need to largely rely on and cooperate with subordinate administration to assure both informed initiatives and effective implementation (Benz, 2004; Wessels, 2000, 354). The subsequent chapters in this volume suggest that the administrative interaction processes are characterized by factors such as:

- the nature of the policy problem at stake, for example redistributive versus regulatory public policy;
- actors' commitment to joint action, that is, the range of alternatives, the range in which joint collective action needs to be agreed upon, existing unilateral fallback options, and the effects of failing to come to joint collective action;
- actor constellations, for example the number and mixture of organized groups that may be involved in setting the agenda or shaping the implementation of public policies of a European administrative system (unilevel versus multilevel, public versus private, and so on);
- the institutional context, that is, decision-making processes based on diverse mixtures of behavioral logics of competition/negotiation/bargaining/hierarchy.

Outline of the volume

The volume consists of eight parts, each offering a combination of state-of-the-art overviews of the relevant subfields of scholarship and cutting-edge original research. Part I consists of a selected menu of theoretical approaches useful for a wide-ranging conceptual understanding of the European administrative system. The subsequent chapters in this part discuss the European administrative system as a multilevel system, the different logics behind such a multilevel administration, and how such a system may contribute to center formation at 'European level'. Part I also discusses how the European administrative system may serve more broadly as part of a European administrative space, the problems of temporal coordination in political-administrative systems characterized by multiple temporal logics, different types of administrative styles in such systems, and finally the possibility of an emergent neo-Weberian order reflecting more than a decade of administrative reforms in the EU administration.

The succeeding parts of the volume are directed toward different institutional parts of the European administrative system. Firstly, Part II outlines the core elements of the EU's executive administration. Focus is directed toward the European Commission, at both its political and its administrative face.

Subsequent chapters discuss the processes of politicization of the Commission, the role of permanent and temporary Commission bureaucrats, and the administration of new administrative elements – such as the European External Action Service. Part III outlines the EU’s parliamentary administration. Chapters focus on the organizational structure and behavioral implications of the European Parliament administration and on the role of European Parliament officials in the legislative process of the European Parliament. Part IV is directed toward the EU’s ‘intergovernmental’ administration. Chapters debate the EU Council system and how it may contribute to administrative fusion in Europe, the role of the Council General Secretariat, and, finally, the Janus-faced role of the Committee for Permanent Representatives of member states to the EU (COREPER). Part V introduces the EU’s court administration. Chapters discuss the internal and external role of the European Court of Justice on the European administrative system, and the role of the European Court of Auditors and how it relates to national independent audit institutions. Part VI outlines the EU’s subordinated administration and discusses how the emergence of EU agencies may contribute both to the rise of executive power and possibly to accountability consequences at European level. Part VII contributes with a broad discussion on vertical and horizontal administrative interaction in the European administrative system. Chapters discuss different modes of multilevel administration in the EU (direct, decentralized, and joint), how the EU administrative system interacts with international organizations outside the EU, the role of expertise in EU decision making through the use of expert committees, the role of subnational actors in the European administrative system, the Europeanization of European civil service systems, and, finally, possible accountability consequences emanating from a multilevel administrative system, with empirical evidence from the EU’s comitology system.

Finally, Part VIII concludes the volume by reassessing some normative implications of the European administrative system and some possible consequences for the research community. The first chapter discusses the EU administration’s accountability challenges, while the final chapter offers a reassessment of the European administrative system and outlines future research avenues.

Notes

1. An earlier version of this chapter was presented at Brown Bag Lunch Seminar at the University of Agder on 6 February 2013. The authors would like to thank Dag Ingar Jacobsen, Stefan Gänzle, and Anne E. Stie for helpful comments.
2. The current financial turmoil appears to give rise to protective measures (for example customs and tariffs) that may well lead to ‘deglobalization’. The point is that transformative change should not be conceived of as unidirectional. See Reinhart (2012). ‘The Return of Financial Repression’. CEPR Discussion Paper no. 8947. London, Centre for Economic Policy Research. <http://www.cepr.org/pubs/dps/DP8947.asp>.

3. The paragraph follows the succinct discussion of these problems by Fritz W. Scharpf – see 1985 and 2006.
4. As we will show below in detail, there are several debates where EU administration and administrative interaction in the area of EU policy-making figures prominently, but no attempt to systematically establish a theory of the EU administrative dimension as such exists.

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Part I

Theoretical Perspectives

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2

European Public Administration as a Multilevel Administration: A Conceptual Framework

Arthur Benz

Introduction

According to the traditional view, public administration operates in a clearly demarcated jurisdiction, defined by functional responsibilities and territorial boundaries. In line with this view, the system of administration evolving in modern states has been characterized by a hierarchy of higher and lower levels and a division of power among administrative territories and among policy domains. Actually, administrative policy making cuts across these boundaries. Processes of interjurisdictional coordination are essential in the practice of administration. This reality is adequately captured by the concept of administrative governance (Benz, 2006).

In the European Union (EU), administration has evolved beyond the architecture of the modern state. While in public debates the emerging administrative organizations have often been portrayed as a powerful European bureaucracy, research has drawn a more nuanced picture and emphasized the interrelations and power sharing between European and national bureaucracies. In this context, two concepts have been proposed. Wolfgang Wessels conceptualized a 'fusion' of national and European bureaucracies (Wessels, 2003). He pointed out the interdependence of administrative functions and tasks which finds expression in a close cooperation among civil servants working in Brussels and in national or regional ministries of member states. Other scholars have studied the Europeanization of national administration (Knill, 2001) which, due to convergent adaptation in divergent national structures, has led to the evolution of a European administrative space (Hofmann, 2008; Olsen, 2003). Whereas the term 'fusion' referred to vertical linkages between administrations, the second approach puts emphasis on coordination in horizontal relations, either by mutual adjustment, mutual learning in contests for best practices, or the implementation of procedures determined by European law or programs.

Both notions describe and explain the evolution of a new kind of multi-level administration in Europe, which deviates from the traditional hierarchical model. However, by focusing on the process of administrative integration, these concepts give no account of the particular patterns of emerging structures nor do they inform us about how the European system of administration works. These questions are, however, addressed in the literature on multilevel governance. So far only a few scholars have applied this approach explicitly to analyze public administration. As these contributions demonstrate, administrative science can profit from theoretical and conceptual work on multilevel governance. However, in order to cover the variety and dynamics of patterns of public administration in Europe, existing concepts and explanations have to be revised.

This chapter aims to advance the concept of multilevel governance and to adjust it to research on European public administration. It starts with a brief account of the state of the art, continues with a typology of the varieties of multilevel administration, and discusses theoretical approaches to understanding administrative policy making. Instead of summarizing empirical research, the chapter outlines a refined analytical framework for studying multilevel governance in public administration.

From multilevel governance to multilevel administration

In studies on the EU, multilevel governance has become a widely used framework to understand and explain policy making and institutional development (summarized in Bache and Flinders, 2004; Benz, 2009; Enderlein et al., 2010; Piattoni, 2010). It has been used to explain European integration (Hooghe and Marks, 2001), and to understand policy making in structures of joint decision making, resulting from the process of European integration (Scharpf, 1988, 2001). Both strands of theorizing are based on an actor-centered approach. Hooghe and Marks explained the dynamics of institutional development, in particular the integration of regional authorities into European governance caused by the mobilization of regional actors, whereas Scharpf and others had been interested in finding out how governments come to decisions under the particular condition that they are committed to policy positions determined in national political processes (Falkner, 2011).

In this research area, we find a number of attempts to categorize varieties of multilevel governance. Hooghe and Marks distinguished between type I and a type II multilevel governance, with the first including multifunctional territorial units and the second being based on a variable geometry of function-specific units (Hooghe and Marks, 2003). Benz characterized multilevel governance in the EU as loosely coupled, more flexible in relations between executives and legislative institutions, more open to opting in and out,

and more variable in applying modes of coordination than the tightly coupled joint-decision constellation which exists, for example, in Germany (Benz, 2000, 2010a). Scharpf conceptualized different modes of coordination between levels. He acknowledged the role of the Commission as an agenda setter in negotiations, the existence of hierarchical governance by the European Central Bank and the European Court of Justice, and the option of flexible integration to evade veto power, thus suggesting that multilevel governance varies between policy fields (Scharpf, 2006, 2011; see also Treib et al., 2007). Meanwhile, the Open Method of Coordination (OMC) has attracted attention as a new mode of governance, which in itself can operate with a more consensual, network-like approach that varies according to the role of public actors (Héritier and Rhodes, 2011), or with a more competitive approach (Benz, 2007). Toonen suggested distinguishing between horizontal, interwoven, vertical, and field administration, depending on the institutional structures of a state (Toonen, 2010).

It goes without saying that public administration is part of policy making in multilevel governance and that civil servants also drive European integration. Nonetheless, the role of administrations has not explicitly been considered in works on European multilevel governance. Of course, policy making across levels is dominated by executives, and research in this field has covered public administration to a certain extent (Heinelt and Knodt, 2008). Nevertheless, theories of multilevel governance have primarily been used to explain decision making in the Council or in intergovernmental relations between the Commission and national or regional governments, with experts and administrative staff considered as assisting or implementing actors. Administrations, both those supporting governments and those implementing laws and programs, are still considered to be organizations within a territorially defined area of jurisdiction.

In administrative science, scholars have examined the impact of European integration on the structures and processes of national administrations. These studies tend to focus on national or subnational levels, and do not show whether, to what extent, and how administrations at national and European levels are connected and how they interact. Thus far, there has been no systematic inquiry into the linkages between levels of administration beyond the nation-state (Liese and Weinlich, 2006). Only a few scholars have addressed the multilevel character of the emerging European administrative system. Among them, Egeberg applied a multilevel governance framework in his study on European administration (Egeberg, 2006; Schout and Jordan, 2005). Policy studies have also shed light on networks of administrations (Jordan and Schout, 2006; Suvarierol, 2008). Scholars using the concept of a European administrative space take relations between national and European bureaucracies as a relevant feature without spelling it out in greater detail (Hofmann, 2008; Olsen,

2003). Thus, these theories and the empirical studies available provide rather abstract descriptions of the interdependence and interaction between national and European administrations. Numerous case studies on various administrative sectors have provided information on particular structures and processes, but most of these studies lack a theoretical or comparative perspective. As a result, we are not able to draw generalizable conclusions. In order to provide a precise account of the multilevel patterns of administrations, greater differentiation within the typologies is required (for a first attempt, see Benz, 2010b). The existing literature also reveals that we can hardly explain the existence and evolution of particular patterns of multilevel administration. Since varieties of structures and processes are rarely considered in greater detail, we know very little about how European multilevel administration operates in different fields or about the performance of different patterns of coordination.

As a first step to remedy this deficit, I propose adjusting the concept of multilevel governance and shifting the perspective in administrative studies toward multilevel public administration. Although both concepts overlap, we should distinguish at least two aspects: Firstly, if multilevel governance refers to high politics, it includes executives who are accountable to parliaments and therefore are influenced by party competition in the parliamentary arena. In contrast, civil servants in administrations are accountable to ministers, but are less involved in party politics; instead they often develop policy positions in consultation with experts or special interest groups. Secondly, coordination between levels of administration rarely follows the logic of joint decision making as defined by Scharpf (1997, 143). At least this is not the predominating mode. Usually national or subnational and European administrations exchange information and advice. When they negotiate an agreement, they mostly cooperate on a voluntary basis. Moreover, contacts are rather intense, with relations appearing more like networks. Accordingly, modes of coordination vary, even within an identical institutional setting, while variations of governance identified in research on multilevel governance imply different institutional contexts. For these reasons, we need to reconsider the available concepts in order to map the varieties of multilevel administration.

Mapping multilevel administration

During the last two decades, research on comparative federalism and multilevel governance has uncovered a variety of relations among governments of different levels. Focusing on structures, scholars distinguished between territorially based and functionally based multilevel governance (Hooghe and Marks, 2003), constitutional and treaty federalism (Hueglin, 2013), and intra- and interstate federalism (Broschek, 2010; Schultze, 1990). Governance modes include technocratic and political actors (Beer, 1978), or generalists and specialists

(Scharpf et al., 1976, 236–239). Modes of coordination have been categorized as hierarchy, networks, negotiated cooperation, and competition (Benz, 2009, 85–92). Of course, these typologies can inspire attempts to develop a more sophisticated framework covering the variations of multilevel administrative relations. However, many typologies only include two categories in order to clarify particularities of multilevel governance in the EU. Furthermore, most of them relate to structures, neglecting for the most part processes of coordination, which on the other hand also need to be taken into consideration. In particular, we must analytically differentiate between both variations in the structures and processes of interaction in order to avoid adopting a structural determinism.

In accordance with recent approaches to federalism and multilevel governance (Benz, 2009; Benz and Broschek, 2013), multilevel administration should be considered as a multidimensional concept. Accordingly, the particular pattern of administration, its operation or the effectiveness of coordination, and the dynamics of evolution can be explained by structures and processes in the vertical dimension (relations between Europe and national or regional administrations), the intragovernmental dimension (structures and procedures within administrations including the relations between political institutions and administrations), and the horizontal dimension (relations between administrations at national or subnational level). Thus, each of these dimensions can be described in terms of structural and procedural features.

Regarding structures, the *vertical dimension* is defined by institutionalized relations among administrations at different levels of government. Depending on the autonomy or interdependence of administrations, we can distinguish between supranational and intergovernmental forms. A *supranational European administration* can make decisions without including national governments and their administrations, although these decisions might be influenced by interests communicated by lower-level administrations. An *intergovernmental European administration* cooperates closely with member-state administrations, either because they are compelled to come to joint decisions or because they need support from national governments (Trondal et al., 2010). One indicator of national influence or control is how a European administration is created, with a supranational administration being established by decisions made by European institutions or based on European law, while an intergovernmental administration can be traced back to agreements between member states or results from cross-border cooperation among national or regional authorities. Moreover, the recruitment of staff and the action orientation of civil servants make a difference. In a supranational administration, we find European ‘technocrats’, whereas civil servants selected by member states tend to represent national or regional interests, even if they fulfill special tasks in a policy sector. Other indicators may include fiscal resources (coming either

from the European budget or from member states' funds), the internal organization (with supranational structures emphasizing functional differentiation, and territorially differentiated European administrations tending toward the intergovernmental model), and the definition of tasks (with supranational administrations providing information, implementing regulatory functions, or producing transnational common goods, and intergovernmental administrations coordinating regulative policies and often exercising distributive or redistributive functions). Finally, supranational European administrations can make decisions autonomously and implement them by their own power in a hierarchical structure, whereas intergovernmental European administrations are involved in cooperative modes of governance in networks.

If a supranational European administration exists, powers are separated, but multilevel coordination is nevertheless necessary in order to process information and manage interdependence. If powers are shared, administrative units at different levels have to coordinate their policies in order to fulfill their functions. Power sharing can result from legal provisions, but in public administration we more often than not observe bureaucracies pooling competences or interacting in emergent networks, so that they de facto exert shared powers although they can decide autonomously. An intergovernmental administration can also arise if powers are separated and decentralized. In this case, administration remains at national or regional level and is not delegated to the EU in legal terms. However, multilevel relations may emerge due to the need to manage interdependence across borders, due to external effects impinging on decentralized administrations, or due to attempts by the European administration to influence administrative structures or policy making in member states without holding the formal power to regulate or control. To differentiate between these types of intergovernmental structures, they will be labeled as power-sharing and power-separating intergovernmental administrations.

The vertical structures and processes of multilevel administration cover the basic conditions and mechanisms that can explain the dynamics of evolution and the effectiveness of coordination. Other dimensions include significant secondary conditions that affect the preferences of actors and their capacities or constraints in policy making. With regard to the *intragovernmental dimension* of multilevel administration, the most relevant features are: (i) the degree of autonomy of an administration from political guidance and control at different levels; and (ii) the extent to which boundary-spanning administrative units are subject to internal supervision. High autonomy in both respects increases the dynamics of multilevel administration and makes effective coordination more likely, but often at the cost of information deficits at national level, thus encumbering parliamentary oversight. European administrations arguably enjoy greater independence from political or administrative control, even if they have been subject to monitoring mechanisms in order to fight corruption

and to increase efficiency. In contrast, the degree of political autonomy of national and regional administrations varies. Agencies operate independently on the basis of directives or supervision of governments, whereas ministries fulfill political missions and programs.

The *horizontal dimension* relates to the territorial scope and balance of the multilevel administrative system. It can include more or fewer member states in different policy fields. Relations of power and the resources of the national or regional administrations involved can be symmetric or asymmetric. Moreover, national administrations can participate in multilevel policy making independent of administrations of other states, or they can be involved in horizontal coalitions or networks. Exclusive and asymmetric structures can significantly reduce the autonomy of European administration, which in this case is confronted with a powerful national administration or a coherent network of specialists from member states. They also affect multilevel coordination, as do strong coalitions or networks, to the advantage of particular member states. However, a horizontal imbalance reflecting the different administrative capacities of member states can call for an extension of administrative powers of the EU, for example to monitor the implementation of European law in member states. That the European administrative space is characterized not only by different structures and cultures but also by disparities in administrative capacities can hardly be disputed.

Beyond these structural features, multilevel administration can also vary due to *different modes of governance* applied to coordinate policy making. Governance is defined by the patterns and modes of coordination among actors across the boundaries of institutions, territories, or levels. The governance approach (Benz, 2006) assumes a certain correspondence between structural features and regularly applied governance modes, although structures do not determine processes. When considering a multilevel constellation, the vertical dimension of structures seems to be the most relevant condition to explain which mode of coordination applies. It provides an opportunity structure, whereas the horizontal and intragovernmental dimensions establish more or less constraining conditions affecting the operation and dynamics of governance. Modes of coordination can be distinguished as to whether they rule out exit options (coercive), aim for voluntary adjustment or agreement (cooperative), or establish normative frames of reference (persuasive). By combining the categorization of vertical structures and governance modes, nine different patterns of multilevel administration can be defined (see Table 2.1).

Empirical research is needed in order to determine which patterns exist in European administration, which patterns can be taken as typical, whether we find variations in policy fields, and whether there is a trend in the development of the multilevel system toward one pattern or another. Furthermore, comparative analyses can reveal how the different patterns work under different

Table 2.1 Varieties of multilevel administration

Vertical structure	Mode of coordination		
	Coercive coordination	Cooperative coordination	Persuasive coordination
Supranational hierarchy	regulation	incentives (grants), negotiation in the shadow of hierarchy (negative coordination)	consultation
Power-sharing intergovernmental administration	joint decision making ('compulsory negotiation')	voluntary negotiation	joint declarations, bridging concepts
Power-separating intergovernmental administration	institutional competition (mutual adjustment)	yardstick competition	voluntary policy transfer, mutual recognition

structural conditions, in particular those related to the intragovernmental and the horizontal intergovernmental dimensions. A few examples are noted below in order to illustrate the relevance of the categories.

1. One of the most illustrative examples of supranational multilevel administration is the European Commission's regulation of national subsidies. Due to information asymmetries in the hierarchical structure, the Commission negotiates with national and regional administrations. More often than not, cases of conflict are settled by a compromise instead of a unitary decision. In this way, the Commission is able to solve the motivation problem in hierarchical governance and to make national and regional administrations comply with its decisions.
2. The administration of structural funds is characterized by intense coordination between a supranational administration and national and regional bureaucracies (Bache, 2008). Again, information and motivation problems are dealt with in negotiations in the shadow of hierarchy. In this case, we also observe negative coordination (Scharpf, 1997, 133) since the funds are allocated on the basis of regional development programs which are elaborated at national level and adjusted to European regional policy in bilateral negotiations with the Commission.
3. The 'fusion of bureaucracies' (Wessels, 2003) in a network-like structure is mainly the result of consultation and discourse among administrative

experts, bringing specialists from the Commission's Directorates-General (DGs) in regular contact with respective specialists from national or regional organizations. Consultation can be initiated by European or national administrations. In regional policy, these processes often bypass the national level, either when the Commission's DG Regional Policy (Regio) contacts regional administrations directly or when regions lobby the European Commission via their offices in Brussels.

4. Institutionalized 'joint tasks' requiring multilateral negotiations in order to come to a decision ('joint decision making') are rare in the intergovernmental administrative structure emerging in Europe. However, with the comitology committees, this type of governance is used to implement European law by detailed administrative regulations (Art. 291 TFEU). These executive committees constitute a multilateral system of negotiation among representatives of member states, usually experts from special departments, who advise or monitor the Commission. In order to get their opinion heard, committee members, who have to decide by qualified majority, tend to find an agreement.
5. Usually power sharing does not imply that rules compel administrations to come to an agreement. In practice, national or regional administrations voluntarily cooperate in order to pool their competences and to improve effectiveness. For example, national regulatory agencies work together in networks (Ehlermann and Atanasiu, 2004). Moreover, during the 1990s a network of national administrations responsible for spatial planning emerged (Faludi and Waterhout, 2002). While regulatory networks aim at information exchange and coordination of decisions, the creation of the network of planning administrations was motivated by institutional interests. It put national administrations in a position to defend their domain against pressure to cut resources, or to gain power in national coordination processes.
6. If powers are de facto shared for functional reasons, coordination does not necessarily require negotiated agreements committing the participants to a particular policy, but can be achieved by a common understanding of tasks, leaving it to national and regional bureaucracies to carry out those tasks. More often than not, DGs of the Commission or European agencies apply joint declarations and persuasive policies, addressed either to private actors or to public administration in member states. Furthermore, 'bridging concepts' (DeBardeleben, 2012) can define a common framework for national or regional administration. The European Spatial Planning Perspective can be considered a case in point: negotiated in an intergovernmental process, it was meant to define the principles and guidelines for regional planning in the member states (Faludi and Waterhout, 2002).

7. Intergovernmental relations of autonomous administrations can exist without any involvement or intervention of a supranational European administration. In a multilevel setting, some initiatives and guidance come from a higher-level institution. Nonetheless, it is also possible that administrative functions related to European policies are fulfilled as a result of a mutual adjustment of decentralized administrations. Institutional competition constitutes a mechanism for driving and coordinating decisions under this condition. For example, the bureaus of regions and cities established in Brussels resulted from a competition for access to European politics. Decisions to set up these organizations were motivated by the assumption that the EU provides resources relevant for economic or institutional development in regions. Regional administrations felt compelled to participate in this competition.
8. Another mode of competition aims at improving administrative performance in relation to common European goals or standards. This 'yardstick competition' (Besley and Case, 1995) motivates innovation and mutual adjustment by comparative evaluation, benchmarking, or 'naming and shaming' practices in the national or regional administrations of member states. In this case participation is voluntary, and the European institution organizing the contest has to convince member-state governments to take part, to provide the necessary information, and to draw conclusions from comparative evaluation. Whether the respective administrations are willing to comply depends to a considerable extent on intragovernmental conditions. Apart from competitive modes of benchmarking in the context of the OMC, yardstick competition has been used by European administrations in regional policy.
9. Finally, coordination in intergovernmental administration can result from the mutual exchange of information and voluntary adjustment without competitive mechanisms. If national or regional administrations are pursuing innovation with regard to policies or institutions, they can learn by observing practices in other countries and can transfer ideas or models into their own jurisdiction. With the OMC, the EU has established a framework for this mode of governance. Moreover, formal or informal rules can motivate administrations to mutually accept decisions of respective offices in other states. When it implemented its Single European Market program, the EU relied on processes of voluntary mutual recognition among member-state administrations (Schmidt, 2007).

As mentioned above, the existence of particular patterns is not determined by institutions, although they do constitute, as opportunity structures, a basic condition. In addition, perceptions of policies and ideas or norms have an

impact on how European and national administrations interact and coordinate their decisions. The literature on European multilevel governance suggests that we should expect a rise in ‘new modes of governance’, that is, those types based on cooperation and persuasion (for example, Diedrichs et al., 2012; Héri-tier and Rhodes, 2011). A number of reasons support this assumption. These modes allow European bureaucracies to implement policies even if the EU has no formal regulative or administrative powers. Furthermore, they are less prone to deadlock situations in cases of redistributive conflicts, and they promise to make administration more innovative and more able to adjust decisions to changing or varying situations. Therefore, it can be expected that:

- research will disclose fewer coercive or cooperative modes and more persuasive modes due to the limited powers of the European public administration to intervene in national jurisdictions;
- among these modes we will find highly flexible and changing combinations of governance modes, with the European public administration frequently adjusting to specific situations (conflicts and imminent or real deadlocks) or tasks due to the evolving and dynamic character of multilevel arrangements; and
- modes of coordination will differ according to the structures of multilevel administrations and policies due to the variety and multidimensionality of multilevel administrations.

Operation and outcomes

To understand how the different patterns of multilevel administration operate and to explain the performance, deficits, or failure in coordination, theories of policy making in multilevel systems provide a number of concepts, elucidate different mechanisms, and suggest a variety of hypotheses (summarized in Benz, 2009; Piattoni, 2010). In view of the varieties outlined above, mechanisms such as unilateral decisions, negotiation, competition, and policy learning are relevant, each operating under different conditions. Therefore, it is not possible to rank the types according to criteria of performance. Given the complexity of multidimensional structures operating under various conditions, each case is unique. However, administrative science can provide an appropriate analytical framework allowing the systematic evaluation of cases in a comparative perspective to identify basic patterns, to explain how policies are coordinated across levels and institutional boundaries, and to understand why particular outcomes can be observed. Such a framework must include a concept of administrative behavior and theoretical models of mechanisms, that is, of processes that turn the actions of individual administrations into coordinated collective action.

Theories of administration have been based on different concepts of administrative behavior. In general, individual civil servants are viewed as part of an organization and as actors following rules, goals, cognitive frames, and standard operating procedures. However, the consequence of organization for an action model is a matter of dispute. An administrative unit can be described as a corporate actor determined to implement the law (Weber, 1976, 124–127), interested in maximizing its budget (Niskanen, 1971), or aiming at problem solving or innovation ('bureau shaping', Dunleavy, 1991). In the context beyond the nation-state, the third model probably best matches the reality. Nonetheless, as multilevel administrations include function-specific and territorial units, we need to distinguish between 'technocrats' and 'topocrats' (or 'specialists' and 'generalists', Scharpf, 1988, 246). Technocrats, who are specialized in a policy field, tend toward problem-solving behavior, whereas topocrats or generalists are more interested in gaining resources or in pursuing the goals of their own organization, which in a multilevel administration includes national or regional interests. Which of these models applies depends to a considerable extent on intragovernmental conditions. In independent agencies, specialists in policies are able to shape decisions. As a rule, these actors pursue the mission of their organization. Departments of ministries may also support the special interests of their clients. However, national administrations directly accountable to governments and supervised by parliaments tend to support those policies which are relevant for their government. They usually accentuate territorial or institutional conflicts in inter-administrative relations.

Regarding mechanisms, scholars have not only debated the concept in general but have also suggested different categorizations (Scharpf, 2006; Tömmel and Verdun, 2008; Treib et al., 2007). The typology of multilevel administration outlined above comprises the following mechanisms of collective action:

- In *unilateral governing*, a higher level administration holding the authority to impose decisions on lower level units is able to determine goals, rules, performance standards, and expectations, but it can never fulfill tasks on its own. Even if it exerts regulative power, it has to rely on implementation by a lower level administration. As mentioned above, relationships are characterized by information asymmetries and goal conflicts. Therefore, coordination between levels is mainly achieved by consultation, that is, through the exchange of information influencing the decision making of the implementing authorities, and by incentives 'in the shadow of hierarchy'. In contrast to negotiations, no agreement will be required if this mechanism applies. In hierarchical structures, multilevel coordination can also be achieved by persuasion. In this case, the higher level authority

tries to influence the cognitive and normative dispositions of the civil servants in lower level administrations. As this mechanism does not imply direct interaction, its effectiveness is uncertain. Nonetheless, the relevance of persuasion in interadministrative relations should not be underestimated, all the more so as public administrations tend to justify their policy by referring to accepted norms or concepts.

- Interadministrative *negotiations* aim at an explicit agreement in direct communication. Actors regularly defend their position and make claims and counterclaims. However, if specialists are involved, they more often than not provide reasons for their proposals and search for a consensus. The first mode, bargaining, ends with compromises or package deals, which actors accept as long as they find themselves in a better position compared to non-agreement. The second mode, arguing, leads to agreements accommodating different interests in an integrative collective decision. The mode of interaction cannot be negotiated, it emerges from unilateral action. Thus, negotiators run into a collective choice dilemma, since arguing behavior promises the best outcomes for all but can be exploited by the bargaining behavior of individual actors (negotiator's dilemma, Scharpf, 1997, 117–118). This dilemma will be less likely to obstruct coordination if actors are engaged in iterative negotiations or networks.
- The mechanism of *competition* applies to multilevel structures where policies are decentralized and a central administration regulates or organizes procedures. It leads to coordinated policies through the mutual adjustment of actors pursuing the same goal either by similar or by different means. Administrations at lower levels are motivated to achieve a joint policy due to rewards in the form of either fiscal revenues or acknowledgment by their peers, their clientele, or a supervisory authority. The first case has been extensively analyzed as institutional competition among governments competing for mobile tax payers (Oates, 1972; Tiebout, 1956). It may influence the legislation and fiscal policies of member states or regional governments, but is hardly relevant in a multilevel administration. The second type of 'yardstick competition' (Besley and Case, 1995; Breton, 1996, 229–235; Salmon, 1987) is increasingly used to coordinate administration in the EU. In practice, this mechanism is based on rankings or benchmarking and requires a comparative performance evaluation according to defined standards of policy making. Participation is voluntary, as long as it is not enforced by a central authority, which is not possible in the EU. Whether competition leads to a convergence or divergence of policies cannot be determined without distinguishing between aims and means. In institutional competition, we often find convergences toward particular means to improve and promote a location (for example, by tax policies, infrastructure, research policy, or administrative reforms), but the

results differ according to the existing structures of an economy. Yardstick competition can proceed through cycles of divergence and convergence in sequences of producing and diffusing innovation (Kerber and Eckardt, 2007, 238).

- Like competition, *policy learning* occurs in horizontal structures, but triggers internal processes in administrations on a voluntary basis (for example, Dolowitz and March, 2000; Gilardi and Radaelli, 2012; Meseguer, 2009). It generates changes inside an administration, when actors draw lessons from experiences observed in other regions or nations. This process is often supported by information provided by consultants, researchers, or public administrations at a higher level. The learning capacity is mainly dependent on intragovernmental conditions, such as the freedom of an administration from political pressure or control, the resources available, and the adaptability or rigidity of structures.

In reality these different mechanisms work in combination. They can mutually support a coordinated outcome or can produce conflicting effects. Mechanisms will often be linked in a sequence of collective action if, for example, a supranational administration starts with unilateral regulation and responds to conflicts or resistance from implementing administrations by entering negotiation or by setting incentives. Apart from other conditions, it is the opportunity to shift between different modes of coordination which makes multilevel administration work. However, these shifts can also end with strategic failures or with ineffective outcomes if a change in governance modes serves to avoid conflicts instead of solving problems.

As mentioned above, different mechanisms and conditions must be considered in order to explain how a multilevel administration operates and performs. In view of the difficulty in qualifying whether an outcome of multilevel coordination is effective or efficient, or at least capable of dealing appropriately with the problems at hand, it seems more promising to examine coordination failure and to define outcomes 'ex negativo' than to assess to what extent standards of performance are achieved. Failure can be identified by indicators such as a policy deadlock (no decision is taken on issues which are on the agenda), enduring or increasing conflicts after decisions are made, or friction in organizations (competence conflicts threatening administrative policy making). By investigating cases of failure, we gain insight into processes of multilevel coordination and into how administrations deal with difficult problems. Failures can reflect serious deficits, but they can also create challenges that mobilize the efforts of actors to deal with problems. Thus, a study of the causes and consequences of failures can lead to empirical evidence demonstrating how European multilevel administration actually works.

Conclusion

The rise of multilevel administration in the EU should be neither praised as an evolving administrative space where policy making is coordinated nor condemned as an indication of an opaque and ineffective system of fused bureaucracies. It should rather be regarded as an inevitable consequence of European integration, with the outcome depending on particular structures and processes.

To understand the effects of multilevel administration, research has to cover the varieties and dynamics of structures and patterns of governance. While research of multilevel governance in the EU provides a solid base for empirical studies, a more differentiated analytical framework is essential in order to better understand how multilevel administrations evolve and work. Further research and discussion must prove whether the framework suggested in this chapter is appropriate.

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3

The Two Logics of Multilevel Administration in the EU

Edgar Grande and Martina McCowan

Politics and bureaucracy in the European administrative system

The recent ‘public administration turn’ (Trondal, 2007) in European Union (EU) studies has not only produced an overwhelming richness of empirical studies on individual organizations such as the European Commission, regulatory agencies, and various types of committees, more importantly it has created an inspiring perspective on the administrative system of the EU (see in particular Egeberg, 2006; Ellinas and Suleiman, 2008, 2012; Hofmann and Türk, 2006; Trondal, 2010). As a result of intensified integration, we are witnessing the emergence of a new form of compound ‘executive order’ in Europe, which integrates various types of supranational, national, and subnational organizations (Trondal, 2010). The new research perspective offers a comprehensive view of the EU’s administrative system and allows key questions in the field of public administration to be addressed in an innovative way. This pertains to the structuring of the ‘administrative space’ (Olsen, 2003) within the EU, its internal conflicts and dynamics, its external environment and demands, its effectiveness and efficiency, and its accountability and legitimacy.

However, if we examine existing studies on the current state of EU administration we find an irritating picture. The empirical literature is characterized by heterogeneous evidence, diverging trends, and multiple tensions. Evidence of the bureaucratization of the Commission (Egeberg, 2006) goes hand in hand with studies on the introduction of new managerial approaches (Bauer, 2007); and accounts on ‘bureaucratic center formation’ within the Commission (Trondal, 2012) are accompanied by evidence of fragmentation and decentralization by the establishment of new agencies and the delegation of administrative functions to national and subnational authorities (Busuioac et al., 2012; Støle, 2006). These are just some of the most striking examples.

How can we explain this puzzling state of affairs? Which factors contribute to these diverging trends? And what are the consequences for the future development of the European administrative system? The heterogeneous evidence provided by recent empirical studies may be partly due to the fact that the emergence of a new administrative order in Europe is still in flux. The expansion of the EU's responsibilities and membership, the establishment of new agencies and committees, and the reform of administrative structures have produced substantial transformative pressure in the past 25 years and these developments are far from being completed. However, as we will argue in this chapter, recent empirical studies also reveal some conceptual shortcomings of research on EU administration. These difficulties result not least from problems of applying established concepts from national contexts to the EU. This not only holds true for the EU but is also the case for its multilayered administrative system. Most importantly, current research does not pay sufficient attention to the *functional hybridity* of the EU bureaucracy and its consequences.

In this chapter we analyze this problem in four steps. Firstly, we argue that the emerging European executive order is characterized by the tense coexistence of two logics of multilevel administration: a political one and an administrative one. Secondly, we show that these two logics are responsible for multiple strains within the Commission and in the European administrative system more generally. Thirdly, we describe several organizational strategies which have been developed at European level to cope with these strains. Finally, we discuss the consequences of these organizational strategies for the structuring of the European administrative system.

Functional hybridity as a characteristic of the European administrative system

It is a well-known fact that the EU, by integrating supranational and intergovernmental principles, is a unique political system, which is clearly distinct from both international organizations and (federal) states. Supranational institutions enjoy substantial autonomy from member states, and the functions and organizational design of some of them are also remarkably distinct. This applies in particular to the European Commission, which plays a 'pivotal role' (Trondal, 2010, 56) in the emerging European administrative system.

There is broad agreement in the scholarly literature that the Commission is a complex, hybrid, multifaceted, and multifunctional organization, which combines various organizational features, functions, and dynamics in a unique way (see Cini, 1996; Coombes, 1970; Nugent, 2001). Due to its exceptional legal status and its multiple functions, the Commission is clearly distinct not only from the secretariats of international organizations but also from national administrations. The Commission is certainly a bureaucracy, and it might have

become more so in recent decades, but it is neither a Weberian nor a 'post-Weberian' bureaucracy. Both concepts are based on the distinction between politics and bureaucracy. They assume that both spheres can be demarcated precisely and that the respective functions can properly be allocated to different actors and organizations. Accordingly, political leadership is located in governments, and it is the responsibility of the administration to execute and implement political decisions. New managerial concepts do not abandon this distinction; rather, they reinforce it by separating political and administrative functions more clearly and by conceding the administration more flexibility in performing its functions.

While it is clear in the literature on public administration that the boundaries between both spheres are in reality blurred, the analytical distinction between politics and administration still has considerable heuristic value. In our view, it is the key to a more adequate understanding of the Commission and its role in the EU's administrative system. Although we find different categorizations of the Commission's functions in the literature, the various contributions agree that the Commission has to perform multiple functions simultaneously. In his seminal study of the Commission, Coombes (1970, 234–240) distinguishes between 'normative', 'initiative', 'administrative', and 'mediative' functions. Nugent (2010, 122–135) modifies and extends this list by distinguishing six responsibilities: proposer and developer of policies and of legislation, executive functions, guardian of the legal framework, external representative and negotiator, mediator and conciliator, and promoter of the general interest of the EU. Obviously, these functions are not varieties of administrative tasks, which add up to a consistent administrative portfolio; rather, they represent both political and administrative functions. From a functional perspective, the Commission is characterized by *functional hybridity*. Most importantly, its political functions are explicitly prescribed in the treaties; it has not usurped them in a process of agency drift. According to Article 17 TEU, the Commission is responsible for furthering the European idea and the integration process; and furthermore the Commission has, among other functions, the exclusive competence to initiate and draft EU legislative acts (for the various powers and functions of the Commission, see also Cini, 1996, ch. 1; Hooghe and Nugent, 2006, 151–154). It would also be misleading to interpret the Commission's political functions as another example of well-known 'bureaucratic politics', in which administrative actors pursue their own idiosyncratic goals in the policy-making process (see Peters, 1992, 115–121). Instead, the Commission's normative and initiative functions assume political leadership and responsibility for the Union and the integration process as a whole. It is the Commission that is supposed to protect and promote the general 'European interest' against narrow-minded national and sectoral interests.

Functional hybridity and the mastering of ‘multidimensional role sets’ (Marcussen and Trondal, 2011) is a common feature of international organizations. In the case of the Organisation for Economic Co-operation and Development (OECD), for example, Marcussen and Trondal (2011) identified both ‘bureaucratic’ and ‘epistemic’ roles. However, the mix of roles in international organizations does not include explicit political roles, at least not as part of their formal role definitions. Nor is the hybrid character of the Commission captured by Trondal’s distinction between a ‘logic of hierarchy’ and a ‘portfolio logic’ which coexist within the Commission (Trondal, 2012, 426). Both logics describe different approaches of performing *administrative functions* within an organization and they cannot be applied to the performance of *political functions* in a straightforward manner.

Consequences of functional hybridity: Multiple roles, multiple tensions

If we characterize the European administrative system by functional hybridity, as implied in the concept of ‘compound bureaucracies’ (Marcussen and Trondal, 2011; Trondal, 2010; Trondal et al., 2010), the crucial question is how the different functions can be institutionalized and performed within the same organization or set of organizations. We can think of several solutions to this problem: the complementarity and coexistence of different functions, a hierarchical ordering of functions, the marginalization or even displacement of one function, and, not least, the internal strains and conflicts resulting from their coexistence.

In reality we certainly find all these constellations to some extent; the literature, however, emphasizes the last of these possibilities. In this context, the work of Coombes (1970) is still illuminating. Referring to contingency theories of organization, he argues that political and administrative functions ‘each call for completely different kinds of organizations’ (Coombes, 1970, 237). According to conventional wisdom until the 1980s, administrative functions are most effectively and efficiently organized in a hierarchically structured Weberian bureaucracy. Political functions, however, are best performed in a completely different type of organization characterized by a flat hierarchy, porous boundaries, the dominance of technical expertise, and a system of shared beliefs. If both functions are institutionalized within the same organization, ‘there must be constant strain within the Commission between its Normative and Initiative functions on the one hand, and its Mediative and Administrative ones, on the other hand’ (Coombes, 1970, 240). On the basis of his empirical case studies, Coombes concluded that ‘there does seem to be a marked incompatibility between the Commission’s “political” role as a promoter of the common interest and its “bureaucratic” role as administrator and

mediator' (1970, 326). In addition, he found evidence for an increasing subordination of the political role in favor of bureaucratic functions (see Coombes, 1970, 299).¹

With regard to the emergent European 'executive order', Trondal (2010, 5) assumes that it is exposed to inherent tensions, which result from at least four key decision-making dynamics: an intergovernmental, a supranational, a departmental, and an epistemic dynamic. In his view, these decision-making dynamics 'are arguably coexisting and complementary rather than contradictory' (Trondal 2010, 5). Consequently, he is interested in how these dynamics shape the role sets and behavior of officials within the Commission (for example, whether they act according to a supranational or an intergovernmental logic). He argues that international bureaucracies incorporate a multidimensional set of organizational components and decision-making dynamics in a rather incoherent way:

The presence of compound 'orders' does not suggest integrated and coherent orders consisting of perfectly-integrated and monolithic institutions and dynamics. Executive orders do not typically 'hang together', exhibiting coherence and predictability. Instead different components of executive orders tend to overlap, counteract, layer and sometimes be out of synch rather than being integrated, coordinated and 'ordered'. Compound executive orders are typically characterized by the coexistence of multiple and coevolving governance dynamics.

(Trondal, 2010, 5; see also Marcussen and Trondal 2011, 616f)

A review of the scholarly literature reveals that in the past decades the European administrative system has in fact been shaped by *three tensions*. These tensions result from the imperative of institutionalizing largely incompatible functions in an organizational setting characterized by a strong supranational authority, a unique intermingling of constitutional powers, and the tight integration of member states into the European executive order. These tensions are the following:

- firstly, and most importantly, *functional tensions* between political and administrative functions;
- secondly, *political tensions* between supranational autonomy and control by member states;
- thirdly, and more recently, *organizational tensions* between a bureaucratic and a managerial approach in the organization of the EU's administration.

1. *Functional tensions* result from the coexistence of political and administrative functions within the Commission. Many commentators see an 'apparent

contradiction between the two' (Ludlow, 1991, 126). The resulting strains become particularly manifest in the context of three key aspects of the Commission's political functions: leadership, policy innovation, and policy coordination.

- The execution of the Commission's leadership function provokes, among others, tension between a '*presidentialization*' of the Commission and a *decentralization* of authority both within the College of Commissioners and within the European administrative system more widely. These tensions materialize, for example, in the interplay between the Commission presidency and the role of Commissioners. Under the Barroso Presidency, trends of a centralization of authority have been observed since 2005, in order to strengthen leadership and combat decentralization in an enlarged Commission (Kassim et al., 2013, ch. 6). A distinct trait of the Barroso Presidency has been the strengthening of the coordinative and interventionist role (as regards policy substance) and the recent proximity of the Secretariat-General to the Commission President, reinforcing his available administrative resources (Bauer and Ege, 2012, 405f; Kassim et al., 2013, 282). However, this has produced ambivalent attitudes among Commission officials (Bauer, 2012; Kassim et al., 2013, 168–174, 195–198).
- Moreover, there are tensions between *policy innovation* and *routine tasks* within the Commission. Already in the late 1960s Coombes (1970, 299) noted a trend toward bureaucratization and the expense of political leadership and policy innovation. Although Commission officials strongly emphasize the importance of the Commission's role as a policy initiator in the EU system, their work is burdened with managerial tasks (Kassim et al., 2013, 134f). Similarly, recent accounts on the role of the Commission during the current Eurozone crisis regard it as the 'core political driver of the Union' (Cisotta, 2013, 2). However, its primary role in EU economic governance has been subject to change, with a stronger focus on implementation competencies rather than on agenda-setting power.
- *Coordination*, another key political function, is constantly facing centrifugal tendencies and the danger of *fragmentation* within the Commission, due to various sectoral pressures (for full details, see Hartlapp, 2011; Jordan and Schout, 2006). For Peterson (1999, 57), the coordination problem remained 'one of the Commission's most glaring weaknesses' in the late 1990s. The various efforts by the Santer Commission to tackle this problem were rather disappointing, and complaints on the horizontal specialization, the 'siloization' (Trondal, 2012, 435) of the Commission, are still a recurring theme in the literature (for example, Coombes, 1970; Stevens and Stevens, 2001).²

2. *Political tensions* between bureaucratic autonomy and political control are particularly complex in the administrative system of the EU, because it integrates supranational and intergovernmental political principles. In this context the key question is how member states and other supranational institutions (for example, the European Parliament) affect the autonomy of the EU bureaucracy (Ellinas and Suleiman, 2012). We can clarify this point by distinguishing between political and administrative functions, on the one hand, and between formal and operational restrictions, on the other. On the basis of these conceptual distinctions, we can identify four different ways in which member states and intergovernmental principles confine the autonomy³ of the EU bureaucracy:

- *Formal restrictions of political autonomy* result from the fact that the Commission has to share its political and administrative functions with other supranational institutions. Two aspects have attracted particular attention in the literature. Firstly, the empowerment of the European Parliament has given rise to a structure of ‘multiple principals’ (Dehousse, 2008), in which EU institutions share legislative power (Kelemen, 2002); and secondly, tasks may be delegated to agencies rather than to the Commission. One of the consequences of this power constellation is inter-institutional struggles on the institutional design of agencies.
- *Operational restrictions of political autonomy* are the consequence of the establishment of a multitude of committees within the institutional framework of the Commission. This committee system not only includes external specialists and experts from science and industry but also national civil servants. Initially, a number of these committees might have been established in order to enhance the operational capacities of the Commission and to coordinate national policies in fields in which the Commission had only limited legal competencies (Gornitzka and Sverdrup, 2008, 727; Trondal et al., 2010, 51f). However, these committees also represent a form of intergovernmental control over the delegated powers to the Commission (for an overview of the EU committee system, see Egeberg et al., 2006; Joerges and Vos, 1999; Trondal, 2010, part III). As the Directorates-General (DGs) fulfill a political function in terms of preparing initiatives and formulating draft legislation (for example, Peters, 1992, 102), it is not surprising that the control of the member states over the Commission focuses on the DGs, in the form of comitology committees.
- *Formal restrictions of administrative autonomy* can have many origins and purposes. Among others, they have been introduced to secure national interests, for example in the staffing of Community organizations. As a consequence, in the past national considerations about the staffing of

Commission positions have led to the problem of ‘national flags’, establishing nationality as a key criterion in personnel decisions (Kassim et al., 2013, 36–39) despite the fact that according to the formal recruitment principles priority should be given to recruitment on merit (under consideration of the geographical balance among the member states) (Stevens and Stevens, 2001, 72). However, since the implementation of the so-called ‘Kinnock reforms’, the Commission underwent major changes, reducing the influence of nationality on recruitment and promotion decisions, thus making the Commission civil service more independent and autonomous in this respect (Bauer and Ege, 2012; Ellinas and Suleiman, 2012).

- *Operational restrictions of administrative autonomy* result from the fact that the EU’s administrative capacities are very limited. In most policy areas the Community has to rely on the administrative capacities of the member states to implement EU law and programs. This makes the supranational institutions heavily dependent on the ability and the willingness of member states to properly implement EU policies (Falkner et al., 2005).

Clearly, the European administrative order is the object of multiple restrictions and tensions, which result on the one hand from efforts of supranational institutions to protect and increase their autonomy vis-à-vis the member states, and on the other hand from the continuing efforts of member states to directly or indirectly control these institutions and to protect and defend their sovereignty. The result is a permanent conflict between ‘autonomization and territorialization’ (see Egeberg, 2006, ch. 3), in which different dynamics interact within the Commission and guide the behavior of officials.

3. *Organizational tensions* result from the fact that bureaucratic and managerial approaches represent different and at least partly incompatible organizational guidelines, principles, and structures. Such tensions have existed in the Commission since the very beginning. In the view of the founders of the European Communities in the 1950s, the Commission ‘was not in their minds a bureaucratic body at all’ (Coombes, 1970, 296) and it was not supposed to become a large Weberian bureaucracy. In the course of the integration process, its bureaucratic structures and functions have become more important, thus producing internal strains between the aspirations of the political leadership based on managerial approaches, on the one hand, and the Commission’s bureaucratic structures, on the other. These tensions were substantially intensified with the implementation of the Kinnock reforms between 2000 and 2004.⁴ These reforms actually pursued two goals at the same time. First of all, the reforms were expected to ‘swing the

pendulum back from a consociational to a Weberian bureaucracy' (Hooghe, 2001, 176), but at the same time the reforms were also aimed at modernizing the Commission through the introduction of New Public Management (NPM)-oriented reform goals (see the Commission White Paper on Reform 2000). In reality, these two goals turned out to be contradictory rather than complementary, resulting in 'schizophrenic' outcomes and new internal tensions (for example, Ellinas and Suleiman, 2008, 709; Schön-Quinlivan, 2007; Wille, 2007).⁵

These three types of tensions interact and result in two distinct but coexisting *behavioral logics*, which characterize the multilevel bureaucracy of the EU:

- Firstly, a *political logic* oriented toward political functions, based on flexible and management-oriented approaches, with a high degree of autonomy from member states and other supranational institutions;
- Secondly, an *administrative logic* focusing on administrative functions performed within a hierarchical, bureaucratic structure under tight control through member states and the European Parliament.

These two behavioral logics necessarily coexist in the administrative system of the EU, and they inevitably create several internal strains. Thus, the EU, and in particular its administrative center, that is, the Commission, is confronted with the permanent problem of mitigating these tensions.

Coping with functional hybridity: Organizational responses to conflicting demands and internal tensions

From the existing literature we can identify several organizational responses to this challenge: (i) internal specialization, (ii) informalization, (iii) external vertical specialization, and (iv) the delegation of tasks to private actors and organizations.

- (i) *Internal specialization* is the most common response within complex organizations to deal with multiple tasks following different behavioral logics (see Egeberg, 2007, 78; Trondal, 2012). By establishing separate organizational units each responsible for a specific task, internal tensions are supposed to be mitigated. In the case of the OECD, for example, Marcussen and Trondal (2011, 616) recommend 'creating enclaves of research and enclaves of administration within the OECD' in order to cope with the internal tensions resulting from the coexistence of bureaucratic and epistemic role sets. In the case of the European Commission, we might assume a similar logic of specialization. The separation of the College of the Commissioners from the administrative services, that is,

Directorates-General, could well be interpreted as an effort to separate the Commission's 'political arm' from its 'administrative arm'. However, such an interpretation of the internal allocation of functions is inadequate: it holds neither for the Commissioners nor for Commission staff in the Directorates. It is well known that Commissioners are 'both politicians and administrators' (Stevens and Stevens, 2001, 222); and the Directorates cannot be reduced to administrative functions either. On the contrary, political functions dominate the administrative culture within the Commission (Hooghe, 2001). As Bauer and Ege (2012, 415) underline:

Commission officials at all levels are *ex officio* involved in EU policy-making. After all, the Commission does not produce number plates, passports or a particular service to citizens, but complex political goods like policy programs, management of the financial responsibilities of the EU, supervising of joint implementation and so on. It may sound trivial, but it should be restated that the Commission is – in this general sense – a political organization.⁶

However, as we have seen, it has to perform these political functions in a highly bureaucratic context. In the past, the Commission's internal response to address this problem was to establish specialized units, for example 'task forces', within existing DGs. The preparation of the EC's 'flagship program' in technology policy, the ESPRIT program in the early 1980s, illustrates this well (Grande, 1994, 257). Rather than entrusting this task to the existing DG for research (then DG XII), which had the reputation of being rather bureaucratic, a new task force was established within DG III (responsible for industry), whose members were partly recruited with an industry background from outside of the Commission. This task force later became part of DG XIII (responsible for information technology).

- (ii) *Informalization* is observable in many different areas in order to manage and accommodate the inadequacies of the formal institutional framework of the EU (Christiansen et al., 2003). In the relations between the Council, Commission, and Parliament, various informal institutions and modes of decision-making have emerged (Christiansen, 2001; Farrell and Héritier, 2003; Héritier, 2012; Stacey, 2012). In addition, we can observe the establishment of different types of networks, mostly of an informal nature, as a parallel structure to the formal organizational apparatus of the EU (policy, regulatory, expert, or committee networks).⁷

In our context, informalization can be used as a strategy to overcome tensions between the political and administrative logics within the administrative system of the EU. The most prominent example of informalization

within the Commission is the 'Delors system', which relied on two pillars: informal networks and recruitment policy. New recruitments were 'intended to be co-operative and "flexible" towards the policies which Delors was pushing. This undoubtedly involved finding ways around the restrictions which established hierarchies and procedures imposed' (Stevens and Stevens, 2001, 238). The latter point is the most crucial one. Flexible, informal procedures, such as personal networks and contacts, were deliberately used to circumvent the Commission bureaucracy, which was perceived as being too rigid (Stevens and Stevens, 2001, 237; see also Peterson, 1999, 54–56; Ludlow, 1991, 119).

- (iii) *External vertical specialization* (in the sense of structural devolution and the transfer of tasks to agencies) is the third strategy for coping with internal strains. The idea of 'hiving off the more managerial functions of the Commission to a series of agencies' (Ludlow, 1991, 126) had already been aired at the time of the Delors Presidency. It was explicitly formulated in the EU Commission's White Paper on Reform in 2000 (part II, 19). In this reform concept, the strategy of delegating tasks to agencies is portrayed as a method for the Commission to focus on its core tasks. Independent agencies are thus seen as a means to improve administrative efficiency and reduce the workload of the Commission.⁸ Regarding the emerging power relationship between the Commission and EU agencies affected through the delegation of tasks, Kelemen (2002, 112) argues that on the one hand the Commission has lost some 'bureaucratic turf' through the creation of agencies, but on the other it has been able to focus on its core competencies, namely policy planning and enforcement. However, the results have been rather poor. Egeberg et al. (2012, 20, 25) show that contrary to the intention formulated in the White Paper on Reform in 2000, the creation of EU agencies did not restrain the growth of the Commission administration.
- (iv) The *delegation of tasks to private actors and organizations* was a response to the increase in the Commission's responsibilities and workload, which took place during the Delors Presidency. This growth in tasks did not lead to a corresponding increase of personnel resources within the Commission regarding either staff numbers or the necessary expertise to perform new tasks (Macmullen, 1999, 198; Stevens and Stevens, 2001, xxii). The solution to this problem was the delegation of work to subcontractors financed from the operating budget who, following a successful application, were employed to run programs on behalf of the Commission. At the same time, such practices reduced the tensions between political and administrative functions within the Commission. Consequently, the White Paper on Reforming the Commission (2000, 10) also suggested an 'externalization policy', so that the Commission could focus on its core tasks and policy priorities.

The consequences of coping strategies

How does functional hybridity, that is the coexistence of political and administrative functions, affect the performance of the Commission and the structuring of the European administrative system? Can the inherent tensions be adequately tempered through these various organizational strategies? These questions certainly need more empirical attention and we cannot answer them exhaustively in the concluding part of this chapter. However, based on the existing literature, we dare to give a tentative answer which is 'no'. We even suggest that the described organizational responses tend to intensify the strains within the European administrative system rather than weakening them. In fact, each of the four organizational strategies employed to cope with the internal strains resulting from functional hybridity has serious negative side effects:

1. The well-known negative side effect of internal specialization is *fragmentation*. The establishment of new units within or alongside existing DGs has intensified 'compartmentalization' within the administrative system; and efforts to better integrate and coordinate activities, for example by strengthening the Secretariat General, have not effectively reduced the 'silozation' of the services, which is 'reflected in the College meetings, in the relationship between the Commissioners and their DGs, and the development of direct links between Commissioners and "their" EU agencies' (Trondal, 2012, 435, 437–439). Instead they have produced another consequential problem, namely permanent organizational change. With horizontal specialization, that is, the establishment of new DGs or specialized units within DGs, in the last decade the Commission has been characterized by frequent changes (Kassim et al., 2013, 77f; Spence, 2006).
2. The negative side effects of informalization are *intransparency and fragmentation*. The very advantage of the various abovementioned informal procedures and structures is the 'invisibility of decision-making processes', but the subsequent problem is a lack of transparency and accountability (Ansell, 2004, 235f). The subsequent problems of the 'Delors system' exemplify this perfectly. The reliance on informal structures bypassing the formal hierarchy led to increased fragmentation and internal conflict and eroded the possibilities of long-term good management. Moreover, recruitment based on personal loyalties caused resentment and decreased morale among staff (Stevens and Stevens, 2001, 238f).
3. The negative side effects of external vertical specialization are *lack of control, legitimacy, and accountability*. Similar to domestic agencies, the delegation of tasks to EU agencies can have many unintended consequences (Christensen and Lægread, 2006). Trondal (2010, 146) observes increasing agency autonomy in the case of the European Food Safety Authority (EFSA).

In its response to bird flu, for example, the agency took a position that contradicted the official Commission policy. Regarding accountability and legitimacy, the study of Wonka and Rittberger (2011, 896) shows that EU agency staff perceive their legitimacy and accountability as primarily building on expertise and professionalism (deriving from the technocratic legitimization principle), rather than on social accountability (account of performance to the public at large or affected stakeholders).

4. The follow-up problems of delegation to private actors and organizations are *a lack of control and a possible misappropriation of resources*. These problems became particularly apparent in the late 1990s during the Santer Presidency. Serious problems related to the delegation of tasks to outside contractors, who ran programs on behalf of the Commission, were detected in 1999 by the report of the Committee of Independent Experts (1999) on fraud, mismanagement, and nepotism. Difficulties resulted particularly from a lack of monitoring and supervision of external consultants and contracts, which led to the misappropriation of resources and to corruption (Macmullen, 1999; Stevens and Stevens, 2006, 469–473).

Against this background we may conclude that the Commission is necessarily a failing organization and that the European administrative system is inevitably burdened with strains and conflicts. The Commission seems to be unable to establish the requisite organizational structures to perform the full range of its functions effectively and efficiently. It neither has the adequate organizational structures to perform its political functions nor does it command the organizational capacities to execute its administrative functions properly. And these problems are not restricted to the executive center of the European administrative system, that is, the Commission; they may affect other parts of the system at European and national level too. Are there any solutions to this problem, or is the European administrative system caught in a vicious circle of conflicting functions, multiple tensions, contradicting coping strategies, and negative side effects, which must reduce both its effectiveness and its legitimacy in the long run? In the scholarly literature, we mainly find two options for improving the efficiency and effectiveness of the EU's 'compound bureaucracy'.

The first option is *bureaucratization*, which means that the Commission becomes a 'normal' bureaucracy concentrating on its administrative functions. This would be in line with developments observed by Coombes (1970) in the late 1960s and by Egeberg (2006) more recently. We can leave aside the question as to which model of bureaucracy should guide such a process. It may suffice to point out that such a transformation would not only necessitate far-reaching internal reforms but also a substantial rebalancing of the entire system of supranational institutions. However, it would certainly be consistent with

recent trends to strengthen the political functions of the European Council and the European Parliament.

The alternative option would be a *redefinition* of the Commission's functions. Such a redefinition should comprise both its political and its administrative functions. Political functions should be reconsidered by giving *integration functions* more weight. Considering the EU's expanded membership and its differentiated mode of integration (Leuffen et al., 2012), its political integration has clearly gained in importance. In this context, an impartial body such as the Commission might be an indispensable complement to other supranational institutions in which national and partisan interests are represented, such as the Council and the Parliament. At the same time, administrative functions should be rebalanced by strengthening the Commission's *networking and learning functions*. According to Metcalfe (2004, 91f), the Commission's main task in such a model would not be in the first place to control and manage the interorganizational networks structuring the European administrative system but rather to ensure their effective functioning. Furthermore, the Commission should act as a learning organization whose task is 'to gather information, to compare and evaluate various attempts to build, change and reform policy networks and to learn lessons from different experience that can be applied when new problems and opportunities arise' (Metcalfe, 2004, 92).

Clearly, both options assume substantial changes in the allocation and interpretation of functions in the European administrative system and in its structuring, which go far beyond an internal reform of the Commission. It certainly exceeds the scope of this chapter to discuss the pros and cons of both options and the prospects of their realization. Even if we are not in a position to present unequivocal and definitive solutions to the problems resulting from the coexistence of two competing behavioral logics in the European administrative system, our conceptual approach may nevertheless have contributed to a better understanding of the challenges with which the EU's compound bureaucracy is confronted.

Notes

1. In their case study on the OECD, Marcussen and Trondal (2011) also found substantial empirical evidence for conflicting pressures and expectations. Their study reveals 'a fundamental "misfit" between external demands and internal dynamics in the OECD Secretariat' (Marcussen and Trondal, 2011, 592), which results in a 'dilemma' between different roles.
2. Interestingly, the study of Kassim et al. (2013, 188–191) reveals that nowadays most Commission officials perceive interdepartmental coordination to be less problematic, mainly due to improved coordination mechanisms (of course, remaining deficits were also mentioned), different to 'the earlier days'.
3. On the concept of organizational autonomy and its various dimensions, see Verhoest et al. (2004).

4. As the existing literature on the reforms is too vast to be presented here in an adequate manner, for an overview of the literature, see Bauer (2007).
5. As Ellinas and Suleiman (2008, 709) put it, '[t]he emerging view from the top management is that the Commission is caught between two conflicting trends, modernization and bureaucratization'. Meanwhile, however, there is broad agreement in the scholarly literature that the results of the Kinnock reforms 'so far have been modest', as 'key organizational principles of the Commission have remained largely unchanged' (Trondal, 2010, 46); for a more optimistic account, see Kassim (2008).
6. Peter Ludlow (1991, 107) observed that '[t]here has always been a bias within the Commission in favor of policy formulation as opposed to policy execution. Senior Commission staff are, for the most part, better at drafting directives than they are at implementing them, stronger at planning programs than they are at administering them'.
7. See, for example, Eberlein and Grande (2005) on transnational regulatory networks within the EU as a manifestation of informal governance.
8. In general, the Commission's interest was to preserve and expand its own administrative structures, which, however, met resistance from the European Parliament and the Council. From its perspective 'agencies are often considered second-best alternatives, which it will accept only if convinced that an extension of own powers is not likely to be approved by the Council' (Dehousse, 2008, 796; Trondal, 2010, 13).

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4

EU Administration: Center Formation and Multilevelness

Morten Egeberg

Introduction¹

In formal terms it is usually quite clear which bodies belong to national governments and which belong to the European Union (EU). In this chapter, however, I argue that national administrations, or more correctly, *parts* of national administrations, have over the last couple of decades to some extent also become parts of a kind of EU administration. I intend to show that this is due to quite particular institutional developments at both European and national level. At European level it is first and foremost the enhanced autonomy and consolidation of the European Commission (Commission) which makes the difference: for the first time in the history of international organizations we can speak of a multipurpose supranational executive with its own political leadership that is able to act relatively independently of national governments and councils of ministers (see next section). In addition, the executive capacity at EU level seems to be complemented by an increasing number of EU-level agencies. Being in charge of both EU policy formulation and implementation, the Commission needs stable partners at national level for both purposes. Arguably, those partners might be found among national (regulatory) agencies, which during the same period of time tend to have been organized at arm's length from ministerial departments (Christensen and Læg Reid, 2006). This so-called agencification phenomenon at national level provides an administrative infrastructure that might be highly conducive to the development of a multilevel *Union* administration.

Thus, the peculiar functional division of labor at international level between the Commission and the Council of Ministers (Union Council) tends to trigger centrifugal forces already present at the very heart of national governments. Such forces cannot be expected to emanate from classical international organizations in which all threads tend to be collected in councils of ministers.

In the latter case national regulatory authorities will normally be held accountable only to one particular ministry. However, in the EU case a kind of dual loyalty, or 'double-hattedness', might be imposed on national agencies in the sense that they have to relate to both national ministries and the Commission. In this chapter I first deal with the development of the Commission as a new executive center at EU level. Focus is placed on the Commission's degree of *actual* autonomy from the established executives, that is national governments. A considerable amount of Commission autonomy is seen as a prerequisite for the transformation of the European administrative space. After a brief look at the advent of EU-level agencies, I will then turn to the changing relationships between executive bodies at EU level and national administrations.

Executive center formation at European level – The European Commission

Establishing separate *executive* bodies (outside the council of ministers) of a confederation or of a nascent federation of states seems in many respects to be the 'hard case' of institution building. The reason for this may be that it creates a capacity for action and execution and not just for talk and formal decision making and that such independent action might be perceived as particularly threatening by constituent governments less eager to transfer power upwards. It seems to have been easier to form (parliamentary) assemblies and courts of justice. It is not only in the history of European-level cooperation that executive bodies have been the 'hard case' but also in the way other regions of the world have organized their common activities. If we take a brief look at how federal states were forged the same pattern is discernible: in the United States of America, the Congress and the Court were both well established in Washington before a federal executive attained adequate capacity to act on a broader scale (Skowronek, 1982). Such an administrative capacity did not emerge automatically as a response to functional needs but had to be extorted from pre-established institutional structures, in particular from the constituent states. In Germany, in 1871 the body of the constituent states ('Bundesrat') was thought to be both the second legislative chamber and the federal government (Gunlicks, 2003, 341). A new and separate executive center at federal level emerged only gradually during the following years.

With regard to European-level cooperation, international governmental organizations (IGOs) had been in place for about a hundred years before a separate executive body in the form of the High Authority of the European Coal and Steel Community was born. At this time international courts of justice were already known from The Hague system, and (parliamentary) assemblies had been constituted within the United Nations, NATO, and the Council of Europe. In its early history the successor of the High Authority, the Commission, faced

challenges of an almost existential character, for example during the 'empty chair' crisis in 1965 (Loth, 2007). Although the history of EU-level agencies has not been as dramatic as the history of the Commission, similar tensions may nevertheless come to the fore since such 'agencification' in many cases means transferring action capacity from the constituent states to a new center at supranational level (Curtin and Egeberg, 2008).

The High Authority of the European Coal and Steel Community (ECSC) and its successors were indeed an institutional innovation at European level: for the first time an executive body with its own leadership had been established outside the national ministers' 'council'. It seems as if the Commission over time has increased its actual autonomy in relation to national governments. Regarding the services of the Commission, the move from an administration that had to rely heavily on seconded personnel from the member states to an administration in which a large majority are employed on a permanent basis is probably very significant. The growing 'internalization' (into the services) of recruitment and appointment processes is also highly indicative of such a development (Fusacchia, 2009; Georgakakis, 2009). The process of appointing top officials has been described as having become 'objectivized', meaning that a transparent procedure and clearly specified requirements have been adopted. Staff resources have been allocated to the process, and the committee, which presents the shortlist of candidates to the respective commissioners, is dominated by career officials. Generally, the recruiting commissioner seems to accept the candidates recommended by this committee (Egeberg, 2006b, 39). Thus, the internalization of appointment processes means that the highly contentious practice of attaching national flags to particular posts in the various Directorates-General (DGs) has been considerably reduced. Consistent with this, Balint et al. (2008) show that with regard to the degree of politicization of the higher management and the degree of openness of the career system, the Commission administration has over time moved away from its continental origin and closer to a British or Scandinavian model, that is, in crucial respects a more independent service. The Commission services' control of appointment processes is neatly illustrated by former commissioner Verheugen's suggestion that commissioners should have more power to pick their directors-generals to ensure their loyalty to their political masters. According to the *European Voice* (12–18 October 2006), Verheugen's comments echoed criticism by Chancellor Merkel who had said that 'commissioners' lack of control of their directors-general was unthinkable for a German minister'.

The political leadership of the Commission also seems to have over time gained autonomy vis-à-vis national governments. Where the College is concerned, the Amsterdam Treaty assigned somewhat more leeway to the Commission President-elect regarding the selection of commissioners. The President also acquired the final say in how portfolios are allocated, and even the right to

reshuffle the team during the five-year term of office by redistributing dossiers, thus making it difficult for governments to attach national flags to particular portfolios. The President is also authorized to dismiss individual commissioners. Where the cabinets are concerned, in any cabinet there must now be three nationalities, a gender balance, and three posts reserved for Commission officials rather than outsiders brought in by the commissioners or foreign ministries. However, compatriots of the commissioner could still be in a comfortable majority. One study shows, however, that not only have the new rules on multinationality been implemented (something which cannot be taken for granted), but that the new requirements were overfulfilled and increasingly so. In 2004, 96 percent of the cabinets contained more nationalities than formally prescribed, and 57 percent of the personnel were non-compatriots of their respective commissioners. The leader level has also become denationalized although this has happened primarily at the level of deputy head of cabinet. Since overfulfillment has also taken place within the cabinets of commissioners originating from old member states and not only in 'new' cabinets that might want to draw on experienced persons from other countries, it gives reason to believe that a norm on rather broad multinational recruitment has been established (Egeberg and Heskestad, 2010). Such a composition has probably changed the role of entities previously portrayed as national enclaves (Michelmann, 1978) and as being apparently sensitive to national interests (Cini, 1996, 111–115).

The Commission is basically organized along sectoral and functional lines and, in contrast to the political leaders of the Council, the commissioners have their primary affiliation to the EU institution. However, a few organizational components of a territorial character remain in the Commission, the most noteworthy of which is the rule that each member state is entitled to nominate a commissioner. Before taking office, commissioners' political careers tend to be overwhelmingly national (Georgakakis, 2009). This nomination procedure contributes to a certain active territorial representation at the top of the EU executive in cases which might be of particular importance to a member state (Wonka, 2008). However, the national role is only one part of a commissioner's highly compound role set and probably not the part most frequently evoked: in practice, a portfolio (sectoral) role, a college (overall Commission) role, and a party political role coexist with the national role (Egeberg, 2006a). With a larger college there seems to be a stronger tendency toward non-interference in each other's business (Kurpas et al., 2008). Thus, to the extent that national interests are pursued, this will mainly take place within the respective commissioner's own portfolio. The role of the president has also become more pivotal through a strengthening of the Secretariat-General (Kassim, 2006).

Concerning the impact that the national background of Commission officials might have on their actual behavior, studies show that 'national socialization'

makes a difference with regard to officials' *attitudes* on broad topics such as intergovernmentalism versus supranationalism (Hooghe, 2001; Kassim et al., 2013): those originating from federal or decentralized states tend to be more in favor of federal arrangements at European level. However, this effect of nationality does not hold for all Commission officials: the effect of Commission socialization is considerably stronger for officials who joined the institution before their 30th birthday. In that case, 'the relative weight of international and national socialization is reversed' (Hooghe, 2005, 876). This is an important observation since an overwhelming majority of those who currently become appointed to senior posts have had an extended internal career. Internal candidates have been increasingly preferred (Fusacchia, 2009; Georgakakis, 2009). Accordingly, in their study of top Commission officials, Ellinas and Suleiman (2012) found no effect of national background on similar attitudes.

In accounting for Commission officials' *decision behavior*, their organizational role, such as DG affiliation, seems to be crucial (Egeberg, 1996; Suvarierol, 2008; Trondal et al., 2010; Vestlund, forthcoming), and this seems to hold even for 'national experts', that is officials seconded by (and even paid by) national governments for a shorter stay at the Commission (Murdoch and Trondal, 2013; Trondal et al., 2008). The fact that decision making at the Commission is very often portrayed as politics among the various (multinationally staffed) DGs underpins this view (Cini, 2000; Cram, 1994; Daviter, 2011; Hooghe, 2000; Mörth, 2000). Finally, the approximately 1,200 Commission expert groups, mainly composed of national civil servants (Gornitzka and Sverdrup, 2008), could be considered a territorial component in the Commission structure. However, those taking part do not perceive themselves or their colleagues as clear-cut government representatives to the same extent as is the case in Council or comitology committees, nor are participants in Commission groups mandated from home to the same extent (Egeberg et al., 2003).

Executive center formation at European level: EU-level agencies

During the 1990s a range of new EU agencies were established. The main function of some of these, such as the European Environment Agency, is to gather information in order to support EU policy making and implementation across the Union. Others are entrusted with the responsibility to prepare decisions to be made by the Commission, as is the case for the European Medicines Agency. Others are assigned implementation tasks such as assisting the Commission in the management of EU programs. In highly specialized areas such as trademarks or plant variety rights, or more recently aviation safety, such agencies come close to independent regulatory authorities since they are empowered to issue binding individual decisions (Dehousse, 2002).

The arguments behind EU-level agencification are remarkably similar to those that have been advanced in relation to the establishment of agencies at national level. In some cases, Commission overload may have led to 'hiving off' tasks to new bodies. Another reason is to ensure continuity and impartiality as regards (individual) regulatory decisions by organizing such decision making in bodies at arm's length from executive politicians (Everson et al., 1999; Majone, 1996). An increasingly party-politicized Commission could make such reforms even more topical (Majone, 2002). Also, agencification at EU level can be interpreted as a political compromise between, on the one hand, the functional need for more regulatory capacity at European level and, on the other hand, member states' unwillingness to transfer more power to the Commission. However, the considerable growth of EU-level agencies, in terms of both number and personnel, has not necessarily happened to the detriment of the Commission which has simultaneously increased its staff significantly (Trondal et al., 2010, 56).

In many respects most agencies are clearly connected to the Commission: they work closely with the Commission, the Commission may have the organizational or budgetary responsibility for the agency, and agency directors are usually appointed on a proposal from the Commission (Almer and Rotkirch, 2004; Everson et al., 1999). However, as might be expected given the character of the areas concerned, a very few agencies, such as the European Defence Agency (for the development of defense capabilities), are supposed to work under Council authority. Most agencies, however, can be perceived as being situated somewhere between the Commission and the Council. Typically, there is a strong representation by member states and a more limited representation by the Commission in the composition of management boards (Almer and Rotkirch, 2004, 58). Since some agencies may be seen as partly a functional alternative to comitology (Dehousse, 1997) this 'double-headedness' makes sense: it reflects the legislator's willingness to sit in and monitor delegated law-making activities. More generally, the 'in-between status' mirrors a mainly non-parliamentary, 'power-separated' polity. As in the US, agencies are part of the power struggle between executive and legislative branches (Shapiro, 1997). Since the legislator cannot hold executive politicians fully accountable, it is instead keen to have some direct influence over regulatory agencies.

Connecting to national level: A multilevel Union administration?

In a multilevel system the implementation of common policies adopted at central level might be organized in different ways; each way creating more or less leeway for lower-level adaptation. An arrangement in which the implementation of common policies takes place *indirectly* through lower level governments is probably the form that allows the most varied policy implementation across

territories. The existence of subcenter *governments* indicates that the respective territories of a system are organized as integrated wholes and that they have a will of their own. Thus, under these circumstances it is more likely that policies that are to be implemented become exposed to competing concerns generated through subcenter politics. The classical IGO makes up the clearest example of indirect implementation: adopted rules are applied solely by national administrations. The transposition device functions as an extra protection of subterritorial integrity. Some IGOs, however, have secretariats with considerable resources and expertise and might be able to modify some of the variation in implementation practices through persuasion and advisory activities (Hartlapp, 2005). A similar kind of 'administrative sovereignty' enjoyed by the constituent territories was also the intended form of the EU at its outset (Hofmann and Türk, 2006). The EU even adopted the transposition mechanism as far as directives are concerned. Studies do indeed substantiate that the implementation of EU policies has, to a considerable degree, been affected by national politics and administrative traditions as well as capabilities (Knill, 2001; Sverdrup, 2007; Treib, 2008).

However, if administrative structures at a lower level are run by the central level rather than by the lower level itself, as is often the case in unitary states, inputs from political bodies at the lower level are not inserted into the implementation process, at least not on a regular basis. Thus, the scope for lower level policy adaptation according to lower level needs is severely circumscribed when implementation is *direct*. Contrary to most national governments, the Commission does not possess its own agencies at lower territorial levels. There are indications, however, that new *hybrid* implementation structures are emerging, combining elements of indirect and direct implementation. For example, efforts by the EU to harmonize structural elements of certain national administrations (such as in communication and transport) could be interpreted as a means to achieve more uniform implementation practices across member states. Also, and probably far more importantly, the emergence of 'partnerships' between the Commission, EU agencies, and national regulatory agencies, partly circumventing ministerial departments, might be interpreted in the same vein. Thus, national agencies may operate in a 'double-hatted' manner, serving both as parts of national administrations *and* as parts of a Union administration (Egeberg, 2006b). This 'double-hatted' role is made possible by national agencies' semi-detached status in relation to their respective ministerial departments: it is precisely this decoupling which seems highly conducive to recoupling to the Commission and, increasingly, also to EU-level agencies. Case studies within several policy fields have shed light on how national agencies as parts of national administrations serve their respective ministerial departments regarding participation in Council working parties, comitology committees, and the transposition of EU legislation into national

law. However, when it comes to the application of EU legislation, and partly also to policy formulation at an early stage, national agencies also cooperate fairly closely with the respective directorates in the Commission and EU agencies, partly bypassing their ministerial departments (Egeberg, 2006b; Gulbrandsen, 2011).

Not surprisingly, in this situation national agencies may face competing policy expectations from their two 'masters' that may be hard to reconcile. One study showed that the importance of the 'parent ministry' partly depends on this ministry's organizational capacity in the field and the extent to which the legislative area is politically contested: the more such capacity and public debate, the more national agency personnel assign weight to signals from national executive politicians (Egeberg and Trondal, 2009). Clearly, the role of the Commission will also tend to vary depending on, for example, the relative strength of the DG involved (Barbieri, 2006). Furthermore, novelty and lack of knowledge make national agencies in *new* member states more receptive to input from the Commission (Martens, 2008). Double-hattedness could be expected to lead to a more even implementation across countries compared to indirect implementation, although not as even as if the Commission had its own agencies or if the application of EU law was in the hands of EU-level bodies. Interestingly, the multilevel constellations pointed to seem to have been largely ignored in the literature on implementation in an EU context: this research has focused overwhelmingly on independent variables at national level (Treib, 2008). In Germany, where the federal government, like the Commission, in principle has to rely on lower level governments for the implementation of common policies, a parallel development of 'double-hatted' *land* agencies, serving *land* ministries as well as the federal government, has been observed (Gunlicks, 2003). As in the EU, agencies organized at arm's length from ministerial departments at the lower level are probably a prerequisite for such a development to take place.

Finally, a second hybrid form is exemplified by the establishment of EU-level agencies. These bodies have so far most typically been assigned mainly information, data gathering, and more technical tasks. However, some task expansion beyond their formal mandates has been observed: one study showed that EU-level agencies may be actively taking part in the formulation of implementation guidelines and even in the handling of individual cases within national agencies (Egeberg and Trondal, 2011). In particular, a hybrid form is made up of the EU agencies that are given some regulatory power at EU level (cf. 'direct implementation') but that find themselves embedded in networks of national agencies; seemingly a political compromise between direct implementation (from central EU level) and indirect implementation (via national administrations). Even if member states numerically dominate the management boards and constitute the networks within which EU agencies are situated, this does

not necessarily mean that national governments as such are in the driver's seat. In practice, national governments are often represented by national agencies working in the respective policy fields. Since such agencies are highly specialized and organized at arm's length from ministerial departments, their personnel tend to evoke rather compound role conceptions and to act in a 'multi-hatted' manner, even in management boards formally composed of member-state representatives (Egeberg and Trondal, 2011, 871). Moreover, studies also indicate that the sheer size and the rather few meetings convened of the management boards weaken the boards' power within EU-level agencies (Busuioac and Groenleer, 2012). Finally, it seems clear that national governments have to share their control over EU agencies with the Commission, which might have strengthened its position within agency networks over the years (Egeberg and Trondal, 2011; Gornitzka, 2008; Groenleer et al., 2010; Martens, 2010; Schout, 2008; Thatcher and Coen, 2008;). However, networks that include horizontal ties among national agencies represent a potential 'organizational weapon' for mobilizing transnational opposition against central control if deemed necessary.

Conclusion

In Europe, significant changes in patterns of executive politics have taken place over the last couple of decades. Most importantly, national administrations, or more correctly *parts* of national administrations, seem to some extent to have also become parts of a kind of European administration. Studies within various policy fields, particularly within various regulatory policy areas, have unveiled the 'double-hattedness' of national agencies: on the one hand, they continue to serve national ministries, but on the other hand they take part in the formulation and implementation of EU policies in close cooperation with the European Commission and EU-level agencies, with relative independence from their respective ministerial departments. Needless to say, in the latter role they may have to defend positions not necessarily shared by their respective governments.

There are two major institutional prerequisites for this new pattern of executive politics across levels of governance and national borders to emerge, one at European level and one at national level. Regarding the European level, it seems clear that the centrifugal forces present at the very heart of national governments cannot stem from classical IGOs. These forces occur due to the actual 'emancipation' of the Commission as a new executive center outside the Council. Having become more independent of national governments, the Commission has at the same time involved interest groups and, increasingly, strengthened its ties with the European Parliament, so we might speak of a kind of pre-parliamentary system at EU level. The establishment of the Commission's

predecessor, the High Authority, represented a genuine innovation as regards the organization of executive politics at international level.

However, a new executive center at European level does not in itself result in the new patterns of administrative integration across levels and borders that have been focused on in this chapter. After all, the original 'EU model' is based on 'indirect administration', which means that it should be a clear division of labor between the two levels: policies made at EU level are (for the most part) implemented by national governments which enjoy a kind of 'administrative sovereignty'. Therefore, an additional institutional prerequisite for the new patterns of multilevel executive politics to evolve is fragmented national governments. It is precisely when national agencies are vertically as well as horizontally decoupled that they are open for being recoupled into new administrative configurations. Thus, the erection of semi-detached, highly specialized national agencies, which also enjoy considerable autonomy in practice, has provided the necessary administrative infrastructure for the reconfiguration to take place.

Note

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5

A Conceptual Account of the European Administrative Space

Jarle Trondal and B. Guy Peters

Introduction¹

Despite advances in research on the European administrative space (EAS), no widespread understanding about its meaning, mechanisms, and significance yet exists. This chapter offers a comprehensive conceptualization of the 'EAS' and takes stock of accumulated empirical lessons learned from its development. European integration through administrative capacity building assumes that the 'EAS' features a new pattern of European integration that complements regulatory integration (Weiler et al., 1985). Formulating and implementing public policy in Europe have been prerogatives of national administrations. The capacity of the state has largely been determined by 'the [administrative] capacity of the state to effectively achieve the chosen policy outcomes' (Matthews, 2012, 281). This chapter explores how these prerogatives have become complemented with the institutionalization of an 'EAS' within the European Union (EU). An 'EAS' serves arguably as a common European administrative infrastructure for the joint formulation and execution of public policy.

The development of the 'EAS' can be understood as a process of institutionalization of common administrative capacity. This institutionalization has both normative content and some structural manifestations. Arguably, an 'EAS' can be conceptually grasped by three dimensions which are closely associated with Huntington's (1968; see also Ragsdale and Theis, 1997) ideas concerning the institutionalization of political structures. The institutionalization framework is useful for describing the process of building administrative capacities over time. Furthermore, if we consider the institutionalization as a continuous variable rather than a simply dichotomy, we might also assess possible incompleteness of institutionalization of common European administrative capacities. The levels of institutionalization may vary – for example across countries, policy areas, and time – along the three dimensions suggested in this chapter. By institutionalization we imply more than the simple creation

of structures to perform administrative routines. As Selznick (1957) has argued, institutionalization involves infusing a structure with values greater than necessary for the mechanical achievement of their tasks. In terms of the 'EAS', this normative basis of institutionalization implies that there is some commitment to the Union and to the maintenance of existing patterns of governance within it. This ideational basis of the institutionalization of the 'EAS' can be seen as having certain discursive and semantic elements. The need to transpose European directives into national law may, for example, require the acceptance of some common standards of administration and of administrative law (Hofmann and Turk, 2006). Thus, institutionalization may accompany the rise of shared language for understanding public administration in member states, despite the broad differences in their administrative traditions (see Painter and Peters, 2010).

In the literature, an 'EAS' and its component parts have been analyzed mainly along three analytical dimensions: institutional independence, integration, and co-optation. These dimensions are reflected in contemporary research on the 'EAS' and may serve to capture central aspects of the integration of public administration in Europe (for example, Ellinas and Suleiman, 2012; Olsen, 2010). The purpose of this chapter is threefold. Our first aim is to offer a comprehensive conceptualization of the 'EAS' with the use of these dimensions. The second aim is to examine the varied and rich research agendas currently under way and to integrate them by examining the institutionalization of administrative structures and sets of administrative beliefs. Our final aim is to stimulate further research along the conceptual map suggested.

Firstly, an 'EAS' involves the institutionalization of some level of *independent* administrative capacity at European level, notably the rise of relatively permanent and separate institutions that are able to act relatively independently from member-state governments. Secondly, the rise of an 'EAS' may require some degree of *integration* of this independent European administrative capacity. This entails both the inter-institutional integration of administrative structures at EU level and the intra-institutional integration of each institution thus forging internal administrative hierarchies. Thirdly, an 'EAS' entails that this independent and integrated European administrative capacity is able to *co-opt* some administrative subcenters; that is, there is a mutual process of integration (*engrenage*) of domestic agencies and relevant EU administrative structures. Moreover, EU institutions may also co-opt other international bureaucracies thus integrating global administrative architectures.

This stock-taking exercise proceeds as follows: The next section reviews the main lessons learned regarding the rise of an 'EAS' in recent literature. The second step of the chapter offers an empirical re-examination of research as regards institutional independence, integration, and co-optation of what is

conceptualized as ‘EAS II’. The empirical laboratories covered by this chapter are limited. Certain institutions are excluded. The main focus of this analysis is placed on a limited set of institutions that feature *new patterns* of integration of European public administration. The chapter responds to calls to study unsettled administrative spaces that are continuously evolving (Olsen, forthcoming). Evolving administrative spaces are important to understand because such systems ‘are especially likely to call attention to phenomena and mechanisms that are not easily observed in well-entrenched, stable polities’ (Olsen, 2010, 12). The unsettled nature of an ‘EAS’ may be further accentuated by adverse political and/or economic environments such as the sovereign debt crisis in Europe (2008 to present) (Coen and Roberts, 2012; Lodge and Wegrich, 2012). During periods of stress and uncertainty, existing balances in an ‘EAS’ regarding institutional independence, integration, and co-optation may be challenged and questioned.

Lessons learned

Scholarship has thus far offered assorted understandings of an ‘EAS’. Questions have centered on what such a space contains, whether there are one or several spaces, what has caused its emergence, and what implications such space(s) may have for domestic government institutions and processes (see Heidbreder, 2011). Essential to this literature, as well as to this chapter, is that the ‘space’ metaphor has no ‘spatial’ connotations attached. We have seen basically two waves of study of an ‘EAS’ (‘EAS I’ and ‘EAS II’). This chapter draws attention to the second surge of research (‘EAS II’) (for a review of ‘EAS I’, see Meyer-Sahling and Yesilkagit, 2011).

- *‘EAS I’*: The first wave of research emphasized the convergence of administrative systems and policies. This research drew on the fields of comparative government and comparative public administration, studying, for example, the origins and spread of common administrative traditions (for example, Knill, 2001; Meyer-Sahling and Yesilkagit, 2011) and public management practices (for example, Christensen and Lægveid, 2011). An ‘EAS’ was conceived of as featuring the convergence of administrative systems around some shared forms. One early contribution to this strand of research defined an ‘EAS’ as European administrative convergence, or the ‘convergence on a common European model’ (Olsen, 2003, 506). One example is the seminal study of national coordination of EU policy by Kassim et al. (2000), who examined degrees of convergence of coordination arrangements in EU member states. Amoretti and Musella (2011) have more recently shown how e-government tools create shared and integrated digital administrative architectures across levels in Europe.

- ‘EAS II’: A second and more recent line of research conceives of an ‘EAS’ as featuring an emergent common administrative order in Europe through the development of new institutional constellations and configurations. This second line of research emphasizes *new patterns* of integration of public administration. Research has been preoccupied with both understanding European administrative capacity building (for example, Egeberg, 2006; Rittberger and Wonka, 2011) and understanding the interconnected nature of the European public administration (for example, Curtin and Egeberg, 2008; Egeberg, 2010; Egeberg and Trondal, 2009). Illustrative of the latter approach, Hofmann and Turk (2006) and Hofmann (2008) conceive of an ‘EAS’ as the emergence of a multilevel and nested, though sometimes loosely coupled (Benz 2012), network administration where institutions at different levels of government ‘are linked together in the performance of tasks...’ (Hofmann and Turk, 2006, 583; see also Eising and Kochler-Koch, 1999).

How then can one recognize an ‘EAS’ and its role in the European integration of public administration? Following the second wave of ‘EAS’ research (‘EAS II’), the following subsections examine ‘EAS’ with reference to institutional independence, integration, and co-optation.

Independence

Firstly, an ‘EAS’ involves institutionalizing some level of *independent* administrative capacity at European level, notably the rise of relatively permanent and separate institutions that are able to act relatively independently from member-state governments. In his analysis of institutionalization in the context of political development, Huntington (1968) argued that *autonomy* was a first requirement of successful state development. This subsection shows how the growth of administrative capacities not only within the Commission but also in institutions surrounding the Commission may contribute to strengthening the independent capacities of the Commission – and thus to facilitating the formation of an ‘EAS’. As well as in-house organizational capacities, the Commission is supplied with the auxiliary capacities composed of expert committees (ECs), EU agencies, and even the European Parliament (EP) administration.

The institutionalization of a common political order necessitates the rise of independent administrative resources and capacity. A necessary factor in building a common political order is the establishment of common institutions, including a permanent congress independent of national governments serving the common interest (Saint-Simon, 1964, 35–38). In a European context it necessitates the rise of separate institutions that are able to act relatively independently from member-state governments. Jean Monnet had early on intended to create a small and independent Commission, a European political entrepreneur rather than a permanent bureaucracy. The present Commission

houses around 35,000 officials, most of whom are employed in permanent posts for life. Divided by the number of Directorate Generals (DGs) in the Commission, there are on average approximately 300 Administrators (ADs) per DG (Statistical Bulletin of Commission Staff 01/2011). The most recent expansion of the EU administration, however, is found at the level below the Commission, most notably among EU agencies (exceeding 40 as of 2014).

Studies suggest that the organizational capacity built up *inside* the Commission, particularly in the sectorally organized DGs, in practice tends to safeguard its independence vis-à-vis member-state governments (for example, Ellinas and Suleiman, 2012). However, a long-held myth has lingered that nationality affects the internal functioning of the Commission, although observations reported in recent research by majority challenge such claims. Largely supporting pioneer studies on Commission officials (Egeberg, 1996), Trondal (2013) suggests that the Commission administration has remained fairly independent of member-state governments. Studies show that both permanent and temporary officials in the Commission act fairly independently of member-state influence (for example, Trondal, 2010). Illustrative of this, Ellinas and Suleiman (2012, 65) show that top Commission bureaucrats tend foremost to rely on information from within the Commission administration. Commission officials, notably the seconded national experts, indicate a fairly low degree of identification with their national governments and tend to enjoy infrequent contact with *their* 'home administration' (Murdoch and Trondal, 2012). Similar observations are made on position formation among permanent ADs (Hartlapp et al., 2010) and on role perceptions in the College of Commissioners (Egeberg, 2006).

Faced with an increasing agenda overload, one supplementary strategy available to the Commission, in addition to building in-house administrative capacities, is to import external experts when preparing legislative initiatives. Recent updated estimates count as many as 1,237 Commission expert committees (ECs) unevenly distributed among Commission DGs (Gornitzka and Sverdrup, 2008). 'In fact, there is about one expert group per eight persons working as an official in the European Commission' (Gornitzka and Sverdrup, 2008, 13). ECs exist primarily in the policy domains of the Commission and there are considerably fewer expert groups in the internal services such as the Secretariat-General. Essential for our argument, ECs in practice tend to strengthen the administrative capacity of the sectoral structure of the Commission administration for two main reasons. Firstly, ECs are typically subordinated directly under single DGs. Most ECs report to their parent DG and seldom to other DGs. Secondly, most ECs are single-task entities largely mirroring the portfolio organization of the DGs (Gornitzka and Sverdrup, 2008).

In addition to inviting additional capacities through ECs, the Commission also in practice has EU agencies and networks of independent national agencies

at its disposal. EU agencies supply the Commission with relevant administrative and executive capacity. The ‘agency fever’ at EU level has been accelerating fairly recently (Curtin and Dehousse, 2012). Since the early 1990s, more than 40 EU agencies have been created. Several of the currently existing agencies are granted some degree of formal decision-making powers, while the remaining agencies have tasks such as information gathering, technical support, and administration (Groenleer, 2009). Most EU agencies have restricted *de jure* powers, particularly with regard to making decisions. In addition to EU agencies, networks of national independent agencies have mushroomed, particularly with a role in facilitating the implementation of EU regulations (Eberlein and Grande, 2005; Thatcher and Coen, 2008). These networks have developed largely on the basis of pre-existing structures (for example, comitology committees) and contributed to the accumulation and layering of independent administrative capacities that facilitate the implementation of EU regulations.

The mushrooming of EU agencies and administrative networks has occurred in parallel with the expansion of the Commission services. The most recent boom of parallel ‘executive’ bodies at EU level (outside the Commission) does not seem to have halted the Commission’s expansion (Egeberg et al., 2012). In summary, both the Commission and EU agencies have acquired increased administrative capacity during recent years, partly due to a general strengthening of supranational executive powers, but also due to subsequent enlargements.

Finally, even the EP administration may supply the Commission with relevant administrative capacities. Since the EP was established, there has been a dramatic growth in its General Secretariat. According to Corbett et al. (2011, 219), the number of posts increased from 37 in 1952 to around 6,000 officials currently working for the EP. In a recent study, Egeberg et al. (2013) show that EP officials have a multiplicity of contacts as part of their daily work. However, the most important contact point reported is the Commission. EP officials also tend to most strongly emphasize arguments from the Commission, next to those from the Council. Ellinas and Suleiman (2012, 213) also report that 74 percent of top Commission officials enjoy contact with the EP. In short, the Commission seems to be the key interlocutor for the EP administration, although a systematic comparison with the Council Secretariat has not been reported. In summary, therefore, the Commission has gained profound auxiliary administrative capacities at its disposal in addition to its increased in-house capacity.

Integration

Empirically it is often observed that the rise of common administrative capacities does not result in the institutionalization of *coherent* administrative capacities. Instead, different components of administrative resources are observed

to overlap, counteract, layer, and sometimes be out of sync rather than being integrated, coordinated, and 'ordered' (Orren and Skowronek, 2004).

Supplementing the vertical specialization of administrative systems, the *internal integration* of administrative systems is increasingly documented within national governments, notably reasserting centers of executive government (Peters, 2004; Poguntke and Webb, 2005). One strand of contemporary research suggests that the Commission has become increasingly integrated – both *within* the Commission administration and *between* the Commission administration and the College of Commissioners (Wille, 2012). The history of the Commission documents periods of internal integration; the best known, perhaps, is the legacy of the Delors Commission (1985–1994), characterized by presidential steering and a relative disregard for administrative routines (Christiansen, 2008, 63; Kassim, 2006). 'At the end of Delors' ten-year tenure at the helm of the Commission its potential for political leadership... had been demonstrated conclusively' (Christiansen, 2008, 63). A relative downgrading of bureaucratic organization was also observed throughout the Monnet Presidency some decades earlier. Essentially, however, the power bases of those presidents were often not safeguarded through administrative capacity building but rather were largely based on their *personal* capacities (Drake, 2000; Duchène, 1994). The contemporary internal integration of the Commission is centered on building organizational capacities around the President, partly by reforming the Secretariat-General (SG) into an administrative service center at the disposal of the President (Kassim and Peterson, 2011). Moreover, administrative integration in the Commission administration is also reflected in intra-service decision-making processes, the rise of a common 'culture' across DGs, and structured relationships between the Commission administration and outside actors – such as international organizations, EU agencies, and domestic governments (Ellinas and Suleiman, 2012, 132; Kassim, 2006, 2009; Trondal, 2010).

A second strand of recent research, however, highlights that presidentialization of the Commission merely coexists with the inherent horizontal specialization, 'siloization', and subculturalization of the services (for example, Ellinas and Suleiman, 2012; Trondal, 2012). A recent study suggests that the integrative *ambitions* of the Commission President and the SG sometimes exceed the integrative *capacities* (Trondal, 2012). The horizontal interlocking role of the SG tends to collide with the organizational resources embedded in policy DGs, fuelling inter-DG conflicts of turfs and policies (Ellinas and Suleiman, 2012, 73; Hartlapp et al., 2012, 27). The administrative integration of the Commission seems in practice to be sometimes thwarted by the horizontal specialization of the DGs and the leverage of the most powerful DGs (Hartlapp et al., 2012, 28). 'Silo thinking' is largely organizationally vested within the Commission portfolios (Trondal, 2012). Recent research also confirms that informal networks

among Commission officials are guided by the horizontal specialization of the Commission administration, thus largely clustered within DGs and thus supporting the 'silo logic' (Peterson, 2011; Suvarierol, 2007, 118). A recent study illustrates how the organizational structures of the Commission administration affect policy processes by comparing these processes within a unit that changed the DG to which it belonged (Vestlund, 2012). Comparing continuity and change in behavioral patterns over time – before and after reform – is a controlled way of gauging the causal direction of the relationship between organizational structure and human behavior. Studies have also shown how patterns of cooperation and conflict inside the Commission administration are associated with the formal organizational boundaries of the services. Trondal (2012) reports that the compulsory staff rotation system inside the Commission tends to sustain and strengthen this pattern. The real-life practice of the rotation of personnel within the Commission is largely a life of intra-service rotation. Hence, rotation largely occurs within DGs rather than across DGs – at least among officials at medium to lower levels in the hierarchy. Finally, Commission officials mainly direct their identities toward the DGs and only secondarily toward the unit level and the Commission as a whole (Trondal, 2012). This observation causally follows from the above observation showing that throughout their Commission life cycle Commission officials invest most of their time and energy within DGs.

This research suggests that the internal administrative integration of the Commission does not seem to profoundly penetrate the services. Two behavioral logics seem to coexist within the Commission administration, albeit embedded and layered within different subunits. A portfolio logic serves as the foundational dynamic at the heart of policy DGs, and this seems to be activated fairly independently of bureaucratic integration at the helm of the Commission. This observation echoes images of the Commission administration as fragmented with weak capacities for hierarchical steering (for example, Coombes, 1970; Hooghe, 1997; Levy, 2006; Metcalfe, 1992). The increased use of agencies to deliver services, especially regulatory services within the Union, also has the potential to undermine the coherence of administrative capacity. As these agencies become more institutionalized and more autonomous from national government institutions performing some of the same functions, they *may* also make the administrative infrastructure of the Union less coherent. However, Hussein and Peterson (2011) and Hartlapp et al. (2010) suggest that this inherent logic of portfolio is increasingly challenged by bureaucratic integration, mainly forged by the Commission SG.

Finally, these findings hold when 'controlling for' recent managerial reforms inside the Commission (for example, Kassim, 2009). The recent administrative reforms of the Commission have been described as historic, profound in depth, and wide-ranging in scope (Barzelay and Jacobsen, 2009; Bauer, 2009).

However, the behavioral logics among Commission officials do *not* seem to be profoundly transformed by these reforms (Trondal 2012). By contrast, the two behavioral logics reported above seem to be mainly guided by the organizational specialization of the Commission services and the accumulation of relevant administrative capacities inside the Commission.

Co-optation

The independence and integration of the Commission does not only have implications for how Commission officials think and act. The rise of independent and integrated European administrative capacities also increases its ability to co-opt administrative subcenters by stealth – notably EU agencies and domestic agencies, but probably also agencies within other international organizations, thus reaching into global administrative architectures.

Firstly, studies suggest that the inherent portfolio logic within the Commission services has certain effects on its ability to co-opt administrative subunits. This is reflected in the development of direct links or partnerships between Commissioners and ‘their’ EU agencies (Groenleer, 2009, 130). A recent study confirms that the pivotal role of the Commission in the daily life of EU agencies is evident within policy areas in which the Commission has considerable organizational capacities at its disposal (Egeberg and Trondal, 2011). In the policy formulation stage, the ‘parent’ Commission DG is seen by EU agency officials as particularly influential. By contrast, at the policy implementation stage, influence shifts more toward one’s own agency and national agencies, although at this stage the Commission is still considered to be the most powerful institution outside one’s own agency (Egeberg and Trondal, 2011). The Commission thus stands out as more vital in the daily life of EU agencies and a *de facto* supplier of administrative capacities for the Commission, particularly within policy areas in which the Commission has considerable organizational capacities at its disposal.

Secondly, the portfolio organization of the Commission is also reflected in the relationships that have emerged between the Commission and domestic agencies and also between the Commission and the horizontal administrative networks of domestic agencies (Heidbreder, 2011). Both the horizontal networks of regulators (for example, Yesilgakit, 2011) and domestic agencies (for example, Egeberg and Trondal, 2009) seem to supply the Commission with relevant administrative capacities, particularly in the application of EU regulations. Domestic agencies organized at arm’s length from ministerial departments enjoy a certain level of independence regarding their exercise of discretion. Studies show that even the daily implementation of EU legislation at national level is no longer solely in the hands of national governments. Egeberg and Trondal (2009) show that the Commission does in fact take an

active part in the application of EU legislation at national level. The Commission thus in practice co-opts domestic agencies. In brief, domestic agencies *may* supply the Commission with relevant administrative capacities, particularly at the implementation stage of the decision-making cycle. From the perspective of institutionalization, administrative co-optation also involves the role of ideas and values. If an administrative system is capable of spreading a common ethos among its members, it may facilitate the rise of coherent behaviors within the administrative system on a broader scale (Ellinas and Suleiman, 2012).

Conclusion

This chapter unveils the European integration of the inherent state prerogative to formulate and implement public policy. It is suggested that 'EAS II' institutionalizes common administrative capacities at European level. These common administrative capacities are analytically captured by three dimensions: degrees of independence, integration, and co-optation ('EAS II'). Capacity building through the creation of genuinely European public administration has strengthened the Commission's ability to set independent policy agendas, shape the implementation of these, and strengthen its capability to draw common lessons from experience. This chapter shows that the supply of administrative capacities inside the Commission has become steadily extended. Currently, most administrative capacities of the Commission are concentrated within policy DGs, although increasingly supplemented with a more powerful Secretariat-General. This supply of administrative capacities inside the Commission administration enables Commission officials to act fairly independently of domestic government institutions. Secondly, the administrative capacities of the Commission also supply the Commission with a capacity to co-opt non-majoritarian institutions by stealth. Compared to the gradual increase of capacities in the Commission, the supply of administrative capacities in non-majoritarian institutions outside the Commission has happened more recently. These consist primarily of EU agencies and domestic agencies but also to some extent the EP administration. This chapter suggests that the supply of administrative capacities inside the Commission is positively associated with its capacity to co-opt non-majoritarian institutions, but largely at the implementation stage of the decision-making cycle and largely within policy areas in which the Commission has considerable administrative capacities at its disposal.

European integration through administrative capacity building assumes that 'EAS II' features a new pattern of European integration that complements regulatory integration. The emergence of 'EAS II' may also mirror the rise of administrative capacities in the Union more broadly. The three dimensions of 'EAS II' outlined may help to understand the nature of this construct and

its impact on the performance of the EU and the constituent states. It should, however, be emphasized that the 'EAS' is indeed an analytical construct that might be difficult to identify empirically in any clear and tangible form. This construct, however, may help us to capture how 'EAS II' serves to institutionalize a common European administrative infrastructure for the joint formulation and execution of public policy in Europe.

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6

Administrative Styles of EU Institutions

Christoph Knill and Stephan Grohs

Introduction

Research on the administrative system at the level of the European Union (EU) has focused either on the macro-development of organizational structures (for example, Egeberg, 2006; Olsen, 2010) or on the micro-attitudes of administrative staff (for example, Hooghe, 2001; Kassim et al., 2013). While these aspects are commonly acknowledged in the literature, other sources of organizational variation have scarcely been explored. The latter include, in particular, patterns of organizational behavior, as they become apparent in the policy-making process with regard to the administration's role in policy initiation, policy formulation, or policy implementation. For example, are some EU institutions more proactive in shaping the political agenda, while others play a more reactive role? Can we observe different administrative approaches with regard to either incremental or synoptic approaches to decision making? And is there variation in administrative styles of implementation?

To address these questions, this chapter focuses on the causes and consequences of various administrative styles of EU institutions. We define 'administrative styles' as the standard operating procedures and routines that characterize the behavior and activities of administrative bodies. In so doing, our analytical focus extends beyond merely considering the structural features of EU institutions, such as their political autonomy, size, organizational differentiation, resources, tasks, and heterogeneity. Instead, we are interested in the organizational and procedural arrangements that administrations develop in order to respond to the opportunities and constraints determined by these structural arrangements as well as in the consequences that emerging administrative styles can have on policy making and the performance of EU institutions.

In the public policy and public administration literature, it is generally acknowledged that public administrations typically play a highly influential

role in the formulation and implementation of political programs. However, notwithstanding this overall finding, the patterns of administrative involvement, operation, and decision making differ considerably across countries (Peters and Pierre, 2004). These differences are commonly reflected in specific administrative 'styles' of policy making. Administrative styles relate to two separate (although intertwined) objects of analysis: the structural and the behavioral aspects of administrations (Howlett, 2003, 475). These include systems of administrative decision making and specific patterns of administrative intervention as well as aspects characterizing administrative interest mediation (Knill, 2001). While policy styles have been used to describe distinctive patterns of national politics (for example, consensual versus adversarial modes of policy making; Richardson et al., 1982), administrative styles concentrate in particular on the role of the public administration in this regard, thus adopting a more narrow and focused perspective.

While the existence and identification of national administrative styles represents a recurring theme in the literature, the styles of EU institutions have not thus far been systematically analyzed. To what extent can we observe distinctive policy-making patterns of EU institutions? How much do administrative styles vary across different institutions, such as the EU Commission, the EU Council, or various EU agencies (and also between different Directorates-General in the Commission), and how can these differences be explained? How do administrative styles affect European policy outputs and their effects? The basic objective of this chapter is therefore to identify variation in the administrative styles of European institutions, and to investigate the impact of these styles on policy making and implementation. The chapter develops a comprehensive theoretical framework for the study of administrative styles, lays out the existing knowledge of the development of the administrative styles of EU institutions with a specific focus on the Commission, and discusses the consequences of administrative styles for EU policy making.

The concept of administrative styles

In the 'classical' analysis of national administrations, administrative styles have typically been conceived of as distinctive dimensions of the broader concept of administrative culture. Generally speaking, administrative culture is studied at three different levels: firstly, the micro-level, including the values, roles, and behaviors of individual members of the administration as well as the attitudes of the general public toward administrations; secondly, the macro-level of administrative traditions; and thirdly, the meso-level of administrative styles, understood as the standard operating procedures of administrative behavior and decision making (Jann, 2002).

In the literature, one can find a range of similar concepts, such as policy styles (Richardson et al., 1982) and regulatory styles (Vogel, 1986) that are closely related to administrative styles and are sometimes used synonymously. Despite certain differences in their empirical focus and operationalization, these concepts basically refer to the same phenomenon, namely 'a more or less consistent and long-term set of institutionalized patterns of politico-administrative relationships, norms and procedures; that is, the standard operating procedures of policy-makers and administrative actors' (Howlett, 2003, 474). Under conditions of uncertainty and complexity, administrators and policy makers develop routines to cope with deficiencies in knowledge, information-processing capacities, and time (March and Olsen 1989; Simon, 1997). The framing of issues, possible strategies, and material solutions that have yielded satisfying results in the past are repeated and habitualized by members of the organization, becoming part of their specific organizational identity; this manifests itself in formal or informal institutions in the long term (Wilson, 1989). This process of institutionalization is driven by the passing down of information from old to new members in the organization. Given the relatively high degrees of volatility, uncertainty, and ambiguity that European institutions face, we can assume that such routines are even more vital for guaranteeing the cohesion and identity of the organization. Such processes of organizational learning can be important for the efficient functioning of an organization, but they can also be obstacles to adequate reactions to new challenges (March and Olsen, 1989).

To further develop the concept of administrative styles and apply it to EU institutions, we differentiate analytically between *three dimensions* that characterize administrative styles. These dimensions represent different patterns of administrative involvement in the *initiation, formulation, and implementation* of policies.

Policy initiation styles – Anticipative versus reactive administration: This dimension refers to the role of EU institutions in the problem-defining and agenda-setting stages. To what extent are they actively involved in this process, or do they merely react to societal pressures and political decisions? Do EU institutions actually initiate policy developments 'from the inside', strategically mobilizing political or societal support to shape the political agenda, or do they merely respond to external requests, thus pursuing a 'wait and see' approach?

Administrative anticipation requires information and learning capacities regarding the effects of existing policies, the emergence of new policy problems, new scientific evidence, technological progress, or the development of new policy solutions. Anticipative institutions would thus be characterized by a high degree of openness and the inclusion of scientific expertise, societal interest groups, and national and international administrations. At the same time, these institutions build up their own research capacities and structure their internal administrative processes in such a way that new information will be

systematically collected and communicated within the system. The anticipative involvement of EU institutions in policy initiation additionally requires that the administrative actors essentially understand their role as entailing policy making rather than merely executing political decisions.

Policy formulation styles – Incremental versus synoptic administration: It is commonly acknowledged that one of the most important sources of administrative influence is the drafting of policy proposals by the bureaucracy (for example, Page, 1985). Although such drafts might undergo certain changes in the political decision-making process, they pre-structure the basic content and the instrumental design of a policy. However, administrations can rely on different routine procedures in the development of their proposals. More specifically, they can either follow a pattern of incremental adjustment or pursue more synoptic strategies of rational search. In the first case, administrations will strongly adhere to the logic of satisficing. Rather than searching for the most effective policy solution, existing policies will be perpetuated and incrementally adjusted in response to new developments. In the latter case, by contrast, more sophisticated techniques of systematically assessing underlying problems and evaluating different solutions will be applied. Accordingly, policy instruments will be based on a deductive logic with rather general and abstract regulations, rather than an inductive logic (entailing case-by-case specifications based on the idiosyncrasies of the case in question; Howlett, 1991; Knill, 2001).

In comparison to incremental adjustment patterns, rational search routines pose greater challenges with regard to the internal coordination mechanisms of institutions. Instead of the standard model of negative coordination (with different units only reporting when proposals interfere with other policy objectives), positive coordination requires that the various administrative units engage in joint problem-solving activities. In addition, rational search patterns require that institutions place strong emphasis on scientific evidence, in terms of both generating internal expertise (for example, through the application of sophisticated cost/benefit analyses and the recruitment of professional experts) and the organization's reliance on outside expertise (via consultation of experts, stakeholders, or national administrations). This typically entails more open patterns of administrative interest intermediation, with the various actors enjoying equal access to the international institutions.

Implementation styles – Intervening versus mediating administration: Although it is generally acknowledged that the enforcement powers of EU institutions are relatively weak (compared to their national counterparts), they can pursue rather different approaches to ensuring effective compliance with international policies. On the one hand, EU institutions can rely on interventionist approaches. In this case, they will attempt to implement and sanction international policies as much as possible by relying on their own resources. Although their sanctioning powers might be limited, they can nevertheless attempt to

increase their steering capacity by collecting systematic information on policy effects or by setting up close relationships with involved stakeholders, interest groups, national administrations, or external experts. They can also strive to mobilize societal pressure 'from below' by disseminating information on national implementation performance. The mediating approach, on the other hand, implies that EU institutions will refrain from developing procedures to observe and improve compliance that go beyond their legally specified duties. In the mediating mode, EU institutions strongly rely on the delegation of implementation tasks to private actors or national administrations. Non-hierarchical patterns of self-regulation or voluntary arrangements rather than 'command and control' approaches play a predominant role. Rather than being an instrument of intervention, such EU institutions view themselves as a means of mediating between societal and political interests.

Depending on the implementation style, we might observe different patterns of administrative interest intermediation. In the interventionist mode, the relationship between public and private actors will be dominated by a general orientation of formal legalism emphasizing a rigid and uniform rule application, while mediating approaches will reflect a more informal and pragmatic orientation, leaving room for bargaining in light of individual circumstances. Intervening styles will be characterized by more adversarial interaction patterns, while consensual relations will be predominantly mediating in nature (van Waarden, 1995; Knill, 2001).

Administrative styles in EU institutions: The state of knowledge

The literature on administrative styles treats the phenomenon as deeply rooted in state traditions that are relatively resistant to change (van Waarden, 1995, 333). For European institutions, this raises the crucial question of how administrative styles develop in these comparatively young institutions without long-standing administrative traditions as well as whether and how national administrative styles permeate and influence their shape. As is well known, European institutions lack a common administrative law and have highly limited fiscal powers at their disposal. Moreover, they have to rely on the member states for the implementation of most of their policies. Their administrative staff have been socialized in highly different administrative systems and are thus used to different national administrative styles (Hooghe, 2001). In addition, EU policies are typically regulatory in nature.

Against this background, the question arises of how these features influence the administrative style of EU institutions, and whether a coherent EU administrative style exists at all. In the following we apply our analytical framework to EU institutions with a special focus on the EU Commission as the key executive institution of the EU. The Commission can be considered as a critical case

for our purpose: as the largest and most influential EU body it might be the first promoter of a common EU administrative style; if the Commission is not able to establish a common style, the other more fragmented bodies such as the administration of the EU Parliament, the Council administration, or the EU agencies are unlikely to do so. Our analysis builds on available research on the sub-dimensions of administrative styles developed in the last chapter. In order to do so, we operationalized major elements of administrative styles according to Table 6.1.

Table 6.1 Operationalization of policy styles

Administrative style elements	Indicators
Policy initiation: anticipatory in ‘low’ politics, reactive in ‘high’ politics	<ul style="list-style-type: none"> • Openness to and integration of external expertise as ‘seismographs’ (consultants, policy experts, national administrations, interest groups) • Generation and processing of internal expertise (recruitment of experts, scientific departments, sophistication of data collection and analysis, professional orientation of staff)
Policy formulation: incremental vs. synoptic	<ul style="list-style-type: none"> • Integration of external expertise in policy formulation (consultants, policy experts, national administrations, interest groups) • Generation and processing of internal expertise (recruitment of experts, scientific departments, sophistication of data collection and analysis, professional orientation of staff) • Internal coordination (positive vs. negative integration) • Application of ‘synoptic’ instruments (impact assessments, evaluation clauses, etc.)
Policy implementation: Blending of intervening and mediating	<ul style="list-style-type: none"> • Use of external monitoring expertise (consultants, policy experts, national administrations, interest groups) • Combination of centralized intervening elements and generation and processing of internal monitoring expertise (recruitment of experts, scientific departments, sophistication of data collection and analysis, professional orientation of staff) • Specificity of regulation and implementation rules • Application of rigid implementation instruments (program budgets, performance management, evaluations)

Policy initiation styles: Anticipative versus reactive administration

The initiation of policies in the EU is triggered primarily by the Commission: it has the formal right of initiative. Of course, problem-definition and agenda-setting processes in the EU are far more complicated than this simple attribution proposes, as many initiatives are launched by other actors and finally adopted by the Commission. The European Parliament and the Council have been particularly identified as important agenda setters (Tallberg, 2002a) as well as single member states and interest groups. For our purpose of identifying the specific administrative styles of initiating policies, the Commission nevertheless has to be focused upon as it is the pivot of the initiation process. The delegation of competences to the Commission builds on the expectation of the member states that the Commission acts on neutral expertise and on sound evidence rather than on specific political interests or preferences (Tallberg, 2002a). Furthermore, the EU focus on regulatory policies implies a policy process which is less characterized by political conflict than by complexity and uncertainty (Radaelli, 1999, 759). This should favor anticipatory, evidence-based approaches to policy initiation.

However, the extent to which the Commission is actually able to adopt anticipatory approaches strongly depends on its relevant capacities. In this regard, particular emphasis has to be placed on the extent to which the Commission can rely on sufficient internal and external expertise. In the stage of initiation, which is problem definition and agenda setting in the policy cycle, information generated by external and internal sources serves as a seismograph for new developments, that is problem structures and possible solutions. Of course, the use of such knowledge can be both substantial (that is, reducing uncertainty) and strategic (that is, used for legitimizing pre-existing positions or promoting the self-interest of the Commission by expanding the portfolio) (Schrefler, 2010, 315).

Due to budgetary limitations, the Commission is generally unable to generate sufficient internal information and expertise in often highly complex issue areas. As a consequence, it seeks to compensate for these deficits by establishing close contacts with external policy experts, national administrations, and interest groups.

The most common source of external knowledge is *expert committees*. Gornitzka and Sverdrup identified 1,237 Commission expert groups (Gornitzka and Sverdrup, 2008, 734), a mode of consultation which has become 'more widespread and institutionalized' (Gornitzka and Sverdrup, 2008, 745). Other sources of expert knowledge are related to other EU institutions: for example, the Council Working Groups, the working house of the Council, and the Comitology. These committees are most likely to influence policy making in issues which are characterized by uncertainty and low political

loading (Radaelli, 1999). Both sides – the European Commission and external experts – benefit from an anticipative style of initiation. On the one hand, the Commission is able to use specific information from the experts; on the other hand, experts get the opportunity to assert their ideas and interests.

A second important external source of information are *interest groups*: the Commission has been acknowledged for its ‘procedural ambition’ (Mazey and Richardson, 1995, 338) to mobilize organized interests. This is particularly the case in the initiation process, for which a very early consultation of interest groups by the Commission for the acquisition of information is reported (Hix, 2005, 206). The research on administrative interest mediation in EU institutions has revealed a high variance of patterns of interest mediation depending on the organizational capacities of interest groups and also on the different ‘cultures’ of the Commission DGs (Eising and Kohler-Koch, 2005). It has also been shown that the Commission to some extent seeks to balance power asymmetries that emerge from differences in the organizational strength of the interest groups. The Commission provides financial and organizational support, particularly for so-called public interest groups in areas such as environmental issues or consumer protection.

Thirdly, *national experts*, seconded to the EU administrations by the member states, constitute an important source of information (Geuijen et al., 2008; Knill and Liefferink, 2007; Princen, 2011). These officials are responsive to member-state interests, which increases the possibilities of national interests being promoted. Their relevance in the initiation stage is more unclear than in the stage of decision making (see below). They lack the independence from national influence present in the Commission’s own bureaucrats as they are per se responsive to member-state interests. They function as a substitute for the Commission’s own resources in its information-processing capacities.

In general, the combination of internal and external sources of expertise provides the Commission with sufficient resources to pursue a fairly anticipatory style of policy initiation. At the same time, its strong openness to external advice and information strengthens rather than weakens the Commission’s role as an anticipatory agenda setter. At the end of the day, it is the Commission which decides how to frame a policy problem and when to place it on the agenda. This is due to the fact that from the multitude of arguments that are presented it can select those which are consistent with its preferences.

Policy formulation styles: Incremental versus synoptic administration

The phase of policy formulation is usually divided into two stages, namely the drafting of policy proposals and decision making (Page, 1985). While the latter usually falls within the realm of legislators, the influence of the bureaucracy is particularly relevant with regard to the preparation of policy proposals. This

does not mean, however, that administrative influence is absent during the decision-making process. Instead, it has been shown that the Commission can exert considerable influence in this stage by strategically taking into account the policy positions of the member states and the committees in the European Parliament. Thus, rather than merely being a broker of interests and a pool of policy ideas (Mazey and Richardson, 1995), the Commission can be viewed as a self-interested seeker for capacity and power. So the way it drafts proposals and involves third actors might considerably shorten the decision-making stage.

However, the general interest of the Commission in influencing and shaping political decision making has strong implications for its underlying administrative style of policy formulation. In this regard, various factors favor a rather incrementalist approach. Firstly, this can be traced to the fact that the Commission anticipates the usually highly heterogeneous positions of the various actors that are involved in the decision-making process. The latter include not only the member states but also the European Parliament and interest groups who seek to influence the decision-making process via various routes. This anticipation reduces the range of feasible policy options during the drafting stage, and in particular feasible options that would entail the design of 'big solutions' on the basis of a synoptic process. Instead, we find rather incremental approaches to policy formulation (Lindblom, 1959).

Secondly, in contrast to the highly open process of data and information collection that provides the Commission with considerable resources to pursue anticipatory strategies of agenda setting and problem definition, the stage of policy formulation is characterized by more closed patterns of interaction in which few actors need to accommodate their interests in long-winded bargaining processes. As a consequence, the Commission has fewer opportunities to independently influence policy making by opening up consultation procedures and making use of external information than is the case during policy initiation. Instead, the specific division of power in the EU system consequently inclines toward a consensus between the main actors (Knill and Tosun, 2010, 77). This makes incremental solutions far more feasible. Additionally, the unanimity principle in the College of Commissioners makes incremental proposals that are not harmful to the portfolios of the other subdivisions more likely.

Thirdly, a need for incrementalist styles emerges from the fact that the involved actors play different roles during policy initiation and policy formulation. National experts and national administrative representatives no longer emerge as sources of policy ideas and information, but as defenders of national-interest positions during decision making. The same holds for interest organizations. Close relations with some Commission officials foster the development of technocratic networks in the stage of policy formulation (Radaelli, 1999). However, experts often concur with *interest groups* rather than

influence (Richardson, 2006). In this stage the general openness is reduced to smaller circles of involvement. Interest groups provide specific knowledge, especially when technical issues are touched upon, which runs the risk of ‘regulatory capture’ due to information asymmetries. Nevertheless, their influence at this stage of policy making varies considerably among different issue areas and DGs – while corporatist patterns of interest mediation dominate in agriculture, economic issues are characterized by more pluralist patterns (Hix, 2005, 230–231).

Fourthly, the application of synoptic planning styles is restricted by the intra-organization features that characterize the EU Commission. The Commission is often portrayed as a ‘multi-organization’ (Cram, 1994) with diverging cultures and identities among DGs (Cini, 1996). The lament over the thus-induced fragmentation of the EU policy process and a need for better *coordination* has accompanied the development of the Commission since its early days. As an organization based on the principle of functional specialization, the mutual neglect of DGs and conflicts about certain issues (for example, between the DGs environment and internal market) is a regular source of complication. Research has shown a primacy of vertical coordination (Wonka, 2008); horizontal coordination by consulting affected DGs (Christiansen, 2006, 108–110) happens mostly in the mode of negative coordination. Recent studies also reveal a culture of ‘silo thinking’ (Ellinas and Suleiman, 2012) or a dominant ‘departmental dynamic’ (Trondal et al., 2010) in the services (see also Kassim et al., 2013, 181–210); and this development is strengthened by the sectoral patterns of expert consultation (Gornitzka and Sverdrup, 2008, 741–744) and interest mediation (Eising and Kohler-Koch, 2005), where separated policy communities develop. Moreover, ‘synoptic’ planning techniques such as ex-ante evaluations or sunset legislation are not common in the Commission; and evidence-based impact assessments (Lee and Kirkpatrick, 2006) remain the exception.

These centrifugal tendencies are only partially counterweighted by three main coordination mechanisms: the hierarchical power of the Secretariat-General, regular meetings of the Directorates-General and the chefs de cabinet, and the principle of collegiality, that is, the collective decision making among the Commissioners. The cabinets monitor policy-making processes in the other DGs and provide information to their Directorates-General (Christiansen, 2006). Outside of these vertical instruments only informal mechanisms exist, so that coordination in the Commission remains mostly efforts of negative coordination, supporting the incremental way of policy formulation inside the Commission.

In general, the above considerations suggest that with regard to policy formulation the Commission’s style will predominantly follow an incrementalist rather than a synoptic planning approach. In summary, in the policy formulation stage – in contrast to the anticipative initiation stage – we find a dominance of an incrementalist and fragmented administrative style. The

ambition of the Commission to set the stage meets political resistance by the member states. Instruments such as the consulted experts and interest groups change their role: while primarily they are sources of information at the initiation stage, they are used strategically to build up coalitions for Commission proposals. A further source of incrementalism is the fragmented character of the Commission – a deficit shared with many other organizations with a division of labor. Fragmentation at the same time favors a variation of formulation styles across policy sectors and DGs (Cini, 1996; Cram, 1994; Radaelli, 1999).

Implementation styles: Intervening versus mediating administration

The general finding of implementation research – that shifts in policy objectives and deviations from the original political intentions are frequently observed during the implementation stage – can be expected to be of particular relevance when it comes to the implementation of EU policies. This arises primarily from the fact that in executing EU measures a vast number of actors at different institutional levels are involved. Additionally, the Commission, monitoring the transposition of EU law in the member states as the ‘guardian of the treaties’, possesses comparatively few resources to hierarchically ensure the cooperation of the public and private actors participating in the implementation process.

From an administrative styles’ perspective, the central question relates to the regular instruments and interaction modes the EU administration and the European Commission use – or at least try to use – beforehand to secure proper implementation. Tallberg’s (2002b) distinction between enforcement and management approaches is quite close to our dichotomy of intervening and mediating implementation styles. The implementation system of EU institutions encompasses elements of an intervention approach, such as monitoring and sanctions, as well as mediating elements such as capacity building and rule interpretation (Tallberg, 2002b, 614). The more intervening elements that resemble a ‘police patrol’ approach are used by the European Commission and the European Court of Justice, for example in infringement cases. This system is based on a centralized monitoring by the Commission itself. However, EU institutions use a second, decentralized mode of monitoring (‘fire alarms’), where individuals and companies monitor EU law, using national courts to sue national governments in the case of non-compliance (Tallberg, 2002b, 620). According to this research, EU institutions work with a combination of both approaches – a ‘management-enforcement ladder’ (Tallberg, 2002b, 632) which is highly effective due to the complementarity of both approaches.

This basic constellation implies that the implementation of EU policies generally follows a pattern of negotiation and mediation rather than hierarchical intervention. If the Commission believes that there is an infringement of EU law in a member state, it first makes informal contact with the competent national authorities in order to discuss the details and possible problems

concerning the execution of the affected measure. Depending on the results of these informal discussions, the Commission can instruct the second step of the procedure, which consists of a reminder letter from the Commission to the member state. In this way, the member state is given the opportunity to clarify potential obscurities and problems within the implementation process and to eliminate them if necessary. If a consensual solution is not found at this level, in a third step the Commission gives a reasoned opinion explaining the extent to which the affected member state has infringed EU law. After this, the member state will be given a time limit within which the detected implementation deficits have to be redressed. EU policy making has shifted its focus from a rigid 'old style' regulation to softer forms of regulation (Knill and Lenschow, 2000; Richardson, 2006), for example, in the open method of coordination.

Lacking its own monitoring resources in most policy areas, the Commission relies on information by interest groups and other actors complaining about implementation problems in member states. This approach of indirect monitoring is the result of the absence of the Commission's own monitoring units and its lack of information regarding implementation and its effects of most of the EU policies.

In summary, implementation styles in the EU can thus generally be characterized as mediating rather than intervening. This principle statement, however, does not imply that implementation styles are uniform across different DGs and EU policy areas. Instead, EU implementation styles vary in the extent to which they depart from the overall pattern of mediation. As a general rule, it can be argued that the degree of intervention increases with the policy powers and competencies of EU institutions that may vary from sector to sector. In the field of competition policy, for instance, where executive powers lie with the Commission rather than national administrations, mediation is less prevalent than in areas in which EU competencies remain weak. The latter can be observed, for instance, in areas of social policy (for example, unemployment policy) or higher education. Due to its lack of powers, the Commission relies on 'soft' forms of governance, as has become apparent in the open method of coordination (OMC), which strongly relies on the stimulation of horizontal policy learning during the implementation stage (see Knill and Lenschow, 2005).

Turning weakness to strength? Conclusions and outlook on European administrative styles

Administrative styles can be a useful concept for the analysis of administrative configurations across space and time. By focusing on the European administration, and especially the European Commission, we have tried to identify the

specifics of administrative styles in the stages of policy initiation, policy formulation, and policy implementation. We found a rather anticipatory initiation style, a rather incrementalist way of policy formulation, and an increasingly mediating mode of implementation.

In all stages we found two important drivers for the development of these specific styles: the first refers to the basic weaknesses of European administrations regarding the capacities of their bureaucracy. They are unable to fulfill external expectations and their own aspirations through the use of their own resources. The second driver is the ambition of the Commission to maintain its role as the shaper of European agendas and to serve the self-interest of its services – against all odds. Both the resource dependency and the political interests of member states are important obstacles. The administrative styles developed can to some extent be understood as strategies to cope with these structural limitations. Through the activation of external expertise at the initiation stage, of the incrementalist maneuvering and external coalition-building at the formulation stage, and of a mediating implementation style against member states, the Commission turns its rather weak position into strength.

Secondly, the Commission is far from making the best of its position. There are important barriers to it becoming the strong organization of its own self-image, the most important of which might be the fragmentation of policy making and administration. This is not only an obstacle to synoptic or rational policy making, but also to the development of a unified administrative style. On all these fronts, research has discovered a certain variance of approaches depending on the policy sector and responsible DG: the EU has not yet developed a ‘unified bureaucratic culture or operational style’ (Mazey and Richardson, 1995, 357; see also Cini, 1996; Cram, 1994). A further obstacle in this context is the cyclic involvement of the member states. They particularly interfere in areas perceived as ‘high politics’; while in areas of ‘low politics’ distinctive administrative styles are able to develop, this is deemed impossible in areas of high politics (see also Mazey and Richardson, 1995; Peters, 1994).

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7

Administrative Reforms in the European Commission and the Neo-Weberian Model

Edoardo Ongaro

Introduction

This chapter provides an interpretation of the trajectory of reform of the European Commission according to the ‘neo-Weberian model’ (Pollitt and Bouckaert, 2004, 2011; Pollitt et al., 2008), by contrasting it with both the ‘Weberian model’ and the New Public Management (NPM) doctrines about the organization of the public sector.

Although considered to have a multiple, composite organizational nature (Ban, 2013; Kassim et al., 2013; Page, 1997; Wille, 2013), the Commission has to an important extent been shaped by the French and the German continental European bureaucracies,¹ which are usually deemed to be the ‘purest’ embodiments of Weberian bureaucracy, and whose trajectories of reform have been interpreted as heading toward neo-Weberianism (Pollitt and Bouckaert, 2004, 2011). The neo-Weberian model is a model of organization of the public sector – originally proposed, and as adopted in this chapter, by Pollitt and Bouckaert (2004, chap. 4) – in which the managerial components have a recognized role next to the permanence of key Weberian traits: managerial and Weberian traits combine in a consistent way.

The Weberian legal-rational bureaucratic model may be assumed to be a proper depiction of the administration of the Commission *before* the waves of managerial reform that started in the second half of the 1990s. With the Commission having undergone at first ‘failed’ attempts at reform (during the 1990s) and then ‘successful’ attempts at managerial reform (the ‘Kinnock reform’ as ‘mission accomplished’ in the terms employed by Kassim, 2008), research has been conducted on ‘how much Weberian’ and ‘how much managerial’ is the Commission after such waves of reform (Ellinas and Suleiman, 2008; Knill and Balint, 2008).

Such works have been mainly based on the investigation of personnel management, and our interpretation is that the basic assumption in these works is

that either the Weberian-bureaucratic model prevails or the managerial model prevails. However, we propose that a *tertium* is given, and that a more apposite way of interpreting the administration of the Commission is to investigate its transformed administration by considering three options rather than two. These are: whether it has remained fundamentally 'Weberian' (although below the surface of a range of managerial tools formally in place), or whether it is 'managerial' (mainly in the sense of a post-bureaucratic NPM type of organization, see Pollitt, 2009), or whether it is 'neo-Weberian'. Thus, in our view, the dichotomy 'bureaucratic model versus managerial model' ought to be replaced by a more comprehensive interpretation that considers three poles instead of two, the neo-Weberian model being the *tertium*.

The argument put forward in this chapter is in many respects in line with Olsen's (2006), who contests the idea of the obsolescence of bureaucratic organization and the occurrence of a paradigm shift from Weberian bureaucracy toward market organization or network organization, and proposes considering bureaucratic organization as part of a repertoire of overlapping, supplementary, and competing administrative forms coexisting in contemporary democracies. One main difference between this contribution and Olsen's is that this more specifically resorts to a 'tertium', a third model (neo-Weberianism) to describe what has occurred to Weberian bureaucracies since undergoing waves of NPM reform as well as post-NPM reforms (Christensen and Lægreid, 2001, 2007).

The chapter proceeds as follows: firstly, an overview of the doctrinal debate on the central question 'how *should* the public sector be organized?' is succinctly recalled in light of the 'responses' provided by each of the three models. The 'neo-Weberian model' is then applied to interpret the administration of the Commission following a decade of managerial reforms, contrasting it with the 'Weberian model' and the 'managerial model' as alternative interpretive lenses of the Commission administration. The conclusion we draw is that the neo-Weberian model may be added to the repertoire of models for the study of the administration of the Commission.

On a methodological note, for the description of the administrative reform trajectory of the Commission between 1995 and 2012, we rely on the findings of Bauer (2008a, 2008b, 2009, 2010), Bauer and Ege (2012), Cini (2007), Egeberg (2010), Georgakakis (2010a, 2010b), Hooghe (2012), Kassim (2004, 2008), Knill and Balint (2008), Peterson (2008b), Pollitt and Bouckaert (2011), Schön-Quinlivan (2008), Trondal (2012) and Wille (2012); also Barzelay (2009) and Levy (2006) provided specific information. Major recent works on the administration of the Commission include Ban (2013), Kassim et al. (2013), Wille (2013), the 2008 special issue of the *Journal of European Public Policy* (Bauer, 2008a), and the 2012 symposium of the *International Review of Administrative Sciences* (Ongaro, 2012). A recent synthetic overview of the

administrative reform trajectory of the Commission – on which we systematically rely for the purposes of the analysis reported in this chapter – is in Ongaro (2013).

The doctrinal debate in public administration and the neo-Weberian model

This section provides a necessarily very short overview of the doctrinal debate about the crucial, and highly contested, topic of how the public sector *should* be organized. We will schematically review the following themes:²

- the Weberian model of public administration;
- the NPM;
- the neo-Weberian model.

Starting with the Weberian model, such a model has been effectively summarized by Olsen as follows:

First, at the center there is a distinct organizational setting, the bureau or office: formalized, hierarchical, specialized, with a clear functional division of labor and demarcation of jurisdiction, and standardized, rule-based and impersonal. Second, bureaucracy refers to a professional, full-time administrative staff with life-long employment, organized careers, salaries and pensions, appointed to office and rewarded on the basis of formal education, merit and tenure. Third, bureaucracy implies a larger organizational and normative structure where government is founded on authority [...].

(Olsen 2006, 138)

However controversial it may be to assess the extent to which the Weberian model provides a concrete picture of public administration in Western Europe during the 20th century, or an ideal type (to use another Weberian category), or a framework to gauge the degree of ‘bureaucratization’ in all organizations, public or private (a focus of interest in the post-Weberian studies of the 1940s, 1950s, and 1960s), the Weberian model represents a powerful conceptual tool to analyze public bureaucracies.

The NPM has often been depicted as representing a ‘reaction’ to the alleged ‘*ancien régime*’ of public administration embodied by the Weberian model. One way of conceiving of the NPM is as a set of doctrines about the organization of the public sector (Barzelay, 2001). But what doctrines? There are different streams within what may be labelled the (huge) NPM literature; for the purposes of this chapter, we will outline some recurring doctrinal elements (see in

particular Boston et al., 1996; Dunleavy and Hood, 1994; Pollitt and Bouckaert, 2004, 2011), which include the following:³

- At the level of the overall configuration of the public sector, a preference for single-purpose rather than multi-purpose organizations; a preference for small organizations; a preference for private providers over public organizations, especially for commercial functions; a preference for non-ministerial organizations over ministerial ones; an emphasis on separating operations from regulation and policy; an emphasis on separating funding from purchasing, and purchasing from providing; and an emphasis on performance audit rather than compliance audit.
- At the level of the individual public sector organization, a preference for flat (rather than long) hierarchies, for straight-line accountability, and for decentralizing 'managerial responsibility' wherever possible; an emphasis on performance measurement and management, which includes an output-based allocation of resources (output-based appropriation systems); an emphasis on responsibility being on goal achievement rather than on procedure following ('management by objectives', a stream of thought in management derived from Drucker's thinking); a reorientation of labor relations toward systems based on 'contracts' rather than on law, and on individual contracts rather than on collective contracts; and a preference for fixed-term 'appointments', especially at the top, and an emphasis on linking performance and remuneration.

How can Weberian and managerial features be reconciled? One approach in interpreting the contemporaneous presence of Weberian and managerial/NPM traits is to examine the layering of administrative forms in the public sector of contemporary democracies (Christensen and Lægreid, 2001, 2007; Lægreid and Verhoest, 2010; Olsen, 2006), that is, to treat them as successive, co-existing yet juxtaposed stratifications. Another approach is to consider managerial and Weberian traits to be composed in an internally consistent model: in our interpretation this is the approach posited by the neo-Weberian model. Such a model was originally elaborated by Pollitt and Bouckaert (2004; see also Pollitt et al., 2008; Ongaro, 2009, chap. 7) for interpreting the trajectory of reform of public administration in continental European countries.

In this model (see Pollitt and Bouckaert, 2004, 99–100), the Weberian elements⁴ constitute the backbone of how public administration works (and ought to work). Such elements include a reaffirmation of the role of the state, with representative democracy as the legitimating element within the state apparatus, and of administrative law, suitably modernized, as the main

instrument for preserving principles pertaining to the state–citizen relationship. In more detail, the neo-Weberian model posits:

- (a) the role of the state as the main facilitator of solutions to the new problems faced by technological, environmental, and social (aging population, migration) challenges;
- (b) the role of representative democracy as the legitimating element within the state apparatus that may be complemented, but not supplanted, by a range of consultation devices;
- (c) the role of administrative law as the main instrument for preserving principles pertaining to the state–citizen relationship (including equality before the law, legal security, and the availability of specialized legal scrutiny of state actions);
- (d) the idea of a distinctive status, culture, and terms and conditions of the public service.

Weberian elements are then complemented, but not supplanted, by managerial elements. These include:

- (a) the shift from an internal orientation toward bureaucratic rules to an external orientation toward meeting citizens' needs;
- (b) the orientation toward the achievement of results rather than procedure following;
- (c) the emphasis on civil servants as professional managers, in which knowledge of the law in the relevant area is only one of a broader range of skills required of a public official;
- (d) the supplementation (not replacement) of the role of representative democracy by a range of devices for consultation with the direct representation of citizens' views.

Central to the neo-Weberian model is the idea that the bureaucratic model is still at the core of how the public sector should be organized: it provides its inner accountability logic and the foundation of its legitimacy, while managerial instruments integrate but do not replace these basic features.

In order to better appreciate what the neo-Weberian model is about,⁵ it should be noted that NPM, at least in some interpretations, is not synonymous with the adoption of management systems. It is something more radical: a set of doctrines about how to organize the public sector (Lynn, 2008); it is a theory of governing that challenges previous theories of governing (like Weberianism) and does not simply add 'a layer of tools' above another theory of governing: it is about a radical restructuring of the organization of the public sector involving

different bases of accountability than the Weberian model (Ferlie et al., 1996). In this respect it is the opposite of neo-Weberianism, a model that considers the ‘traditional’ lines of accountability to be at the core of the functioning of the public sector and that assumes that such lines of accountability may be integrated, but not supplanted.

The term ‘neo-Weberian’ has a long tradition in political science and sociology (Lynn, 2008). Where associated with the term ‘state’, neo-Weberian theories usually intend the state as a given, whereby in a historical perspective, ‘[I]ndividual states are understood as remaining on their distinctive paths of institutional evolution – what we may call constitutional evolution or the evolution of “the legal state” – while at the same time exhibiting isomorphism in important administrative system characteristics [...] administrative transformations can occur without fundamentally altering the state-society boundary’ (Lynn, 2008, 5). However, it has been argued that global capitalism (especially global financial capitalism in its ‘pre-2008 crisis’ aggressive forms, centered on the primacy of performance-oriented, tax-minimizing social allocation over society-centered social allocation) combined with border-erasing technologies seem (or seemed) to redesign the state–society borders. Thus, the neo-Weberian state (NWS) may be interpreted (also) as a political response – a state-centered response – by the elites of continental European countries to the pressures of global capitalism to recast the state–society border (Pollitt, 2008); and possibly, more globally, a reaction to the excessive power of ‘impersonal forces’ (such as those at work in global financial capitalism) in which resurgent democracy is the dominant note (Lynn, 2008).

Along another profile of analysis, it may be observed that the NWS is a ‘territorially localized’ paradigm, that is, it concerns a defined set of countries (continental European), at least in the sense that it presupposes a number of features to be in place (such as a separate branch of law, the administrative law; a distinctive public service; and more generally the centrality of the state intended as a given is presupposed). However, the NPM is a territorially delocalized paradigm, that is, it may be intended as a global recipe.

Finally, it is observed that this model is elaborated at a very high level of abstraction, and issues of construct specifications and operationalization are ubiquitous. Such issues are examined with reference to the application of this model to the extant case of the Commission administration.

In conclusion to this section, we should mention that the doctrinal debate on the organization of the public sector ‘beyond the NPM’ is much wider than the account provided here centered on the neo-Weberian model as an alternative perspective, and it encompasses, *inter alia*, theoretical perspectives such as democratic governance (March and Olsen, 1995), the New Public Governance⁶ (Kickert, 1997; Osborne, 2006), and post-NPM perspectives (Christensen and Lægread, 2007).

The neo-Weberian model was originally applied to country-level reforms, to explain the trajectories of reform of the administration of continental European states (Ongaro, 2009; Pollitt and Bouckaert, 2004, 2011). It is here revisited for application to the Commission, by contrasting it with the NPM ‘post-bureaucratic organization’⁷ and with the Weberian organization.

Contrasting the doctrinal perspectives: Interpreting the Commission reform trajectory through the Weberian model, the NPM, and the neo-Weberian model

What does the current state of affairs of the administration of the Commission look like when compared to the Weberian model, to the post-bureaucratic organization, or to the neo-Weberian model? To what extent do these lenses allow us to interpret administrative change and continuity in the Commission in the period 1995–2010? Starting with the NPM, reforms at the Commission may in a number of respects be accommodated into ‘conventional’ accounts of NPM-inspired reforms that have transformed the Commission into a ‘managerialized’ administration. We may observe:

- *Management by Objectives* (MbO) as the overarching logic of guidance of the administration of the Commission, at all levels, and the structured and highly formalized planning cycle as its main instrument (five-year planning, Annual Policy Strategy, Commission Legislative and Work Plan, Annual Activity Report);
- *performance management* as a characterizing trait of the way the Commission is (or should be) directed, and the systematic *measurement* of performance as the unavoidable complement, embodied, inter alia, in the indicators employed in the planning cycle;
- *decentralization of managerial responsibility* as the preferred option – this has manifested itself particularly in the decentralization of responsibilities on financial and human resources from ‘staff’ to ‘line’ DGs, and within them toward the Head of Unit;
- a general emphasis on *managerial skills* as opposed to ‘technical’ skills, a doctrine embodied, inter alia, in the new recruitment procedures that put the emphasis on ‘behavioral’ skills – an emphasis pertaining (or commonly assumed to be pertaining) to managerial doctrines rather than to the skills required of tenured officials in ‘traditional’ bureaucracies.

In short, the administration of the Commission seems to have moved quite neatly toward the adoption of NPM ‘prescriptions’, although reforms display a composite mix of provisions that do not reflect ‘hard NPM’ extreme doctrinal positions. The question, however, is whether or not such provisions have ultimately led to a post-bureaucratic organization of the NPM form (Pollitt,

2009, 200f). All in all, it may be noted that only a relatively limited portion of the large body of 'NPM doctrines' have found their way into the managerial reforms of the Commission, while others have not. The broader organizational design of the Commission has not been altered, nor has the hierarchy been flattened, nor have operations been separated from policy⁸ (to the extent this makes sense at all for the Commission), nor have 'commercial functions' been given to private providers,⁹ and regulation (European public law), not contract, is the main regulatory source in labor relations.

It thus seems proper to question the assumption that reforms have led to completely replacing the Weberian model as the organizational model of the Commission. Many traits of the Weberian model may be detected in it, traits that seem to have passed unchanged through the wave of managerial reforms. They include the following:

- The centrality of the bureau (the 'unit'): formalized and standardized, hierarchical, rule-based, and impersonal, with a clear functional division of labor and demarcation of jurisdiction; it is a central organizational principle in the Commission, indeed it seems to have found in the Commission an almost perfect embodiment, and this feature has passed entirely unchanged through the wave of reforms.
- A unified civil service, professional, full-time (indeed with strong restrictions on engaging in external activities), with life-long employment and organized careers, and appointed to office and rewarded on the basis of formal education, merit, and tenure (the effect of managerial reforms, in this perspective, has been to put the emphasis on merit at the expense of seniority as the primary criterion for career progression).¹⁰

Moreover, other Weberian features seem to have been restated or even reinforced by the reforms since the mid-90s: the presence of a system of strong financial controls and stringent verification rules, further empowered by a strengthened audit system as well as by the establishment of watchdogs such as the European Anti-fraud Office (OLAF); and a strong emphasis on the compulsoriness of public competition as the sole mode of recruitment (which is different from what occurred in the past, see Stevens and Stevens, 2001).

We can now turn to the neo-Weberian model and ask the pertinent question: is the neo-Weberian model an adequate interpretation of the trajectory of reform of the Commission? Given that such a model was originally conceived for describing a state-level transformation of the public sector, it needs to be revisited in order for it to be applicable to the case of a supranational public administration such as the Commission. In revisiting the elements of a neo-Weberian public administration outlined above, we may consider that, regarding the *Weberian* elements,

- (a) the role of the *state* as the main facilitator of solutions to the new problems is problematic in light of the particular polity of the EU, its multilevel administration (Egeberg, 2006), the variety of methods of policy making that can be found in it, and the significance of ‘networked governance’ to the study of EU policy making (Jordan and Schout, 2006; Peterson, 2008a). However, we would argue that the centrality of the state in the NWS paradigm has to be interpreted as being about the *centrality of public sector institutions*, individually as well as in *inter-organizational networks in multilevel governance frameworks*, as the facilitators of solution to the challenges posed to today’s societies – and not about a centralist public authority holding an exclusive monopoly over society in a given political order. In this sense, and independently of the intentions of the reformers of the Commission, the current configuration appears to reaffirm the centrality of public-sector institutions in European governance;
- (b) the role of representative democracy as the legitimating element within the state apparatus is in a number of respects problematic in the EU polity. However, trends toward empowering the European Parliament have made the nature of the relationship between the ‘executive’ and the ‘legislative’ at European level more closely resemble the political system of a parliament–government relationship in European countries, thus adding in a straightforward manner a ‘conventional’ form of representative democracy as the legitimating element. A form of ‘input legitimacy’ has been added to the previous sources of legitimacy for Commission action, which were to be found in ‘output legitimacy’ and the legitimacy that flows from compliance with appropriate procedural requirements (see the works of Majone, 1999), as well as from the range of consultation devices (in a broad sense belonging to the category of the approaches inspired by participatory democracy)¹¹ that the Commission was used to employing well *before* it was given increased input legitimacy, through the vote of confidence by the Parliament and other provisions that have contributed to the ‘parliamentarization’ of the EU. In this respect, the Commission seems to have moved contrary to trends at national level: consultative procedures have been in place for a very long time and the actual tools of representative democracy were only introduced or reinforced afterwards;
- (c) the role of administrative law has been explicitly maintained during the reforms of the 2000s;¹²
- (d) the idea of a distinctive status, culture, and terms and conditions of the public service has been explicitly maintained throughout the reforms of the 2000s.

Regarding the *managerial* or ‘neo’ elements, it may be observed that

- (a) the shift from an internal orientation toward bureaucratic rules to an external orientation toward meeting citizens' needs has been one trait characterizing the reforms (although the Commission generally does not deliver directly to citizens, but indirectly by interacting with the national and subnational administrations of member states);
- (b) the greater orientation toward the achievement of results rather than procedure following has been a general thrust of the reforms, although the picture becomes more faceted when organizational impacts are considered, since the issue of the new managerial paraphernalia determining an overload of administrative work to the detriment of the substantive performance of the core tasks (particularly those related to the policy initiation function) has been raised both in common parlance and in scientific analyses (Bauer, 2008b, 2009; Levy, 2006);
- (c) the emphasis on civil servants as professional managers has been strongly emphasized by the reforms (although the turn has not been from 'lawyers' to 'managers' – since administrative law has never been the main expertise and general background of European civil servants – but from 'professionals' to 'managers', specialist, technical knowledge was the key expertise, and officials in the Commission have traditionally conceived of themselves as 'professionals');
- (d) the supplementation of the role of representative democracy by a range of devices for consultation characterizes the current state of affairs, although the route has been the opposite one: consultation devices came before the establishment of the linkage between the elective assembly (the European Parliament) and the 'executive' (the Commission).

In summary, it appears that the neo-Weberian model has the potential to provide an apt, though partial, interpretation of both the current status and the discernible patterns of reform of the Commission. Mixed orders that combine competing, sometimes inconsistent, organizational principles and structures that coexist and balance different interests and values (Olsen, 2006) seem to be present even within a single bureaucracy, albeit a complex one and located in a very particular institutional position like the Commission (Ongaro, 2013). Weberian and managerial components coexist and reflect important aspects of the administration of this institution. To some degree, these two orders appear juxtaposed, the managerial order having layered over the Weberian one (as shown in the first part of this section). To a certain extent, however, and not an insignificant one, a model predicating consistency between the two orders (Weberian and managerial) seems to be capable of describing central traits of the administration of the Commission (as we have argued in the second part of this section). Neo-Weberianism may thus be added to the repertoire of the models and perspectives for the study of the administration of the

Commission, a result that adds confidence to the findings of those scholars engaged in interpreting the transformation of public administration in 'continental' Europe through the conceptual lenses of the neo-Weberian model (Lynn, 2008; Ongaro, 2009; Pollitt and Bouckaert, 2004, 2011; Pollitt et al., 2008).

We have one final remark regarding the issue of the drivers of the transformation of the public sector in a neo-Weberian way (Pollitt and Bouckaert 2004, 2011; Pollitt, 2008). The trajectory toward the neo-Weberian model in the Commission's case does not seem to be related to the desire to preserve the broad traits of the welfare state by political-administrative elites in continental Europe (the argument put forward by Pollitt and Bouckaert as to why certain continental European states may be pursuing such a trajectory). Indeed, the Commission is not directly concerned with welfare-related services, an area that to a very important extent remains a national competence. The trajectory of change seems to have been much more the result of (not exclusively but to an important extent) NPM-inspired reforms applied to a (distinctive but to an important extent) Weberian bureaucracy located in a particular position, that places it at the crossroads of a plurality of administrative traditions (Ongaro, 2013).

The Commission administration and the European administrative system

What are the implications for (trans-)forming European administrative system of having a neo-Weberian administration at the upper level of governance in the EU? Following the definition of *EAS II* discussed earlier in this book, it may tentatively be stated that independence (of the supranational level) is a trait that emerges as being corroborated – *ceteris paribus* – by this finding. In fact, neo-Weberianism (like Weberianism in this regard) is closer to defining a bureaucracy as autonomous rather than instrumental, and this is a major point of difference from managerialism, which is closer to an instrumental notion of the bureaucracy.¹³ Unfortunately, however, our contribution to profiling aspects of 'EAS II' as discussed in this volume has to stop here: claims as to whether such bureaucratic-organizational traits of the Commission contribute to the integration of the supranational level of governance, or about whether they facilitate or rather hinder the ability of the Commission to co-opt sub centers by stealth (two other qualifying features of *EAS II*), cannot be derived by the properties of the transformation of the Commission bureaucracy discussed throughout this chapter.

Another consideration is that the 'cultural heterogeneity' of the European administrative system (see Chapter 1 of this volume) may perhaps be better qualified by resorting to the notion of 'administrative tradition', as delineated by Painter and Peters (2010). Heterogeneity at national level may thus

be characterized in terms of the multiple administrative traditions extant in Europe (Napoleonic, Germanic, Anglo-Saxon/public interest; Scandinavian; post-Soviet) complemented through the analysis of the transformation occurring to individual national administrations (that is, whether country-level administrative reform trajectories are toward the NPM form, or toward post-NPM, or toward the neo-Weberian state). To this rather complex mosaic can be added the *tessera* of the trajectory of reform of the Commission, which is part and parcel of the European administrative system. This *tessera* is one of a sui generis administration, yet in a number of respects French-model derived and thus originally 'Napoleonic' in terms of administrative tradition 'imprint' (Ongaro, 2010, 2012), that during the first decade of the 2000s has moved along a neo-Weberian trajectory.

In conclusion, this chapter has considered the transformation of the administration of the Commission after the wave of managerial reforms: Weberian and managerial components coexist and reflect important aspects of the administration of this institution. To some degree these two orders appear juxtaposed, the managerial order having layered over the Weberian one. To a certain extent, however, and not an insignificant one, a model predicating consistency between the two orders (Weberian and managerial) seems to be capable of describing central traits of the administration of the Commission: neo-Weberianism may thus be added to the repertoire of the models and perspectives for the study of the administration of the Commission.

Notes

1. The 'turn' from the Monnet conception of the administration of the Commission toward an administration shaped on the models of the bureaucracies in France and (Western) Germany occurred under the presidency of Walter Hallstein (1958–1967) and the (longer) secretariat of Émile Noël; for a historical analysis, see, inter alia, Conrad (2000), Preda (2000) and Sassi (2000).
2. In our necessarily very concise overview, we need to omit important aspects such as the 'Progressive Public Administration' as a historical body of thought about the design of 'well performing (public) organizations', as well as crucial debates about the nature of public administration such as the Simon-Waldo debate.
3. It should be added that it is nowadays difficult to talk about the NPM without also considering the spate of criticism that has been aimed at it. NPM doctrines have been criticized, inter alia, as being administrative proverbs (Meier and O'Toole, 2009); or unfit for diverse politico-administrative contexts (for example, Kickert, 1997); or overcome by, or at least nowadays juxtaposed to, another 'layer' of different doctrines of reform more concerned with coordination and 'whole of government' issues, with citizens' engagement, and with the orientation to outcomes rather than to outputs and efficiency (Christensen and Lægreid, 2001, 2007; Lægreid and Verhoest, 2010; Osborne, 2006; Peters, 2001).
4. Pollitt and Bouckaert adopt the notion of neo-Weberian state in a specific way: they argue that in continental European countries a distinctive reform model has emerged

that is characterized by a mixture of an emphasis on 'Weberian' elements (although such elements can only partly be traced back to the works of Max Weber, as they refer more generally to the concrete embodiments of ideas and principles elaborated by Weber and other scholars – indeed some critics of Weber – that could be observed throughout continental Europe during most of the 20th century) and 'neo', or managerial, elements.

5. In this brief commentary on neo-Weberianism, we draw from and elaborate on Ongaro (2009, Chapter 7).
6. In literature on the EU, the emphasis on 'networked governance' (Jordan and Schout, 2006; Peterson, 2008a) is a common theme, and there seem to be many points of contact between this stream of investigation and the conceptualization of the Public Service Network as a post-bureaucratic organizational form. Metcalfe (1996, 2000) in particular pointed to the property of the Commission as a 'network organization' as being the distinctive feature of the Commission. This appears to be another promising path of investigation for an improved understanding of the transformation of the administration of the Commission. However, the main focus of this chapter is the internal administration of the Commission, hence the selected set of perspectives.
7. A definition of 'post-bureaucratic paradigm' is proposed and elaborated by Barzelay through the metaphor of an extended family of ideas (Barzelay, 1992, 116–117).
8. Although the establishment of Executive Agencies, of which there were six at the time of writing, is a form of policy-operations split.
9. Although a number of functions, such as program evaluation, are performed through external contractors.
10. At least at the level of the rhetoric, but this point is highly questioned empirically, both in academic works and in common parlance within the Commission, and is also echoed in publications such as GRASPE (see issues no. 12 and 13 in particular).
11. Participatory democracy emphasizes the broad participation of constituents in the direction and operation of political systems, while representative democracy (majoritarian democracy) stresses the opportunities for citizens to choose between competing political elites with alternative agendas (Dahl, 1967; Schumpeter, 1943).
12. Although the notion of 'administrative law' is problematic at EU level because of the lack of a general 'administrative procedure act' (see Hofmann and Türk, 2006), this point is not so problematic when considering the internal administration of the Commission, where a consistent 'administrative regulation' is present.
13. Weberian elements – such as: (i) the centrality of the bureau; (ii) the relative insulation from pressures coming from external environments as well as from politicians at the top who have been guaranteed by important provisions in personnel regulation; and (iii) the highly codified rules and routines characterizing task execution by each DG and unit – all tend to emphasize the party-politically neutral approach to task execution and an attachment to one's own unit agenda. To the extent that managerialism tends to replace Weberian traits, we may conjecture a reduction in the autonomy of the bureaucracy and its subordination to political goals – the pursuit of political goals being the ultimate justification for bureaucratic behavior in an instrumental conception of bureaucracy which is at the core of managerial conceptions of the public administration (see Borgonovi, 1984; Christensen and Lægheid, 2001). Conversely, to the extent that managerial traits combine with Weberian ones as in the neo-Weberian model, we may conjecture that the administration in question remains, in its fundamental character, an autonomous bureaucracy.

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Part II

EU's Executive Administration

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8

The European Commission – Politics and Administration

Michelle Cini

Introduction

The concept of the European administrative space (see chapters 1 and 5 in this volume) provides a fertile testing ground for theories and empirical cases that probe the relationship between the administrative and the political in European public policy making. However, the pursuit of this agenda involves conjuring up not only an ‘administrative’ space, but also an equivalent *political* space (also referred to in much of the literature as a political ‘sphere’). If the European administrative space refers to the EU’s multilevel administrative system (Chapter 1), the European political space implies the existence of an equivalent multilevel political system. This chapter considers how these two ‘spaces’ – the European administrative space and the European political space – meet and interact/overlap to allow organizations sited at their confluence to draw on both administrative and political resources to influence policy making and ultimately policy outputs (Chapter 1).

This agenda is especially fruitful where administrative and political functions are closely intertwined, as in cases where organizations have both administrative and political functions and/or where they are populated by actors embodying political and administrative roles. In such cases one can productively ask whether and to what extent the conjuncture of these two ‘spaces’ within the confines of one organization *improves, sustains, or undermines* the capacity of the organization to influence policy outputs (Chapter 1). The expectation is that the ability to draw on both administrative and political resources is likely to improve an organization’s capacity to influence policy making and policy outputs, although the conditions under which this occurs would need to be subject to further testing, which is beyond the scope of this chapter.

The European Commission (‘the Commission’) is a fitting place to initiate this kind of enquiry as it has had both a political and an administrative mission since its early inception, and as a consequence has had to perform both

administrative and political functions (for example, Coombes, 1970, 234–242). However, since the 1990s, and especially following an administrative reform which altered the Commission’s administrative and management roles, the organization appeared to become less political. One commentator even went so far as to claim that politics is now largely absent from the Commission (Weiler, 2012, 830). While there can be no doubt that the Commission of the 2010s is a different animal from that of the 1960s, this chapter rests on the premise that its political mission remains very much intact. However, this claim needs to be demonstrated empirically. To do this, the chapter examines the impact of the interplay of politics and administration on policy making and policy outputs by examining the Commission’s involvement in a recent case of EU decision making, that of the EU budget. While this is a far from typical case of EU decision making, it provides insights into how the Commission was able to influence policy making and policy outputs, while, at the same time, and more broadly, it draws attention to the need to avoid conceptualizing European administrative space as somehow divorced from its political equivalent.

The chapter is organized as follows: the first part introduces the politics – the administration nexus and its counter-concept, the politics–administration dichotomy as used in the literature on public policy making. The second part of the chapter focuses on politics and administration in the European Commission, providing some illustrations which help to explain why the politics–administration nexus is worth examining in the context of this European organization. As more general literature on the Commission is discussed elsewhere in this volume (see, for example, Bauer and Trondal), this part of the chapter only refers to contributions relevant to the interplay of politics and administration. The third part of the chapter examines the EU budgetary process. This is divided into three sections. The first introduces the Commission’s role in budgetary decision making; the second provides an overview of the multiannual budgetary negotiations of 2012–2013; and the third section offers an analysis of the Commission’s involvement in budgetary negotiations and considers the impact of the Commission on the budgetary agreement. A short conclusion then draws together the key strands of the argument.

As a single-case study of what is a very recent and well-reported, but as yet under-researched, issue, the chapter draws on recent documentary sources, including speeches, press releases, policy statements, and official documents produced by the European Commission, other EU institutions, and key member states. These sources are supplemented by a media review of the content of two newspapers well known for their coverage of the European Union and economic policy matters in particular (*The Financial Times* and *European Voice*) from December 2010 to March 2013. Secondary sources provide a context for the analysis and inform the case. While there are inevitable limitations to what

we can learn from single-case studies, the chapter shows that where public organizations draw on a mix of administrative and political resources, they are able to use those resources to influence policy making and policy outputs – even under extremely difficult political circumstances.

Politics and administration: From dichotomy to nexus

The relationship between politics and administration, often in terms of the relationship between legislature and executive, or politician and civil servant, is a long-standing interest of social science researchers. It is even possible to trace this interest back to the ancient world, although in modern times it is generally associated with the works of Woodrow Wilson (1887) and Max Weber (2009) among others. Although the view that politics and administration inhabit discrete and separate spheres/spaces – or that if they do not, they ought to – has been judged either as an aberration or as a misrepresentation of early public administration scholarship (Svara, 1998), the sentiment that politics and administration are, and should be, kept apart seems to linger, as though it is somehow the natural order of things. However, most scholars of public administration now agree that empirically (if not normatively, see Overeem, 2012) the politics–administration dichotomy is dead (Demir and Nyhan, 2008) and that the political and administrative spheres can never be anything but intertwined. This moves the focus of attention away from the politics–administration dichotomy to the politics–administration nexus.

The concept of the political–administrative nexus directs attention to what happens in sites where the political and the administrative spheres/spaces meet or overlap. It concerns the relations that occur within those sites between political actors and their decisions and discourses, on the one hand, and those of their administrative counterparts, on the other. These relations may be characterized by stability and formalized interactions, or by turbulence and informality. To the extent that one might therefore conceive of the politics–administration nexus as the flipside of the politics–administration dichotomy, it is in fact a more nuanced concept.

An interesting perspective on the politics–administration nexus points to the conditions under which the relationship between the political and the administrative spheres or spaces varies. The argument here is that the relationship between the political and the administrative spheres/spaces is likely to vary not only across countries but also within them. Jacobsen (2006) makes this point in his study of Norwegian local officials. This insight may be further stretched to support the assumption that variation is not only likely across and within countries but may also be present within individual public organizations, although this does not mean focusing exclusively on an organizational definition of politics (Vigoda, 2000).

According to Jacobsen (2006), the variation may firstly be explained as the product of contingencies, and more specifically as the result of differing environmental conditions, available resources, and organizational size. Secondly, he points to two important structural factors: the political salience of the task at hand and the position of the actors involved in the hierarchy. Thirdly, he identifies two potentially relevant demographic factors in the form of the movement of individuals across the politics–administration divide and the length of tenure of the individuals involved (Jacobsen, 2006). Finally, he suggests the existence of a temporal dimension, which points to the way in which learning and socialization over time might alter relations between political and administrative actors. Each of these factors is assumed to have an impact on the politics–administration nexus, although the effects they have are not always intuitive. For example, turbulence in an organization’s environment is likely to provoke unstable and somewhat informal relations within the nexus; while the movement of individuals across the politics–administration divide is likely to further break down the barriers between the political and administrative spheres. However, using Jacobsen’s fourfold categorization, which suggests variation along contingent, structural, demographic, and temporal lines, is useful in that it helps to pin down the characteristics of what might otherwise be a rather vague concept (that is, the politics–administration nexus). It also points to the importance of considering the politics–administration nexus from, on the one hand, the perspective of the different functions performed with the political space as compared to the administrative space and, on the other hand, the perspective of the different roles that the political and administrative actors populating those spaces might embody.

The European Commission and the politics–administration nexus

Early writings on the European Commission highlighted the organization’s multifarious roles which cut across conventional definitions of administrative and political functions (see Coombes, 1970, 234–242). These studies tended to view the Commission as a normative or politically engaged body, the primary mission of which was to act as a motor, driving forward the European integration process. If only implicitly, the administrative sphere was judged secondary or subservient to the Commission’s political mandate and ambitions. After a lull in the publication of research on the Commission, this early tendency was revisited during the Commission presidency of Jacques Delors, leading to the publication of several books and articles on leadership and power politics in the Commission, with administrative matters once again pushed into the background (see Drake, 2000; Endo, 1999; Grant, 1994; Ross, 1994). However, this did not stop commentators reinforcing the distinction

between the administrative services of the Commission and the more political executive comprising Commissioners, their personal offices, and (possibly) the most senior of the Commission's officials (Cram, 1999). While this distinction remained, the focus shifted dramatically after 2000, a change provoked by the resignation of the College the year before (for example, Macmullen, 1999) and the consequences thereof. Since then, the dominant focus of research on the Commission has been on its administration (of recent studies, see Bauer, 2012; Ellinas and Suleiman, 2012; Hooghe, 2012; Kassim et al., 2013; Ongaro, 2012), with much less emphasis placed on the political dimension (however, see Smith, 2004). In parallel, the Commission has come to be viewed as an administrative organization first and foremost, with its political mission now somewhat residual.

Two recent large-scale projects seem to buck this trend, as they reassert if not the primacy of politics, then its continuing relevance to the study of the Commission. The project by Hartlapp et al. (2012) aims to explain politics in the context of decision making by and within the European Commission. More specifically, it explores the Commission's role in setting the EU's decision-making agenda, emphasizing the importance of the internal dynamics that shape the preparation of legislation. In doing this it does not seek to bracket off the Commission's administration from the politics of the Commission but incorporates the administrative logics of the intra-Commission policy process into the analysis in an attempt to explain what can otherwise be rather puzzling Commission legislative proposals. A second project by Anchrit Wille (2013) explores the interplay of political and administrative actors in the senior echelons of the Commission, focusing on the role of Commissioners and their personal staff, on the one hand, and senior administrators (Directors-General), on the other. This project shows the Commission to have experienced a normalization process, with the transformation of the Commission into a (normal) political executive over the past decade or more. This transformation reflects the changing nature of the Commission's work.

While these projects cast new light on the post-2000 European Commission, there is no inherent conflict between research on the Commission's administration and research which acknowledges the Commission's political functions and the political roles embodied by actors within the organization. In fact, when the Commission is considered as an organization in the round it becomes impossible to ignore the interplay of politics and administration in it. Thus, the empirical content of the political-administration nexus quickly becomes apparent. Prompted by Jacobsen's distinction between contingency, structure, demography, and time, and reflecting the relevance of both the Commission's functions and the political and administrative roles of those who work within the organization, some illustrations of where and how politics and administration meet and, at times, intersect within the Commission follow.

The most obvious of the contingent factors affecting the European Commission in recent years has emerged as a consequence of the Eurozone crisis. Particularly since 2010, the crisis created a turbulent environment that has challenged the very existence of the European Union and the European integration process in which the Commission is wholly implicated. The uncertainties surrounding the future of the European integration process, of certain member states within it (the United Kingdom in particular), and of the euro have by necessity called into question the future of the European institutions in general and the Commission in particular. It is unclear whether the Commission will benefit from the crisis and ultimately strengthen its (new) position within the EU by gaining an enhanced role in the economic governance of the EU/euro area, or whether the Commission will be further weakened to the extent that its political functions (that is, its leadership and agenda-setting functions) will all but disappear. What seems clear is that the EU and the Commission within it will experience the crisis as a critical juncture and will change much more than simply incrementally as a consequence. This is not to say that the crisis is the only environmental factor that has affected the Commission, not least if we go back to the period before 2010 or to before the start of the economic crisis in 2008 when the 'decline' of the Commission was already a familiar point of discussion for students of the EU. There is surprisingly little research published on the impact of the crisis on the Commission, perhaps because there is so much uncertainty (see, however, Hodson, 2013). At the very least, we can expect to see the relationship between the Commission's political and administrative roles altered as a consequence, but what form such a change will take remains to be seen.

While it is hard to move beyond the all-encompassing issue of the impact of the crisis on the future of the European Commission, there also exist structural factors that vary in their impact on the political-administrative nexus in the Commission. While Jacobsen (2006) points to political salience as a key structural factor, it is hard to discuss this at a general level in the Commission without rehearsing arguments similar to those that relate to contingency. He also, however, talks under this heading about the importance of the relationship between actors in the hierarchy. This is relevant to the Commission given that the Commission comprises different categories of civil servant as well as high office-holders/political appointees. Members of the Commission and their personal offices or 'cabinets' fall into the latter categories; permanent Commission officials, as well as seconded national experts, fall into the former category. At the level of the College, where the Commissioners and their staff reside, there is a relatively clear demarcation of roles and responsibilities. The latter perform an explicitly political function, even though they are appointees and not elected representatives. At the official level, the senior civil servants are administrators, but in fact straddle the worlds of politics and administration

in a manner which is conventional for these top officials. Within the Commission's services, the permanent and the more temporary (or seconded) staff work side by side. All are 'civil servants', but the role of the seconded staff complicates what might otherwise be a rather tidy hierarchical framework, not least as there are often questions asked over whether they owe their allegiance to the EU institution for which they work or to their national administration (even government) at home (see Chapter 12 in this volume). That said, the Commission remains a rather hierarchical body, which maintains a clear hierarchy with regard to administrative and political roles (see Wille, 2013).

Variation along demographic lines throws up a number of issues. Here we touch on one, which concerns the extent to which there is movement of personnel across the politics-administration divide. The Commission has been characterized by what in the Commission is often called *parachutage*, that is, the appointment of former members of the Commissioners' personal offices (cabinets) to positions at the top of the Commission administration (Wille, 2013, 40). In the past this has been said to cause bottlenecks for middle-ranking administrative staff seeking promotion to the upper echelons of the organization. Although not generally favored by the administration itself, they do serve to bring the senior administrative tier of the Commission closer to the political wing by bringing into the administration individuals whose background is political. It could be argued therefore that this kind of fluidity across administrative-political boundaries contributes to a breaking down of barriers between the European administrative and the European political spaces that meet within the Commission.

Finally, Jacobsen suggests that there is also a temporal dimension to be considered when addressing variation in the politics-administration nexus. The implication is that, as time passes, organizations become more formalized and less informal, which suggests a consolidation of the politics-administration divide and less interplay between the two 'spaces'. One might argue this from the perspective of the Commission by claiming that the Commission has moved from immaturity to maturity, particularly since the implementation of the post-2000 administrative reform. However, taking a longer term perspective which reflects on the early history of the Commission, it is possible to see how the Commission has altered substantially from its early incarnation as an informal group of pro-European experts to a fully-fledged bureaucracy, something that Jean Monnet, responsible for the Commission's earliest form, the European Coal and Steel Community's High Authority, had originally been keen to resist. As the Commission grew, a clearer separation of roles and functions was necessary to ensure the organization's effectiveness. Informal relations were replaced by a greater formality, suggesting that this may well at the same time have contributed to a distancing of the political from the administrative sphere/space within the Commission.

These illustrations of some of the points at which politics and administration meet and perhaps intersect within the Commission are not intended to point to any pattern or trend in the way of the character of the political-administrative nexus in the Commission. Instead, the aim is to demonstrate that both in terms of its functions and the roles performed by those working within it, the Commission sits at the intersection of the European administrative and the European political spaces. A case study of EU decision making suggests how the Commission's position helps it to influence policy outputs – even under politically difficult circumstances.

EU budgetary decision making and the European Commission

Approving the European Union budget is always a contentious process. Each year battles rage within and among the EU institutions; national governments fight among themselves over spending levels and budgetary priorities; and vested interests lobby in support of their own preferred outcomes. At EU level, these battles are inter-institutional in the broadest of senses in that they provide an arena for institutional power plays. The European Parliament tries to consolidate and improve its position, while the EU Council, or particular member states within it, seeks to control the process and its outcome. The Commission also has a record of pushing its own institutional and political agendas, although the way in which it does this is quite different from the other EU institutions, in that it is able to make use of its agenda-setting and honest-broker roles. At times these inter-institutional tensions come to a head as they did in the period between 1975 and 1982 (European Commission, 2008, 27–28). The institution of a multiannual budgetary process by Jacques Delors in 1988 was intended to resolve the almost perpetual budgetary wrangling. However, although it has funneled some of the tensions into a shorter time frame, it has failed to do away entirely with the annual bargaining process, which remains as contentious as ever.

The annual negotiations tend to involve requests by the Commission to move funds from one budget title to another (for example, Taylor, 2011a, 5) or to increase the funds available when approved schemes come close to running out of money. This is often the product of the rather arcane distinction between *commitments* appropriations, which are agreed multiannually, and *payments* appropriations, which are annual ceilings (European Commission, 2011a); but it can also be the consequence of underspending in certain parts of the budget. Toward the end of a multiannual budgetary period, commitments made do not always tally with the remaining funds available (for example, Brand, 2012, 1). However, even under these circumstances, national governments dislike acceding to requests for more money to be transferred to the EU even when their failure to do so places the Commission in a difficult legal

situation (as it cannot go into deficit). As such, these annual rounds of negotiation remain tense occasions which can also impinge on the forthcoming multiannual budgetary process.

The European Commission is responsible for drafting the European Union's multiannual budget. Within the Commission the lead administrative service is the Budget Directorate-General (DG Budget), led by the Commissioner responsible for budgets. Other Directorates-General and Commissioners are actively involved and the process as a whole is 'owned' by the College of Commissioners. The Commission President is normally actively involved in discussions on the budget within the Commission and often takes the lead in presenting and defending it to the other EU institutions and national governments. The involvement of the Commission President is an indicator of the (political) importance attached to the budgetary decision-making process.

Work on the draft budget begins in earnest several years before the budget comes into force. At a political level, national governments and other actors usually lobby the Commission to ensure that their voices are heard early in the process. Around 18 months before a final agreement is expected and approximately 36 months before its implementation, the long negotiation process begins with the formal agreement of the budget by the College of Commissioners. This provokes heightened discussion across the EU institutions, within and among national governments, and in the media on issues such as preferred budgetary priorities, the overall size of the budget, the relative allocation of funds to each heading, the rebates, and possibly even the framework governing the budgetary process in future rounds.

The negotiations are not just inter-institutional, they are also *intra*-institutional. They involve intensive bargaining by national governments in the EU Council/European Council, and among MEPs and political groups in the European Parliament. Most of the debate in the Commission comes in the earlier phase, although there can also be substantial disagreement over how to respond to parliamentary and national positions during the negotiations proper. In the European Council, the General Affairs Council and the Council of Economic and Finance Ministers take the lead at the initial stages (with much of the technical work being done at working group level). Final decisions go to the European Council, although heads of government/state may also be informally involved earlier in the process. In the European Parliament, the key players are the members of the Committee on Budgets, particularly the Chair and the rapporteur(s) responsible for drafting the EP's report(s). The political leadership of the Parliament also becomes extremely involved in budgetary decision making during crucial stages in the negotiation process. Only after the European Council has reached a political agreement does the European Parliament vote on the budgetary proposal put before them.

The EU budget negotiations 2011–2013

Preparatory work on the Multiannual Financial Framework (MFF) 2014–2020 began in earnest in the European Commission in 2010. By early 2011 there was growing speculation in the European media as to the content of the Commission's draft budget due to be agreed by the Commission's College of Commissioners in June. This coincided with a difficult renegotiation of the 2012 annual budget early in the year. Even before this point, however, in late 2010 national governments were already seeking to influence the content of the Commission's proposed budget. On 18 December 2012 a group of five net contributor states (the UK, France, Germany, the Netherlands, and Finland) sent a letter to the Commission President, José-Manuel Barroso, emphasizing the importance of keeping any overall increase in the draft budget to an unspecified minimum (Taylor, 2011c, 7). The European Parliament was also active in seeking to influence the Commission as it worked on the draft budget. In April 2011 it produced a report to this effect, and the Budget Committee met with the Budget Commissioner on 9 May to hear and respond to the Commission's emerging position on the budget question (Brand, 2011b).

Within the Commission the beginning of what would become a lengthy debate on administrative expenditure was also brewing. As early as February 2011 Commissioner Lewandowski wrote to 12 European institutions to ask them to tighten their administrative expenditure, holding up the Commission as an example of what might be achieved (Brand, 2011a). While the focus at this point was on the 2012 annual budget, the MFF would soon take center stage as the Commission's 'preemptive defense' strategy met head-on with member-state rigidity over the prospect of laxness on the part of the Commission. This was targeted as it was the only part of the EU's budget not in the hands of the EU legislature. Sensitivity over budgetary matters was not diminished with the publication of a highly critical report on Commission expenses by the Bureau of Investigative Journalists in early June 2011 (BiJ, 2011), although it was the Commission's battles with (internally) the staff unions and (externally) national governments which occupied most of the energies of the relevant Commissioner (Šefčovič) (Chaffin, 2011). By the end of 2011 the Commission's unions were threatening to strike. The Commissioner responded by suggesting with wry humor that being attacked on both fronts by national governments and Commission staff must mean that his position was a balanced one (King, 2011, 1).

The final version of the draft budget was discussed in the College of Commissioners on 29 June 2011, during a long meeting of the College (Taylor, 2011b, 10). The same day, Barroso presented his draft budget to the European Parliament leadership (Taylor and Brand, 2011, 1), with a similar presentation to the EU Council taking place the following day. The draft budget set overall

levels of planned spending for the forthcoming seven-year period at an amount substantially higher than the amount proposed by the EU Council, increasing the budget by around 5 percent (Taylor and Brand, 2011, 1). The budget also spelled out the proposed allocation of funds across budget headings. Barroso's stated aim at this stage was not to provoke any dramatic shocks, but to continue to support core EU policies such as the cohesion policy, the common agricultural policy, and the research policy. He particularly stressed the importance of using the budget to fund the Connecting Europe trans-European transport infrastructure projects (Barroso, 2011a). Other issues were more contentious and included a proposed revision to the system of rebates, which would affect not only the United Kingdom but also Germany, Austria, and Sweden (Chaffin, 2012; European Commission, 2011b). At the same time the Commission proposed a solution to the resourcing of the EU budget (the so-called own resources issue) (European Commission, 2011b, 7–8). Barroso argued that the current system meant that national governments were supporting around 80 percent of the budget and that this was unsustainable as it led national governments to want to claw back most of this money. The Commission's view was that a Europeanization of the EU budget could alter the mindset of national governments, diminishing the *juste retour* or 'national envelopes' logic that tended to dominate the negotiations (Barroso, 2011a; *European Voice*, 6 January 2011, 10; Taylor, 2011b, 10). There were two elements to this initiative: an overhauling of the existing Value Added Tax (VAT) system and the introduction of a Financial Transaction Tax (FTT) imposing a 0.1 percent tax on shares and bonds and a 0.01 percent tax on derivatives.

Even before the Commission's draft budget was confirmed, the national debates surrounding the negotiations were dominated by the large net contributor member states keen to keep the budget increase as small as possible, arguing that austerity at home had to be paralleled by austerity at EU level. Certain governments, especially the United Kingdom, felt strongly that the Commission had not listened to warnings earlier in 2011 that they would come down hard on the institution if they did not keep the overall proposed increase in the budget lower than average inflation (Chaffin, 2012). The United Kingdom was not alone in its criticism of the Commission, however, as it was supported by other member states including Germany, the Netherlands, Sweden, and Austria (Taylor, 2011b, 10).

The sensitive rebate question also led to a particularly hostile response from the national governments eligible for rebates. The United Kingdom stated that they would not sanction any change; and as the United Kingdom's agreement was not time-limited, that ended their discussion of the issues. The other countries involved whose rebate agreements were due to run out at the end of 2013 were also adamant that they would not support the Commission. The proposed change to the EU's VAT regime was also criticized. There was more support for

the FTT proposal even though this also raised the hackles of certain member states, not least the UK government. The UK Prime Minister, David Cameron, was vociferous in his rejection of the tax, arguing that it would only be viable if non-EU countries adopted a similar system, as it would otherwise threaten the United Kingdom as a global financial center.

Negotiations began formally in the second half of 2011, although the Council and the European Parliament first had to establish their institutional positions on the Commission's draft budget. Once the negotiations proper began, disagreements of a longer standing over the budgetary scrutiny and discharge process intervened to sour the atmosphere between Parliament and Council. It was not until February 2013 that the European Council finally agreed to a package that could be put before the European Parliament, although this package was rejected by the European Parliament. Soon after this, 11 governments decided to create an FTT using an 'enhanced cooperation' procedure which permits subsets of EU member states to make policy where there is no agreement in the EU as a whole.

Analysis

The process of setting the EU's draft budget comprises both technical (administrative and management) and political (agenda-setting and bargaining) functions, performed within and by the European Commission. Commission officials, most notably the staff of DG Budget, in consultation with colleagues across the institution, work to translate existing and future legal and political obligations on the EU into policy priorities and ultimately into euros. As a famous Commission reform document once put it, the Commission needs to ensure that the EU has at its disposal the 'means to match its ambitions' (European Commission, 2000).

In the real world of EU politics it is impossible to separate this administrative process from the politics of budgetary decision making. Any decision about policy priorities is invariably political. Even if within the Commission there is a formal division of labor between those doing the administrative legwork and others keeping an eye on the political implications and pushing the Commission's own political agenda, there is no clear-cut dividing line establishing where, at the level of individual decisions, the administrative world ends and political world begins. The budget-setting process inextricably involves political decision making, with the actors involved having to come to terms with whether they want more or less integration, in the form of a more intergovernmental or a more supranational EU, giving an advantage to particular EU institutions in the process. In the 2014–2020 MFF negotiations, those actors also had to consider whether they wanted to see the (draft) budget reinforce national austerity policies or whether it might be cast as an engine for boosting economic growth. These kinds of cross-cutting contentious issues are far from

unusual in the EU context – the budget-setting process serves to exemplify the complexity of the EU policy process.

It is primarily at the agenda-setting stage that the Commission is able to draw on resources which it can use to shape the EU's budget. These resources are primarily administrative, but they may also be to a lesser degree political. Placing emphasis on agenda setting does not mean that the Commission's role is negligible later in the budgetary process, but it does indicate that the bulk of its administrative-political work occurs early on. It is for that reason that both internal and external actors try to influence the Commission at this stage. In the case of the draft budget it is clear, for example, how the net contributor member-state governments put pressure on the Commission President by sending a public letter to the Commission President six months before the draft budget was due to be released. The influence of the net beneficiaries was pursued less aggressively, but they too sought to shape the budget-setting process, primarily in order to prevent budget reductions being brought in at the expense of cohesion funding. The European Parliament had its own agenda, and used its formal scrutiny functions to call the Commission into account to present its perspective on the budget, one which privileged a growth strategy over austerity. Even within the Commission, as well as among the EU institutions and agencies more generally, there were disagreements over administrative spending, with the Commission leadership battling with the staff unions over the reform of the system for deciding officials' salary increases (the so-called *Méthode*), pensions, retirement age, and the length of the working week. This led to claims by the unions that the Commissioner responsible was doing the bidding of national governments and was failing to stand up for the rights of their staff.

National governments also put the Commission under pressure in a different way, by undermining the credibility of the institution. Firstly, the Commission was subject to criticism that it was power-hungry. It was depicted as working to enhance its own powers by proposing a larger and more independent EU budget, which would deepen supranational integration and inflate its own position within the EU as manager of that budget – all at a time of austerity and crisis within the European Union. Taking this as a given, any proposal by the Commission might be interpreted as suspicious, unrealistic, and reflective of a political agenda not shared by many (or even most) national governments. Secondly, the Commission's credibility could be undermined by pointing to poor standards of conduct and inadequate decision-making procedures. The report of the Bureau of Investigative Journalism, published in early June 2011 (BiJ, 2011), which raised embarrassing questions about the expense claims of Commission staff, was a particular blow to the College as it came at a time when the Commission was trying to take the moral – and populist – high ground in arguing against the imposition of austerity and in favor of a budget that would

contribute to growth and employment across Europe. The presentation of the Commission as spendthrift was at odds with this image that the Commission itself wished to promote.

The Commission drew on administrative resources in presenting its budgetary initiative. It sought both to take a balanced approach to the draft budget, attentive to the concerns and criticisms of national governments and other key actors and also argued vehemently that a budget had to be agreed that allowed the EU to fulfill its legal obligations in line with the Lisbon Treaty. Although the net beneficiaries condemned the headline figure, there was much less criticism of the way in which funds had been allocated across EU policies. Moreover, Barroso was careful to demonstrate linkages between existing policies already agreed by member states and priorities signaled in the draft budget. The Europe 2020 agenda was used in this manner (Barroso, 2011a). Another issue, of a slightly different order, which was frequently referenced to by Barroso was the Connect Europe agenda, which promotes trans-European, and particularly transport, networks. Barroso stressed that these were exactly the kind of cross-border initiatives in which the EU ought to be involved, as they could not easily be managed by individual member states, or even bilaterally. In making these claims to national governments, Barroso also sought to appeal directly to European public opinion, for example by publishing an article in the euro-critical British newspaper *The Sunday Times* in early July 2011 (Barroso, 2011b), although with how much success one can only speculate.

The Commission, in general, and the Commission President, in particular, sought to engage more directly in politics over what might be labeled the ‘framing’ of the budgetary process, that is, over the issue of the EU’s ‘own resources’ (or common budget). This revolved around the proposed introduction of a Financial Transactions Tax and a reformed VAT system, and a reworking of the method of allocating national rebates. The Commission was strongly supported by the European Parliament in its ambition to reform the MFF, and at one point the latter even went so far as to make the reform of the ‘own resources’ system a condition of their agreement to the overall budget. Barroso set out the aims of the reformed budget. It was intended to simplify the system of ‘own resources’, which had become complex and opaque over time as well as being too dependent on national contributions. Behind this bid for transparency, which presented the initiative as a practical solution to a practical problem, was a broader agenda which saw national contributions as perpetuating a zero-sum approach to the budget by national governments. While all governments claimed they wanted a reduced budget, all also wanted to increase the proportion of the budget allocated to them. The budgetary process was not viewed in terms of burden-sharing, or what the Commission preferred to refer to as ‘solidarity’, but was the epitome of a *juste retour* (or equitable return) way of

thinking. However skeptical one might be about the likelihood that it might succeed, Barroso invested a great deal of effort into arguing that this reform of the multiannual budgetary process was essential. Ultimately, however, he failed to win the argument, although he did manage to persuade a subset of member states to take forward the Financial Transaction Tax as an ‘enhanced cooperation’ initiative. For Barroso, this may have been a second-best outcome, but it does demonstrate how Commission agenda setting, drawing on both administrative and political resources, can produce real policy effects, even if they are not quite those that the Commission intended at the start of the process.

Conclusion

This chapter began by introducing the concept of the politics–administration nexus, which serves as a way of focusing attention on the sites in which the European administrative space and the European political space meet and potentially intersect. The European Commission, it was argued, offers an interesting case study as it has generally been said that the organization performs both political and administrative functions, as well as being populated by actors who inhabit political and administrative roles.

An illustrative case study of the EU’s budgetary decision-making process, and the Commission’s role within it, demonstrated empirically how politics and administration intermingle within the EU policy process. More specifically, it showed how the European Commission was able to maintain a political foothold in EU policy making, allowing it to shape – if only in a limited fashion – political decisions in the hands of the EU’s legislative actors. While there is no doubt that the Commission lost the argument on ‘own resources’, it was able to see its Financial Transaction Tax initiative taken up by a number of national governments, under the enhanced cooperation procedure. While certain member states – the net beneficiaries of the EU budget – sought to push the Commission out of the European political space, the formal-legal responsibility of the Commission with regard to the draft budget, and the administrative-management involvement of the Commission’s services in producing the draft, meant that the Commission remained an important player in the very political budgetary process, particularly in the early stages of the process. The fact that certain national governments felt the need to undermine the credibility of the Commission at this stage demonstrates recognition of its potential impact on the policy. However, there is nothing new in showing how the Commission possesses a (potential) political vocation and role. This is only surprising in the context of what has been reported as the withering away of the Commission’s political dimension over the course of the post-Delors period and after the Commission’s dramatic resignation of March 1999 (Weiler, 2012).

As already noted, there can only be tentative theoretical conclusions drawn from a single case such as this. However, the chapter concludes by arguing that this research sheds light on the interplay of the European administrative space with what might be called the European political space. It demonstrates how a public organization's ability to influence policy outputs is a function of its ability to draw on both its political and its administrative resources to assert itself in the political sphere. If we can draw out the conditions under which this impact may be more likely, we might hypothesize that this happens where the administration was established or performs a function which is associated with a particular teleology. It may also be more likely in administrative bodies whose credibility (indeed its very *raison d'être*) is challenged. While these insights may not resonate with all administrative organizations, they could nevertheless form the basis for further hypothesis-generation and empirical research on the interplay of politics and administration within the European Union and the wider European administrative space.

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9

Politicization of the European Commission: When, How, and with What Impact?

Miriam Hartlapp

Introduction¹

Classical concepts of public administration define ‘politics’ and ‘administration’ as opposites (for example, Wilson, 1887). Theoretically, the separation of the administration from party politics is necessary to serve the general public interest when executing political decisions, while discretion is a precondition to cogently implement policies. However, empirical as well as conceptual works have left this dichotomy behind to instead describe politics and administration as closely interwoven. Landmark studies developed ‘images’ (Aberbach et al., 1981) or ‘models of interaction’ (Peters, 1988) to capture the relative autonomy of bureaucracy, how politicians and bureaucrats cooperate or complement each other in policy making, and whether they interact cross-departmentally or in functional policy communities. Today, the ‘growing osmosis between the political and administrative system’ (Bekke and van der Meer, 2000, 281) is frequently captured as the *politicization of administration*. From a comparative perspective, differences in the politicization of administrations across time and countries prevail, yet overall the picture seems clear: administrations are constantly or even increasingly politicized (for example, Balint et al., 2008, 685; Peters and Pierre, 2004; Schnapp, 2004; Schwanke and Ebinger, 2006). To what extent does this account of a politicized administration hold for the European Union (EU)?

Politicization is a widely and increasingly used concept in EU research, for example when referring to the growing public attention on the integration process or the relative power gains of the European Parliament in the EU’s institutional system. The EU’s core administration, the EU Commission, is ascribed a decreasing politicization (Balint et al., 2008; Bauer and Ege, 2012) and an increasing political orientation at the same time (Döring, 2007; Wonka, 2007). The wide discrepancy of these observations calls for a systematic analysis of

the EU Commission. Is the EU's core administration politicized? What patterns of politicization do we find over time and among sectors? If we assume that personal characteristics matter in explaining general political interest or a particular policy choice, how do different ideologies impact on the policy substance proposed by the EU Commission?

Conceptualizing politicization

Public administration studies frequently use two non-exclusive concepts of politicization (Schwanke and Ebinger, 2006). From the first perspective, formal *institutional* features, such as rules and positions, give insight into the politicization of an administration. Following such an institutional perspective, Peters and Pierre (2004, 2) define politicization as the 'substitution of political criteria for merit-based criteria in the selection, retention, promotion, rewards, and disciplining of members of the public service'. Others have focused on the effects of these rules on concrete staffing (Page, 2012; Schwanke and Ebinger, 2006, 235). If personal advisors, cabinets, state secretariats, and division heads experience a greater staff turnover after elections, a politicization of the administration has taken place. Theoretically, for both measures the control of a (political) government over an (expert) bureaucracy counts in maximizing general influence as well as decision power to secure a specific piece of legislation or to change a concrete public policy.

Research following this perspective typically distinguishes between the United Kingdom and Scandinavian countries, on the one hand, and the continental countries such as France, Belgium, or Greece, on the other hand. In the first group administration and government are separated, while in the second group cabinet members, secretaries of state, or advisors control bureaucracy (Peters and Pierre, 2004, AE, 1999). Along with the second group, the US system equally qualifies as politicized in institutional terms, while the UK administration shows a relatively apolitical profile. Germany traditionally covers the middle ground (Mayntz, 1984) but experienced strong increases in staff turnover after the last elections (Schwanke and Ebinger, 2006, 241; for similar trends in other countries, see Suleiman, 2005).

In contrast, *functional* politicization is interested in the actual behavior of administrative elites and seeks to assess the degree to which this behavior is politically motivated. Politicization 'implies a greater sensitivity of civil servants for considerations of political feasibility and institutes a kind of political self-control of top bureaucrats through their anticipation of the reactions of the cabinet and of parliament to their policy proposals and legislative drafts' (Mayntz and Derlien, 1989, 402). Functional politicization is assessed at micro-level rather than through rules and institutions. The personal characteristics and beliefs of top officials can affect the politicization of administration

through two theoretically distinct mechanisms. Firstly, personal characteristics may have an effect through principal-agent relationships where the principal tries to control the agent, or through a delegation chain. In parliamentary democracies the delegation chain runs from voters over elected representatives to chief executives and civil servants. Administrative officials act according to party-political preferences under a cost-benefit calculus, responding to a range of ex ante and ex post mechanisms. Secondly, socialization approaches consider earlier affiliations as formative for position taking inside the administration. Once certain ideas or beliefs have been established, corresponding positions are considered appropriate when deciding about new policy substance (Hooghe, 2001).

The functional perspective was prominently introduced in administration studies in the 1980s. The landmark volume of Aberbach et al. (1981) was among the first to provide reliable findings on the origins, education, and professional affiliations of top officials in Western societies as well as their beliefs and role perceptions. Since then, a number of studies have used the same or similar frames to trace changes in the personal characteristics and beliefs of individuals for all or some of the countries initially covered (Aberbach et al., 1990; Mayntz and Derlien, 1989; Schwanke and Ebinger, 2006).

The politicization of the EU Commission

In the EU Commission the nexus between the political and the administrative is particularly interesting due to its dual role as the EU's administration and its executive government. On the one hand, the Commission can be understood as a typical administration where neutrality is key to effective steering and management. Commissioners are not legitimized through (direct) elections nor are they publicly responsible for their actions. Furthermore, officials up to the top levels are expected to act independently. According to the treaty, Commission members

shall be chosen on the grounds of their general competence and their independence shall be beyond doubt. In carrying out its responsibilities, the Commission shall be completely independent. Without prejudice to Article 18(2), the members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity.

(Article 17 TEC)

On the other hand, the Commission is endowed with a quasi-monopoly to propose legislation at EU level. It is through this executive power that the Commission shapes the substance of EU policies since it predefines the

corridor of the subsequent inter-institutional process. There is ample case-study evidence about the 'purposeful opportunist' (Cram, 1997) that 'pursues its own preferences, within limited bounds' (Pollack, 2000, 116) – typically with a pro-integration bias – rather than simply executing tasks and neutrally solving problems. The nexus between these two aspects renders the politicization of the EU Commission highly interesting. Where the proposed independence is challenged is that agenda setting undoubtedly raises questions of legitimacy. At the same time, politicization provides direction on the positions the Commission takes when setting the agenda for the EU political system.

Today there are 27 Commissioners in the EU Commission – one from each member state. They head the Commission's services (DGs).² Commissioners are appointed for one term but may return, either on the same portfolio or on a different one. Since 1958, the first Hallstein Commission, up to 2010, the first Barroso Commission, 146 Commissioners have been appointed to 242 different positions.

Previous research has shed light on the politicization of the EU's administration from a *formal institutional* as well as from a functional perspective. In a differentiated empirical account, Balint et al. (2008) describe how historically recruitment in the EU Commission was only partly formalized and was heavily influenced by political actors, including national government interventions. At that time, being a cabinet member was an important career step in order to reach top administrative positions such as Director-General (Coombes, 1970). Furthermore, Ross (1995) describes the power of cabinets, and their ability to steer or circumvent the services, as a key feature of the Delors era. Since then this has changed substantially, most visibly with the Kinnock reforms. While merit has always been one of the relevant recruitment criteria, today it is the single most important factor in becoming a Commission official – even, or particularly, for political positions. Balint et al. (2008) describe that meritocracy is assured by a newly founded recruitment office and supported by new staff regulations. However, what can be learned from these empirically rich studies is above all the dominance of nationality and member-state quotas in complicating the assessment of the institutional politicization of the EU Commission by blurring the indicators and veiling politicization effects.

Following the *functional perspective* of administration studies, the beliefs and role perceptions of individuals working in the EU Commission have been assessed in surveys and elite interviews (for example Egeberg, 2006; Hooghe, 2001; Trondal, 2010; most recently Kassim et al., 2013). These studies mostly characterize Commission officials as pragmatic institutionalists or as holding supranational views, and find notable differences in the distribution of ideology across services (Kassim et al., 2013, ch. 4). However, party ideology is not considered an important factor by officials working in the Commission, for example when formulating policies (Bauer and Ege, 2013, 182). The different

data sets and surveys at hand date back to the mid-1990s. Thus, detailed analyses of politicization in the founding days or earlier periods of the EU are still missing, even though the personal characteristics of Commission officials have always been of interest to researchers on an anecdotal or snapshot basis. We can thus add to the important insights on politicization generated by this literature if we go back further and investigate personal characteristics as a causal factor in the beliefs and role perceptions of top officials working in the EU Commission. In the following, the professional background and party political affiliation of top officials will be assessed on the basis of a new data set on the EU Commission.³

Assessing the politicization of the EU Commission

Professional background

Individuals that held political positions prior to joining the EU Commission can be expected to contribute to its politicization. In contrast, individuals recruited from academia, bureaucracy, or business are likely to be less involved in politics. Two dimensions are essential in defining the degree to which a professional position can be considered political: the relative power of a position to influence decisions in a political system, and the democratic legitimacy of the position. Both dimensions distinguish the political sphere from the administrative.

For each commission term, I determine the degree of politicization by assigning all Commissioners in our data set to a professional group, based on the professional positions they held previous to their engagement in the Commission.⁴ A power- and a legitimacy-oriented view are then compared. A *power index* measures political power by assigning a numerical value to each position based on existing rankings of portfolio salience (Döring, 2007; Druckman and Warwick, 2005). Values are assigned to each person based on the average value of each position across states, with former prime ministers scoring highest (2.27) and activists lowest (0.22). New scores for positions that had not been considered in existing works are added. In contrast, the *legitimacy index* measures the extent to which Commissioners had occupied democratically legitimated posts. Political positions filled and legitimized by democratic elections are assigned a positive value of one whereas technocratic posts were assigned a 0 (Schnapp, 2004).

Figure 9.1 shows that the indices are analytically closely related and therefore correlate. The development of both indices across time clearly supports views on the Commission as being increasingly politicized regarding the professional background of its personnel. Today, most members of the Commission held other political offices legitimized by elections before assuming a position in the Commission. There is also a trend toward hierarchically higher positions such

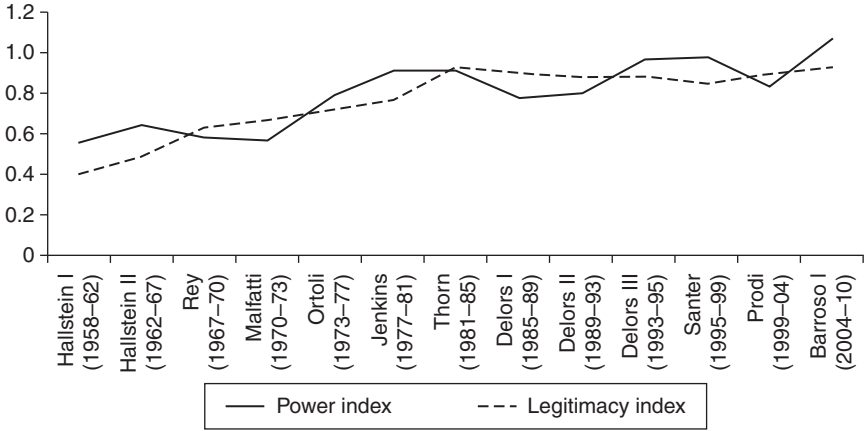


Figure 9.1 Politicization of the commission over time according to professional background

Source: Own analysis on the basis of commission data base

as prime ministers. Clearly, Europe has gained in importance regarding both individual careers and national governments no longer being willing to send less-qualified personnel. This is in line with earlier findings by Döring (2007) and Wonka (2007).

The data provide a nuanced view on different professional categories and reveal party politics to be on the rise to the detriment of administrative and especially diplomatic positions. In its early decades, approximately one-third of the Commission’s staff had originally worked in the diplomatic service. There are also fewer academics today than in previous decades. What serves as an explanation here is that in earlier times European politics were considered as some kind of external affairs. However, the increasing competence transfer contributes to an understanding that decisions taken in Brussels affect many ‘national’ policies – hence staff should not be limited to diplomats trained in the ‘external’ view. Finally, the College’s enlargement rendered its members somewhat, but not substantially, more technocratic. This is due to the comparatively higher percentage of apolitical newcomers among the elites of Eastern European countries after the regime changes (see also Ban, 2013).

Turning to the flipside of prior professional background, the economic activity of Commissioners following retirement from the Commission also yields insights into politicization. This is particularly relevant from the delegation perspective outlined above. Commissioners returning to politics provide support to a politicization argument of the EU Commission since state governments can hope to call on their Commissioner’s loyalty by offering reappointment or a high-profile domestic position after the Commission function (Egeberg, 2006; Wonka, 2007). However, revolving doors into business are

also frequent, raising questions on clientelistic rent-seeking coalitions between business interests and the Commission as regulator (Vaubel et al., 2012).

The later professional affiliation can only be provided for 82.8 percent of the Commissioners. Information is often missing, particularly for early periods of the integration process, thus interpretation warrants some caution. However, changes over time indicate that following a drop in the mid-1980s political and government positions have gained in importance among Commissioners' later professional affiliations. Three Commissioners have even taken up positions as party leaders after leaving the Brussels administration: Stavros Dimas (conservative Greek Commissioner for the Environment), Jan Figel (conservative Slovakian Commissioner for Education, Training and Culture), and Roy Jenkins (social democratic British President of the Commission). Strikingly, a substantial number of Commissioners engage with the private economy; revolving doors are most typical where Commissioners come from DGs with economic portfolios such as DGs MARKT, TRADE, or ENTR. A prominent example is Common Market Commissioner McCreevy, who went into investment banking, or Enlargement and Industry Commissioner Verheugen, who offers political consultancy (also Vaubel et al., 2012). This is surprising since a code of conduct exists to screen future professional activity so as to prevent a conflict of interest or to punish deviant behavior, for example by pension cuts. Strong evidence on the delegation argument is still missing, but the overall picture fits well with the politicization thesis. Where the EU Commission is more politicized in terms of professional background, both theoretical concepts – the socialization and the delegation mechanism – lead us to expect that differences in ideological orientation over time and across sectors do matter. Therefore, we now turn to the party political affiliation of officials working in the EU Commission.

Party affiliation

Bauer and Ege (2013, 182) as well as Kassim et al. (2013, ch. 4) find that ideology is not considered a relevant category at service level. However, most Commissioners are members of or affiliated to a political party. Overall, the College of Commissioners has grown more political with fewer independent Commissioners. Consequently, every Commissioner can be assigned to one of the following party families: Conservatives/Christian Democrats, Liberals, Independent, Greens, Social Democrats, Communists, and Allies.⁵ Thus, not only can statements be made about the relative ideological heterogeneity, or possible ideological or partisan biases, but these findings can also be put into the perspective of central integration steps and important policy developments (Figure 9.2).

At first sight, the relative dominance of right-leaning Commissions over social democrats is striking. However, over time alternating dominances

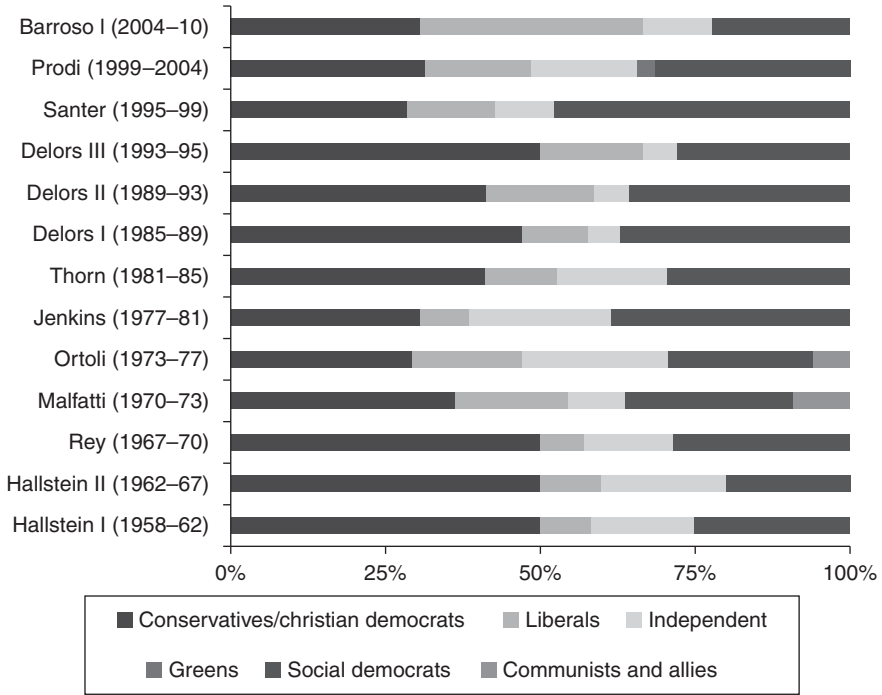


Figure 9.2 Party affiliation of commissioners over time (months in office)
 Note: The graph shows actual party membership/affiliation for the time when being nominated (not, for instance, being appointed by a certain government). Months in office allow dealing with the (rare) event of changing Commissioners under an ongoing term
 Source: Own analysis on the basis of Franchino (2009) and commission data base

between the two big parties become visible. The graph shows relatively left Commissions both during the 1970s (Jenkins, Ortoli) and from the mid-1990s to mid-2000s. In line with public perception, the Prodi Commission was the ‘least conservative’ (353 of 1,337 months) while Barroso assembled a strikingly liberal Commission. Hallstein I in turn was the ‘least social democratic’ Commission (65 of 445 months). Surprisingly, Delors comes second to Hallstein as ‘least social democratic’, while typically being associated with the ‘social’ dimension of Europe. One possible explanation is that under specific circumstances a single person – here the social democrat Delors – matters beyond the party political balance inside the College of Commissioners. The Santer and Prodi Commissions as dominantly social democratic are associated with social policy projects under the Open Method of Coordination.⁶

The relative party political homogeneity in the College of Commissioners under Thorn and Delors matches the decision period of (probably) the most important integration project: The Single Market Project, ‘project 1992’. During

this period, member states agreed on the Maastricht Treaty – comprising not only the EMU but also a foreign and security policy, and a political union. This finding rules out the notion that core economic projects have only been originated by liberal/right-leaning Commission coalitions. In contrast, a relatively heterogeneous Commission coincides with the period of Eurosclerosis in the 1970s where the Commission made few far-reaching attempts to use its powers, trying to push and drag member states to extend competences, or to develop important policy projects. In recent decades the Commission has been less mixed than in the 1970s but more mixed than in the 1980s and early 1990s. During this time integration developments can be described as very active but also increasingly contested. Thus, politicization as a party political affiliation of Commissioners fits well with integration dynamics and policy substance.

Turning to the sectoral perspective, I take the Commissioner's party affiliation as an indicator for the DG's ideological alignment. The first insight we can draw from Figure 9.3 is that ideological backgrounds of DGs display stark differences: some DGs display alternating party political 'flags', others are over time dominated by a specific ideological orientation.

In comparative politics a great number of publications analyze the distribution of portfolios, mainly in coalition governments. The underlying idea is that there is a correlation between the distribution of portfolios and the priorities assigned to them by coalition partners. Social democratic parties are more concerned with welfare state policies, while it is often argued that conservative parties tend to care more about policies related to finance, law, and order (for an overview, see Franchino, 2009). By analogy, it is plausible to assume that ideological backgrounds matter especially for DGs where the policy preferences vary with partisan orientation, a prominent example being social policy or economic and financial policy. Following this reasoning I would expect that DGs with a clear market focus are more likely to be dominated by Commissioners from liberal or right-leaning party families, while interventionist policies fostering market-correcting policies and their DGs are more likely to be headed by social democratic Commissioners (Baeck et al., 2011). Hooghe (2001, ch. 5) has proposed a classification of DGs which I employ to come to grips with the rather malleable term 'interventionist'. Alluding to insights from the political economy literature, she categorizes DGs EMPL, COMM, ENV, EAC, SANCO, AGRI, DEV, FISH, and REGIO as portfolios adhering to 'regulatory capitalism'.

In line with these expectations, Commissioners from social democratic parties are found responsible for policies sympathetic to an active and equalitarian role of the state (DGs ENV, REGIO and EMPL). Furthermore, DGs REGIO and EMPL are strongly involved in spending policies. Only DG TRADE stands apart as social democratic but without a market-correcting mandate. The picture fits well with an analysis by Franchino (2009) stressing that 'left (right) leaning

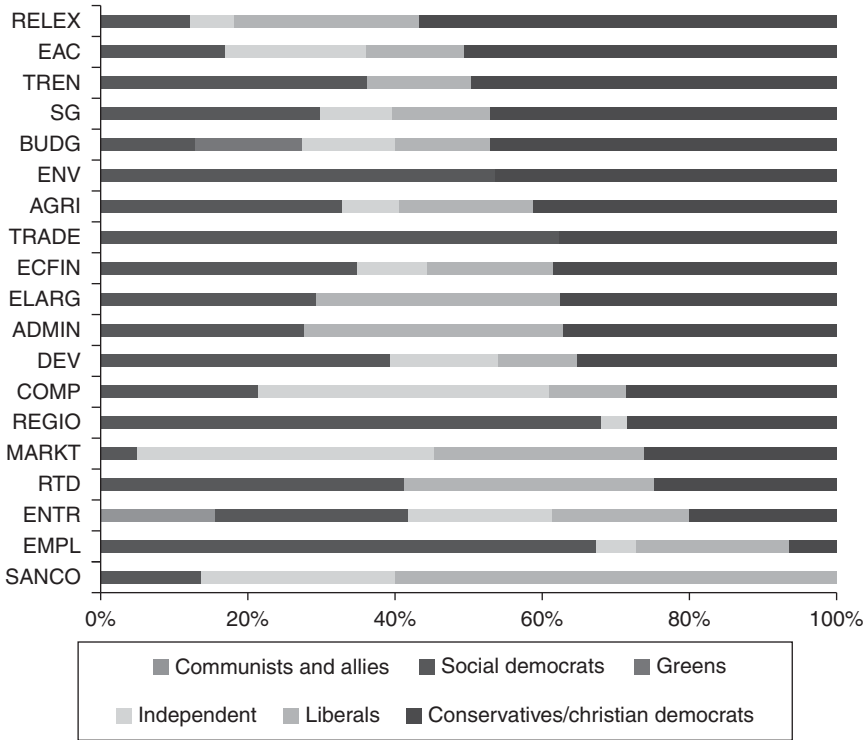


Figure 9.3 Party affiliation of commissioners across DGs (months in office)
Note: The graph shows actual party membership/affiliation for the time when being nominated (not, for instance, being appointed by a certain government). SG refers to the Commission Presidents heading the Secretariat General. Months in office allow dealing with the (rare) event of changing Commissioners under an ongoing term. DGs INFISO, MARE, TAXUD, JLS, and COMM are excluded for having been separate entities relative shortly, only
Source: Own analysis on the basis of Franchino (2009) and commission data base

commissioners are significantly more likely of being assigned portfolios with a left-(right-)wing ideological profile’.

Members of right-leaning parties are found at the top of DGs RELEX, EAC, and TREN – a group that is united by its largely regulatory nature. The economic DGs ENTR, BUDG, ECFIN, and MARKT with a market-enhancing mandate stand out as relatively mixed in terms of ideology. This can be explained by the different approaches a party may take toward the policy – an interventionist, public utility policy or a privatized, competition policy. Liberal Commissioners were particularly important in DGs SANCO, ELARG, and ADMIN. Interestingly, DG COMP, a service that is considered to particularly advance liberal positions and that has been shown to house officials with particularly liberal ideology (Kassim et al., 2013, ch. 4), has for most of the time been led by the

(increasingly) rare species of a politically independent Commissioner. Two portfolios (DGs DEV and ENV) stand out as balanced with regard to party political orientation of their leaders; the environmental portfolio particularly does not lend itself easily to interests of only the left or right. Green parties are typically most closely associated with environmental policies (Hooghe et al., 2002).

Findings on party political orientation and sectoral administrative structure largely correspond with the expectations articulated in the literature. What does not fit the picture is the majority of conservatives working in DG EAC. Contrary to expectations, the portfolio for the prototype of interventionist EU policy, DG AGRI, has mostly been led by a conservative Commissioner. In the EU, agriculture was traditionally a stronghold of conservative interests and voters (cf. alignment with farmers' parties) despite its interventionist character.

Thus far, different measures of politicization and ideological distributions inside the EU Commission have been presented. The next section exemplifies how this politicization enters concrete position-formation processes and impacts on policy substance.

The impact of ideology on commission positions

In a sample of 48 cases that trace legislative position formation inside the EU Commission,⁷ we find that those party interests represented by a Commissioner are quite likely to influence the Commission's position. These positions trickle down to the services through the respective cabinet. As one interviewed official described it, services orient themselves toward the political stance as well as the working style of their Commissioners and cabinets (COM 58:211, COM 86, 71). Typically, in each cabinet one or two members deal with party political issues (COM 103, 78). However, in the College of Commissioners party politics was only one among many factors determining the position taken, and arguably mattered at aggregate level in only a limited number of cases. Successful ideological advocacy appears to be contingent upon the consensual decision taking place in the College. Although formally qualified majority voting is the rule, the overwhelming number of decisions in the Prodi and Barroso Commissions are said to have been taken unanimously (Egeberg, 2006). The following case exemplifies the impact of ideology on internal position formation.

The Community's *Sixth Euratom Research Framework Program* (COM [2001] 94–2)⁸ funds research on nuclear energy, primarily in the areas of fission and fusion. In the Sixth Research Framework Program, the Euratom part of the Commission's proposal is equipped with a smaller budget than in the foregoing Fifth Framework Program, that is, not only in relative but also in absolute terms. This is insofar puzzling as EU funding programs usually follow 'the principle of conservation of budget in the Commission' (COM 96, 73). Once

a funding stream has been established at Community level, the Commission will try to maintain and expand it. Also, it is the legislative proposal presented to the cabinet through which the Commission tries to increase budgets (COM 98, 65).

An important factor in explaining why the FP6 Euratom proposal did not aim for a higher budget is that at the time the FP6 was drafted and adopted in the Commission, the Commissioner for Budget was a Green party politician who was 'adamantly opposed to nuclear energy' (COM 102, 97; also COM 82, 38). Her opposition was of importance in the Commission's internal negotiations since DG BUDG holds internal veto power on spending policies (Hartlapp et al., 2013). The DG in charge of the Framework Program, the Directorate General for Research and Technological Development (DG RTD), had little choice but to take the party political position into account. Consequently, the budget for nuclear energy was reduced in the final proposal.

In other cases of our sample, individuals at the Commission's top hierarchy also influenced legislative proposals by strongly defending their party political positions (Hartlapp et al., 2014, forthcoming, for example cross-border healthcare). We have seen that the advocates of party political interests not only had long-standing careers in those parties before entering the Commission but that the issues in question touched upon the core ideologies of the respective parties – in the example presented, on nuclear energy. This conforms more to a socialization logic rather than to a delegation chain unfolding on the basis of rationalist office seeking. However, ideology matters not only to define positions, as the affinity between specific sectoral portfolios and the ideological orientation of Commissioners suggests. Quite regularly party political affiliation has helped to assert positions in the Commission's internal contentions. One interviewee argued that, generally, belonging to the same party family renders a Commissioner a 'natural ally' (COM 104, 172). Informal structures facilitating this mechanism are regular informal meetings among Commissioners from the same party family – typically over dinner at the occasion of the EP sessions in Strasbourg (COM 103, 79; COM 104, 240).

Conclusion

The EU Commission is a particularly interesting case of a politicized administration due to its dual role as the EU's administration and the executive government setting the agenda for EU politics. Administrative studies measure politicization from a formal institutional and a functional perspective that respectively captures political considerations in career and recruitment, and the beliefs and orientations of individuals working in the Commission. Systematically exploiting the functional perspective on the basis of personal characteristics and with a view to temporal and sectoral patterns reveals new

insights into the politicization of the core administration in the emerging European administrative system.

Looking at the previous professional activity of personnel, I presented evidence that the Commission, much in line with findings on national administrations, has developed from a Weberian bureaucracy into a more political body. In terms of party political affiliation, the College of Commissioners has grown more politicized with fewer independent Commissioners, but without a clear pattern of becoming more liberal or more left-wing over time. We found the ideological orientation of individuals working inside the Commission to be unequally distributed across portfolios. The coalition of the two largest parties nicely matches important integration steps. DGs of interventionist policies are often found to be headed by Commissioners pertaining to a social democratic party family. Our findings gain relevance in combination with arguments as to why and how personal characteristics matter. A case study exemplified how ideology is a decisive factor in explaining positions proposed by the EU Commission. The material also shows that ideology is relevant for position formation in the EU Commission, where alliances along party political lines constitute a power resource to assert portfolio interests internally.

Insights into politicization from the formal-institutional perspective recently stressed a decreasing politicization at the service level (Balint et al., 2008). Our data support Peterson (2008, 767; also Bauer and Ege, 2013, 175) who argue that the political and the bureaucratic spheres in the EU Commission are drifting apart in terms of politicization. It seems that in this respect the EU administrative system is moving in the direction of the Scandinavian and UK system, with a clear separation between an (increasingly) apolitical administrative level and (increasingly) politicized officials at the top. This picture also fits well with the quest for more political legitimacy recently voiced by the Commission. The call for linking the selection of its President to EP elections is a strong sign of assuming this more political role at the top by gaining legitimacy for its far-reaching execution of agenda-setting powers in the EU's political system.

Notes

1. Funding from the Volkswagen Foundation in the form of a Schumpeter Fellowship is gratefully acknowledged. I thank Commission officials interviewed in 2008 and 2009, Yann Lorenz for excellent research assistance, and the editors for helpful comments.
2. The number of DGs increased over time, for example, in relation to enlargement. In this article the Barroso I Commission functions as the default for DG and Service abbreviations and adjustments are made to allow for timelines (cf. annex for the respective acronyms).
3. For details on the database, see <http://www.wzb.eu/de/forschung/internationale-politik-und-recht/positionsbildung-in-der-eu-kommission/publikationen/database>.

It covers 1957–2008 and provides three different perspectives on the Commission: Commission staff ('Persons Data'/'Persons Positions'), administrative structure and size of the Directorates-General ('DG Data'), and a localization of policies in the administrative structure ('DG Nomenclature').

4. Academic, Activist, Bureaucrat, Business, Diplomat, Junior minister, Minister, Parliamentarian, Party Leader, Prime Minister, Regional Government, Secretary of State, or Union Leader. Where the person under consideration had occupied more than one of the listed position groups, they were assigned the category where they had occupied the hierarchically highest post.
5. Party family groupings build on and further develop Hix and Lord (1997). I am aware that variation across national parties is substantial, even within party families, but think that party political orientation of Commissioners can nevertheless bear some insights.
6. The jury is still out as to whether these soft governance instruments can be judged as an important advance on social policy or are rather characterized by voluntarism.
7. The case studies are part of a broader collaborative research project on 'Position Formation in the EU Commission'. For more information, see <http://www.wzb.eu/en/research/international-politics-and-law/position-formation-in-the-eu-commission>.
8. The analysis presented draws on the work of my colleague Julia Metz (2012) to whom I am thankful for sharing data and insights.

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10

The Permanent Commission Bureaucrat

Sara Connolly and Hussein Kassim

Introduction

Although international organizations command considerable scholarly interest, surprisingly little attention has been paid to the people who work for them. Studies typically describe the functions that these organizations perform (for example, Barnett and Finnemore, 2004; Cox et al., 1973). They summarise the internal structures and procedures of international institutions, assess how effectively they carry out their responsibilities, and (sometimes) attempt to measure their influence. Commentary on personnel matters, such as recruitment, promotion, pay, and working conditions, sometimes also feature (for example, Davies, 2002), but the literature rarely has much to say about the backgrounds of employees, and – the socialization literature aside (for example, Checkel, 2007) – still less about their beliefs.¹ Only recently have scholars begun systematically to investigate the motivation and values of international civil servants (Anderfuhren-Biget et al., 2013; Fresia, 2009; Häfliger and Hug, 2012).

This neglect is surprising for at least three reasons. First, the expertise which an international administration commands, the extent to which its staff are representative of the constituencies it serves, and the model of recruitment it follows – career- or position-based – are defining characteristics of public bureaucracies. It is surprising that, although they exhibit classic bureaucratic features, they are only rarely brought within the ambit of comparative study. Second, the technical expertise and professional experience available to an international administration are likely to affect its capacity to carry out the tasks entrusted to it. Any assessment of the ability of an international institution to perform its responsibilities effectively must necessarily incorporate an assessment of its workforce. Third, international organizations have grown considerably in number and influence since 1945, transforming the governance of democratic states and societies. Since their activities affect not only

governments, but increasingly also the daily life of citizens, the origins and outlook of the staff of international institutions are a matter of public concern.

Despite the existence of a now voluminous literature (Szarek and Peterson, 2007), in terms of the themes described above the European Commission has been little better served than other international institutions (however, see Bellier, 1995; Page, 1997). Preoccupied by the Commission as a political actor, scholars have overwhelmingly focused on the role it plays in decision making and in particular its influence in the EU's legislative processes. The Commission as an administration and the people who work for it have attracted far less attention (Kassim et al., 2013, ch. 1). Far fewer scholars have looked at staff motivation (Michelmann, 1978; Page, 1997), the educational and professional backgrounds of Commission employees (Michelmann, 1978; Sasse et al., 1977; Stevens and Stevens, 2001), or their values and beliefs (Hooghe, 1999a, 1999b, 1999c, 2001). As a result many (mostly negative) assumptions or contentions about the Commission and its personnel in political debate, media discussion and academic scholarship go untested. In an era of general anti-bureaucratic sentiment, the Commission is typically regarded as the arch bureaucracy – remote, faceless, and over-mighty (Kassim et al., 2013, ch. 1).

Focusing on the European Commission, this chapter addresses exactly those questions about the staff of international institutions that so often go unexplored.² In so doing, it exposes as myths many of the beliefs about the Commission that have become accepted wisdoms. The view that Commission employees are disproportionately graduates of a single discipline, namely law, the assumption that staff are career civil servants with little, if any, experience outside the public sector, and the belief, reported by the Eurosceptic press and espoused by some politicians, that the organization is populated by expansionist bureaucrats who want always and everywhere to extend EU competencies and therefore their own power are among the most widespread.

The discussion below is organized into four sections. The first section briefly describes the framework in which Commission staff work. The second examines the backgrounds of Commission personnel. Testing accepted wisdoms that the Commission is an 'administration of lawyers' and that its staff arrive directly from university or a public sector position, it looks at the educational qualifications held by Commission employees and at their prior professional experience. Then, examining the extent to which EU member states are represented in the Commission administration in proportion to their share of the total EU population, the chapter considers whether the Commission administration is a representative bureaucracy. The career paths of Commission staff are the subject of the third section, where horizontal mobility, career progression, and the extent to which gender, nationality, or education influence the speed of career advancement are investigated and assessed. The fourth section is concerned with the motivations and the beliefs of Commission employees. Testing claims

that Commission staff are instinctive federalist centralizers, this section looks at what attracts recruits to the organization, the vision of the EU as a political system that they favor, and whether they think more or less decision-making authority should be vested at EU level. The conclusion summarizes the main arguments and considers future directions for research.

The Commission's permanent administration

The Commission workforce comprises around 33,000 members of staff, of whom 69 per cent are employed on a permanent contract and have the title 'official' (see European Commission, 2014). Permanent officials are further subdivided into three groups: administrators ('ADs'), who have legislative or budgetary responsibilities; assistants ('ASTs') who perform administrative support functions; and, since 2014, secretaries or clerks. ('AST/SCs'). This chapter focuses on administrators.³ Forming the largest segment of the Commission's workforce (38 per cent), they are located in the 'services' – the 'Directorates-General' – that are directly comparable to the ministries of a national civil service. The services interact with the political layer of the organization, composed of the College of Commissioners and the Commissioners' private offices – the *cabinets*.

The creation of the services as a permanent bureaucracy is an achievement of the first Commission President, Walter Hallstein, who believed that only 'une grande administration' (Hallstein, 1965) – expert, meritocratic, and with a structure that provided for advancement over a career – would have the authority to act independently vis-à-vis the bureaucracies of the member states. Although compromised to an extent by the manner of its implementation (see below), Hallstein's career-based vision triumphed over the alternative advocated by, among others, French President, Charles de Gaulle. Opposed to the creation of a permanent supranational bureaucracy, de Gaulle had envisaged a model where national officials were seconded from the member states for a fixed duration. Hallstein, with the assistance of Emile Noël – for 30 years the Commission's most senior administrator⁴ – put in place the fundamental features of a permanent administration:

- recruitment of officials by a competitive examination (the *concours*);
- a career structure with four categories – A, B, C, and D⁵ – which was replaced in 2004 by a system with two function groups, 'administrators' (ADs) and 'assistants' (ASTs), though on a single pay scale; and
- the promise of career progression on the basis of merit and seniority.

More broadly, the Commission combines elements of French and German administrative traditions (Balint et al., 2008).

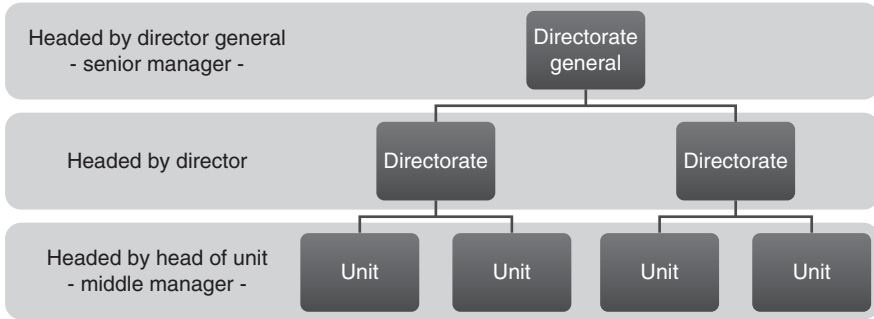


Figure 10.1 Hierarchy and management in the European Commission

While the *concours* system is taken from France, the hierarchical organization of the Commission is modeled on the German administration: each DG, headed by a Director-General, is divided into directorates, which in turn are divided into units (see Figure 10.1). The first are headed by Directors, the second by Heads of Unit. Moreover, the European Commission, like other EU institutions, has followed the administrative law tradition that is a feature of bureaucracies in both France and Germany by codifying in its Staff Regulations (or 'Statut') the terms and conditions of employment, recruitment, and promotion procedures, and the duties and obligations of personnel. These rules were first adopted in 1960. Aside from incremental changes, which have been innumerable, the Staff Regulations have been reformed three times: at the time of the merger of the executives of the three European Communities in 1965, in 2004 as part of the 'Kinnock reforms' (Balint et al., 2008; Bauer, 2008a; Bauer, 2008b; Kassim et al., 2013; Kassim, 2004a, b, 2008; Schon-Quinlivan, 2011) and in 2014 following a review conducted in association with the negotiation of the EU's Multiannual Financial Framework (2014–2020).

Finally, although it has powers and responsibilities that differentiate it significantly from the international secretariats or executive organs of most international organizations, the Commission remains a dependent institution that is 'multiply accountable' (Christiansen, 1997). As masters of the treaties, the member governments determine the size of the College of Commissioners and the number of the Commissioners selected per member state. For many years, they also agreed a nationality quota, which they scrutinized and enforced at senior levels of the organization through the cabinets, themselves formerly national enclaves within the Commission (Joana and Smith, 2002; Kassim et al., 2013, ch. 5). Member governments also nominate the Commission President and other members of the Commission, taking into account results of the elections to the European Parliament, while the European Parliament holds

hearings where it can effectively reject individual Commissioners. More generally, both the Staff Regulations discussed above and the EU budget, which sets not only the total number of officials but also the categories to which they can be appointed, are legislative acts that must be negotiated with, and agreed and adopted by, the Council and the European Parliament. The Commission therefore operates with limited room for maneuver, the selection of its leadership, the level of resources available to it and the rules that govern its operation decided externally.

Commission officials: Who are they, and where do they come from?

Public administrations are often evaluated against two key criteria. The first requirement, set down by Max Weber, is that bureaucracy must command specialist expertise if it is to be considered legitimate. This is important for any administration if it is to claim authority, but the demand is even more exacting in the case of an international body, such as the European Commission, which is evaluated according more to its 'output' than its 'input' legitimacy (Scharpf, 1999). The second requirement is that a public bureaucracy should be representative of the communities that it serves. In the first instance, this demands an equitable gender balance both horizontally – that is, in all policy areas – and vertically, at all levels of seniority. In the case of an international administration such as the Commission, it also requires that nationals from all EU member countries are present across and at all levels of the organization.

Educational and professional backgrounds

The Commission requires a considerable range of expertise and experience if it is to craft proposals and manage policy in all the areas in which the EU is active, as well as to maintain credibility and standing with policy stakeholders. Were its policy officers to be drawn from a narrow disciplinary range or to have only limited professional experience and skills, these requirements would not be met. In practice, as data from the online survey conducted as part of the EUCIQ research project shows (Kassim et al., 2013, ch. 2), evidence points in a very different direction from the accepted wisdoms.

First, as Figure 10.2 shows, the educational backgrounds of Commission officials are considerably more diverse than often thought. The Commission's workforce is in fact composed of graduates drawn from a broad range of disciplines. Contrary to myths about the organization, lawyers do not preponderate. Indeed, graduates in law are outnumbered both by economists and by natural scientists (see Figure 10.2).

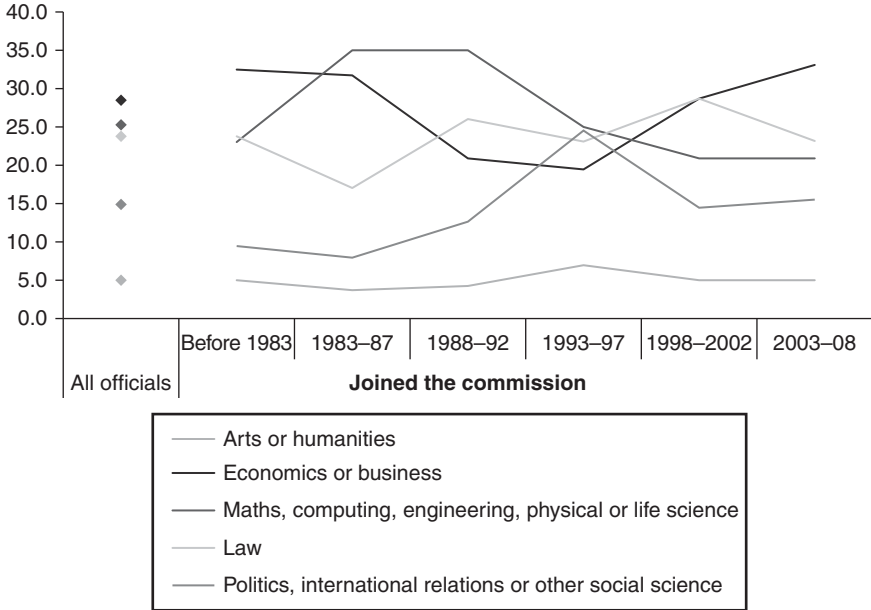


Figure 10.2 Commission officials: Main educational qualification (2008)

Source: EUCIQ data

Second, the range of professional and prior experience possessed by Commission staff is considerably broader than accepted wisdom suggests (Figure 10.3). Although more Commission officials come from the public sector than from any other background, it is only since the mid-1990s that former civil servants have formed a plurality. Indeed, over the past three decades, more than a third of Commission staff have come from the private sector. A further ten percent, moreover, were recruited from the liberal professions. Finally, there is little support for the contention that Commission staff are unfamiliar with life outside the ‘Brussels bubble’. No fewer than 96 percent of officials in fact have prior work experience.

Although a lack of data makes it difficult to compare the Commission with other public bureaucracies, whether national or international, the data from the EUCIQ project reported above show that policy officers within the Commission have a wealth of expertise and experience.

Gender

Historically, the Commission was marked by a significant gender imbalance: women were concentrated in lower grades, underrepresented in middle management, and almost entirely absent from senior positions (Commission 2004, 2005, 2010). In 1975, for example, a time when there was a strict

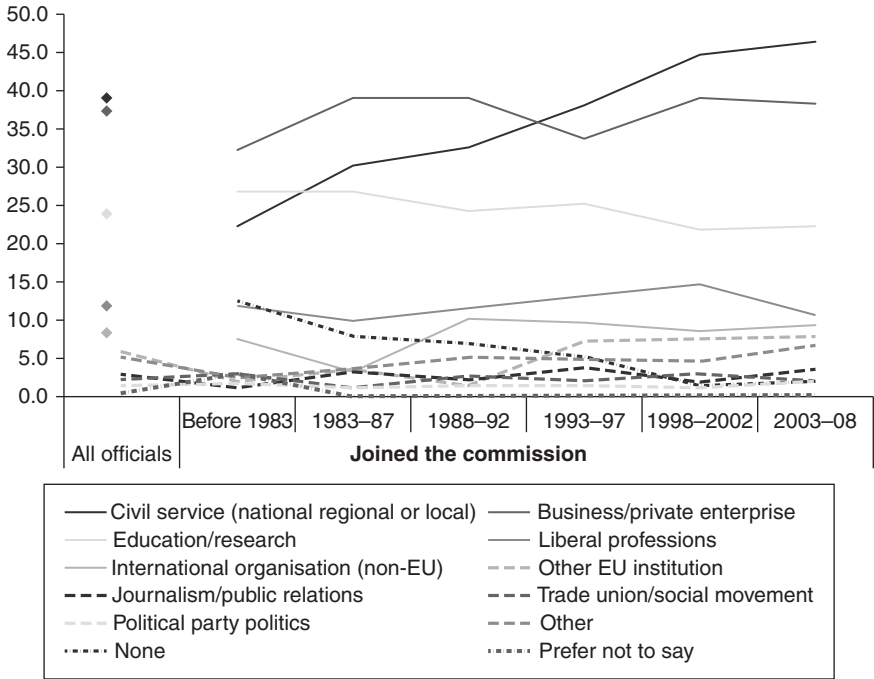


Figure 10.3 Commission officials: Career before joining the European Commission (2008)
 Source: EUCIQ data

separation between staff in translation and staff with policy responsibilities, women formed 43 percent of the total Commission workforce, but worked in translation (46 percent of language administrators (LA)), or especially in clerical (that is, category C) roles (81.2 percent). Only two percent of top officials (A1) were women. By the mid-1980s the situation was little better: only 9.3 percent of administrators were women, men outnumbered women in middle management by more than ten to one (735 men; 69 women), and of 162 senior positions only two were held by women. Eleven years after the Commission had created a standing Joint Committee on Equal Opportunities for Men and Women, improvement was at best incremental: women accounted for 13.5 percent of administrators, 11 percent of middle managers, and 2.4 percent of top positions.

Only with concerted efforts within the organization since the mid-1990s – against the background of gender equality campaigns at national and international levels and changing social attitudes – has the balance begun to be redressed (Woodward, 2012). As well as implementing a series of action plans,

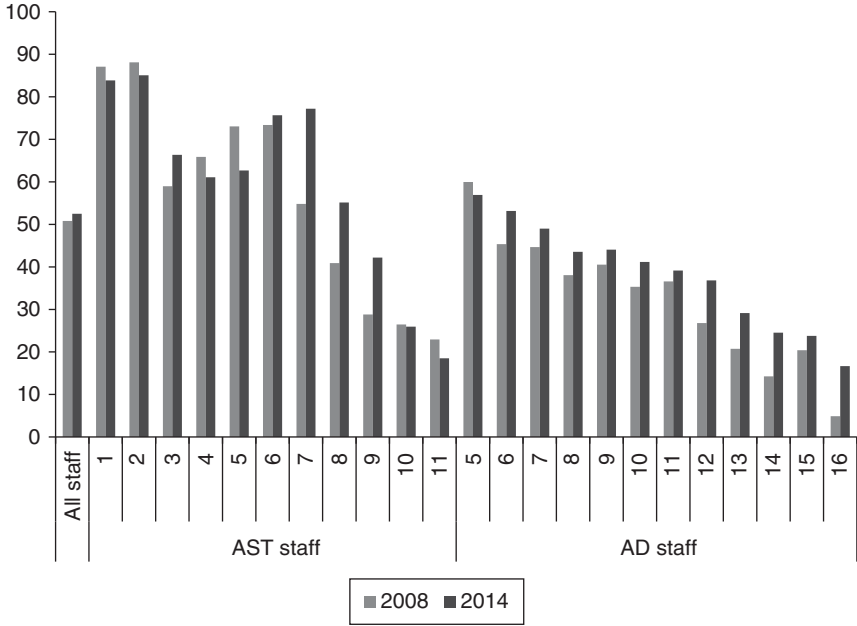


Figure 10.4 Women as percentage of Commission officials, 2008 and 2014
 Source: European Commission data (http://ec.europa.eu/civil_service/about/figures/index_en.htm)

which set specific targets for recruitment at different levels of the organization over the short, medium, and long term (Commission, 2004, 2010), the Commission used the enlargement exercise to redress the gender balance (Ban, 2013; Commission, 2011). The percentage of women among administrators has grown from 24 percent in 2003 to 40.4 percent in 2009 and 54.6 percent in 2012, middle managers from 17.2 percent to 23.3 and 28.7 percent and senior managers from 13.7 percent to 21.4 and 27.2 percent (Commission, 2004, 2005, 2012).

Figure 10.4 shows the work that still remains to be done. Although the overall percentage of female employees has increased from 46.6 percent to 52.5 percent and the Commission’s top official – the Secretary-General – throughout most of the Barroso era (2004–2014) has been a woman, the number of women diminishes with every upward step on the AD scale. Nor does the Commission fare well in comparisons with EU member-state administrations. Based on 2012 figures (Commission, 2012) – the most recent year where comparative national data is available – eight of the EU-27 had a lower percentage of female managers in the very top jobs (level 1) and only three of the EU-27 had a lower percentage of women in the next tier of senior jobs (level 2).

Nationality

Nationality has long presented the European Commission with difficulties, both symbolic and practical. It was evident in the clash between Hallstein's wish for a permanent administration of career civil servants and de Gaulle's preference for seconded national civil servants, which reflected competing visions of the Commission's role and independence, and was not dispelled by Hallstein's apparent victory. The creation of the Commission's administration as a career civil service distinguished the Commission from other international bodies, where individuals are recruited to particular jobs and opportunities for career advancement are limited accordingly.

At the same time, the Commission is intensely aware that expert knowledge of the member states is indispensable to its mission. It could not perform the functions entrusted to it without a detailed understanding of the economic, political, and legal systems of each member country – not to mention the linguistic abilities needed to communicate with public and private actors – that only nationals typically possess.⁶ Nor would its action be seen as legitimate if it was unable to speak to citizens in their own language or if its workforce were drawn too disproportionately from only a number of member states. The need to preserve a 'geographical balance' within the administration was therefore written into the Staff Regulations, where it sits somewhat uncomfortably (in Article 27) alongside a commitment to recruitment on the principle of merit.

For the member governments, formal commitment to 'geographical balance' was not enough. They insisted on a system of fair shares (Page, 1997, 41), where the nationals of each member state occupied a number of posts roughly equivalent to its share of the total EU population. The original bargain foresaw a share of one-quarter each for France, Germany, Italy, and the Benelux countries (Lindberg, 1963), but the percentages were readjusted at each round of enlargement. In practice, however, national shares were rigorously protected only at senior management level – that is, Directors and above – and the *cabinets*, in close collaboration with the Permanent Representations and the capitals, which kept a close eye on appointments and put forward new candidates to fill vacancies as they arose. In addition, governments laid claim to the top posts in Commission departments in policy areas important to them. Thus, a French national often headed the Directorate-General for Agriculture, a German the Directorate-General for Competition, and an Italian the Directorate-General for Financial Services.

Both practices – national quotas for senior management posts, and national flags – were dealt a blow by the Kinnock reforms (Kassim et al., 2013, ch. 8). A new appointments procedure was enforced for senior jobs that limited, though did not entirely eliminate, outside interference, and compulsory

mobility was introduced for Directors General. More generally across the organization, some member states are better represented relative to their size than others. An analysis using the concept of disproportionality developed by Page (1997, 44) to measure the extent to which the number of officials from each member state reflects its share of the total population of the EU confirms that the findings of earlier studies still hold true (Table 10.1): that the proportion of officials from the smaller member countries, most notably Belgium, is greater than suggested by their share of the EU population, while many larger member states, notably, the United Kingdom, France, Germany, and Poland, are underrepresented – a shortfall is recognized as a problem in both Brussels and the national capitals of the countries concerned.

The nationality of officials is an important aspect of representation, but the role that nationality plays within the organization is no less significant. Data collected for the research project, 'The European Commission in Question' (EUCIQ), show that Commission officials believe that the Commission needs to have a diverse workforce in order to be able to carry out its responsibilities. The 'big bang' enlargement of 2004 has only emphasized the importance of country-specific knowledge and command of EU languages. According to one senior official, for example, '[w]ith 27 member states and 11 languages you clearly need to be able to have native speakers on file ... You can never ask someone not originating from Latvia to deal with Latvian cases because nobody else masters the language' (EUCIQ interview 72).

At the same time, officials certainly do not see themselves as representatives or agents of their state of origin, nor do they believe that colleagues are likely to favor their home country. When asked as part of the EUCIQ project about the influence of nationality in the Commission, a number of officials referred to the Commission's administrative culture, which they argued strongly supports independence and institutional loyalty to the Commission as representative of the general interest of the EU as a norm. In similar vein, the Deputy Director-General of a powerful DG stressed, 'I fundamentally trust the neutrality of Commission officials ... [W]e have high standards in recruitment ... and we are an independent civil service' (EUCIQ interview 139). According to another official, '[a] lot of people will actually be more tough with their own member state, more exigent because they want to show that they're neutral' (EUCIQ interview 45). Standard management techniques – oversight and monitoring by managers, 'the four eyes' principle, and working in teams – also serve to prevent potential abuses. As one middle manager commented of the unit he headed, '[w]e are nineteen in all and we are ... thirteen nationalities ... We need a balance, because we need to get the nationals who may understand better than non-nationals the workings of the member state; at the same time, we want to avoid situations of potential conflict of interest' (EUCIQ interview 16). Further safeguards are provided by the hierarchical structure of

Table 10.1 Proportionality in the Commission administration: Percentage of administrators in management and non-management positions relative to home state's share of total EU population

Nationality	2008				2012			
	All AD	Administrator 5-10	Middle management 11-13	Senior management 14-16	All AD	Administrator 5-10	Middle management 11-13	Senior management 14-16
Luxembourg	31	2	21	7	30	1	22	6
Ireland	118	26	75	17	114	19	81	14
Finland	190	61	128	2	188	52	134	2
Denmark	116	20	90	7	104	11	85	8
Austria	59	9	45	5	59	-1	51	9
Sweden	97	25	70	3	89	5	84	1
Portugal	125	-24	143	6	117	-46	155	8
Belgium	978	489	420	69	992	507	418	68
Greece	242	10	209	23	234	0	207	26
Netherlands	12	-38	44	5	-6	-73	58	9
Spain	-169	-113	-43	-14	-192	-206	15	-1
Italy	-334	-172	-122	-40	-373	-307	-35	-31
United Kingdom	-791	-504	-255	-32	-885	-679	-181	-24
France	-265	-183	-81	-1	-345	-331	-21	7
Germany	-732	-323	-352	-57	-741	-490	-215	-36
EU-15	-322	-715	392	1	-615	-1539	858	65
Malta	97	94	0	2	103	99	2	2

Table 10.1 Continued

Nationality	2008				2012			
	All AD	Administrator 5-10	Middle management 11-13	Senior management 14-16	All AD	Administrator 5-10	Middle management 11-13	Senior management 14-16
Cyprus	51	49	-2	5	44	40	1	4
Estonia	91	99	-10	2	99	104	-7	2
Slovenia	108	127	-20	1	92	104	-14	1
Latvia	83	102	-19	1	105	117	-13	1
Lithuania	107	139	-32	0	104	128	-24	1
Slovakia	63	121	-54	-4	58	105	-44	-3
Bulgaria	102	187	-77	-9	150	213	-58	-5
Hungary	121	226	-99	-6	115	203	-84	-4
Czech Republic	48	165	-105	-12	44	142	-88	-10
Romania	-121	144	-239	-26	-52	160	-190	-21
Poland	-264	197	-416	-45	-263	124	-350	-36
EU-12	486	1650	-1073	-91	600	1537	-870	-66

Note: 1. Countries ordered by share of EU population in 2008

2. Since in the Commission, grade and position are separate, the definition of non-management administrators, middle managers and senior managers is approximate

Source: Authors' calculations, based on index developed by Page (1997, 44-46) and using data from the European Commission, DG Human Resources (http://ec.europa.eu/civil_service/about/figures/index_en.htm)

DGs; collective decision making and rules, such as those that preclude the appointment or continuation in the post of a Director-General coming from the same home country as the Commissioner to whom he or she is responsible, or occupation of adjacent senior positions by compatriots; and measures introduced following the resignation of the Santer Commission as part of the Kinnock reforms, such as detailed financial management control procedures, internal auditing, compulsory rotation, and a greater emphasis on 'ethics and improved management' (EUCIQ interview 107). Indeed, since the crisis that provoked the downfall of the Santer Commission the Commission has become a strongly risk-averse organization, where if anything controls have been over-engineered.

Career paths

As noted above, as a career-based system the Commission is unusual among international administrations. Officials are recruited at entry level. They progress through a series of seniority steps within each grade – and then become eligible for promotion to the next grade. The original intention was that promotion would be based on performance, although seniority now arguably challenges merit as a key criterion for career advancement (Table 10.2a and 10.2b).

Table 10.2a Career structures in the European Commission: Pre-2004 system

Pre-2004 Career Structure			
Category A: 'policy'	8 grades: A8-A1	A1 A2 A3 A4 A5 A6 A7 A8	Director General Director Head of Unit
Category LA: 'translation and interpretation'	5 grades: LA8-LA3 (not shown)		
Category B: 'implementing'	5 grades: B 5 – B 1 (not shown)		
Category C: 'secretarial'	5 grades: C 5 – C1 (not shown)		
Category D: 'Drivers and messengers'	4 grades: D 4 – D 1 (not shown)		

Source: European Community, Administrative reform archive at http://ec.europa.eu/reform/2002/chapter02_en.htm#5

Table 10.2b Career structures in the European Commission: Post-2004 system

		Post-2004 Career Structure, amended 2014		
		Administrators (ADs)	Assistants (ASTs)	Secretaries/Clerks
		AD 16		
Director General ¹		AD 15		
Director ²		AD 14		
		AD 14		
		AD 13		
		AD 12		
		AD 11	AST 11	
		AD 10	AST 10	
Head of Unit ³		AD 9	AST 9	
(Non-management)		AD 8	AST 8	
Administrator				
		AD 7	AST 7	
		AD 6	AST 6	AST 6
		AD 5	AST 5	AST 5
			AST 4	AST 4
			AST 3	AST 3
			AST 2	AST 2
			AST 1	AST 1

Note:

1. Approximate

2. Approximate

3. New minimum grade

Source: European Commission (2004, 2014)

Historically, the career-based system was compromised by the quota system described above, which has largely disappeared. However, other practices such as the organization of internal competitions, which offer staff on temporary contracts the opportunity to become officials without having to sit the external competition (*concours*), or *parachutage*, cabinet members employed as temporary agents, are recruited through internal competitions to management positions in the administration, as well as the recruitment of candidates from incoming member states directly to management positions when the EU enlarges, still remain and block the opportunities for staff recruited at entry level to progress through the career hierarchy.

This section examines the experience of officials after they join the Commission. It looks first at horizontal mobility, assessing how many Directorates-General an official is likely to work for over the course of their career. It then considers vertical mobility – career building and promotion. It compares the experience of men and women and considers whether some nationals have advanced their careers more rapidly than others.

Horizontal mobility

Attitudes to the desirability of mobility for the individual civil servant or for the service in general vary considerably between administrations. While it is redundant in those international organizations where officials are recruited to a particular post often for a specified period, at national level the United Kingdom and Germany occupy opposite poles. The UK civil service values and promotes mobility. By contrast, it is not unusual for officials in the German federal administration to spend their entire career in a single ministry.

In the Commission, the benefits of mobility have long been preached (for example, the Spierenburg Report, 1979, 4–6), but the impediments are considerable (Page, 1997, 35; Stevens and Stevens, 2001, 102–104). Not least, evidence suggests that officials themselves prefer not to move (Stevens and Stevens, 2001, 47). The Kinnock reforms aimed both to prevent senior officials from remaining in the same post – compulsory mobility was introduced for Directors-General and efforts were made to apply similar measures to officials in so-called sensitive posts – and to encourage officials more generally to circulate within the organization.

Data collected as part of EUCIQ show that, despite these efforts, the rates of horizontal mobility remain low (Figure 10.5). Officials in the EUCIQ sample had on average worked in no more than two Directorates-General, although mobility is higher among middle managers and even higher among senior managers. There is some variation among Directorates-General, but not much. At the upper end of the range, officials in DG External Relations had served in 2.5 DGs, but the lowest was only 1.74.

Testing more broadly for factors that potentially influence mobility, analysis shows that the subject of main educational qualification is the most important variable. For example, lawyers and natural scientists tend not only to be concentrated in a relatively small number of DGs but, when controlling for gender, nationality, and seniority, they are less likely to switch between DGs (Kassim et al., 2013, ch. 2). Between 31.4 and 92.3 percent of the staff of the Legal Service, Justice Freedom and Security, Competition, Internal Market, Taxation and Customs Union, Trade, and the Secretariat General are lawyers, while between 33.7 and 74.4 percent of officials in Informatics, Research, Joint Research Centre, Information Society and Media, Fisheries and Maritime Affairs, Health and Consumer Protection, Environment, Energy and Transport, and Enterprise are natural scientists. Economists, by contrast, are not as concentrated in particular Commission departments (Kassim et al., 2013, ch. 2) and tend to be more mobile. Importantly, neither gender nor professional background is significant, though lawyers tend to be less mobile and more women than men have had a legal training.

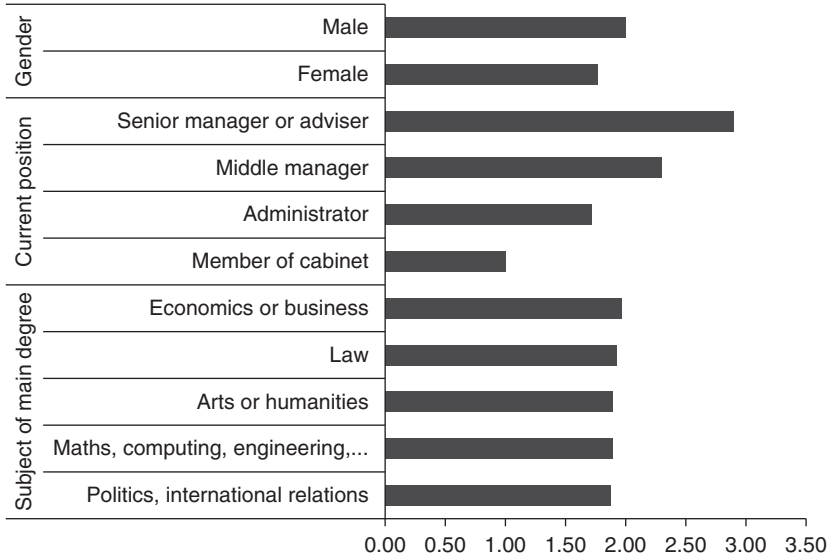


Figure 10.5 Number of Commission DGs in which officials have served
 Source: EUCIQ data

Vertical mobility

Although the Commission was created as a career administration, progression through its ranks is slow. Stevens and Stevens (2001) calculated that, after joining the Commission at entry level, it took an official between 15 and 20 years to reach middle management. Although the Kinnock reforms streamlined the career structure, the introduction of a larger number of grades and steps had the effect of lengthening rather than shortening the period a recruit could reasonably expect before promotion a middle management post. While the narrowing of the career pyramid offers limits the prospects for career advancement, periodic enlargements and *parachutage* further restrict the possibilities for promotion.

Even against this background, there is still strong evidence of career building, especially among middle managers (Figure 10.6). The EUCIQ online survey asked staff about the previous positions that they had held within the organization. Among middle managers – that is, Heads of Unit – 63 percent had served in a more junior role and 38 percent had previous employment in the same role. By contrast, fewer than half (43 percent) of senior managers, i.e. Directors-General, Deputy Directors-General, Directors, and advisers, had occupied a non-management post before moving to their current position. Fifty-five percent had served in middle management and 41 percent in another senior management position.

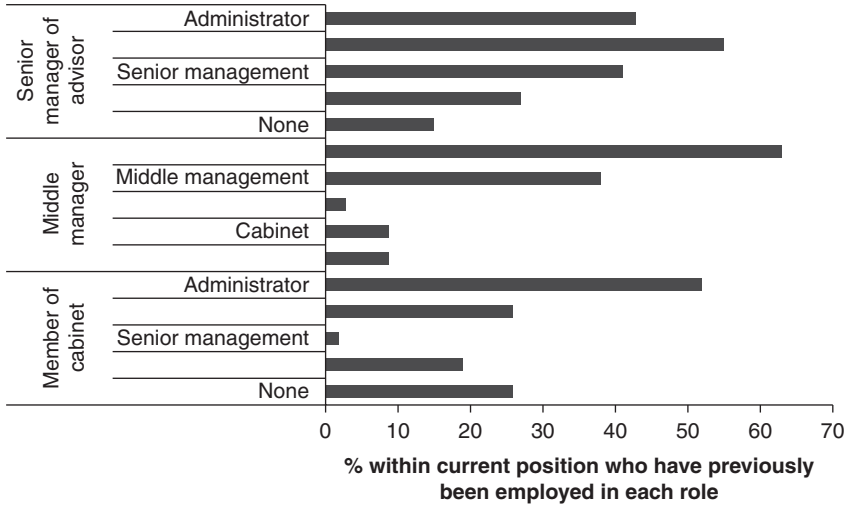


Figure 10.6 Career-building in the European Commission
 Source: EUCIQ data

Conversely, a minority of managers – nine percent of middle managers and 15 percent of senior managers (593 responded in total) – reported that a management job was their first in the organization. It is likely that they were recruited directly into management posts as part of recruitment exercise associated with the 2004 and 2007 enlargements, though a small number may have been recruited as part of one of the open appointment processes that occasionally take place where a senior management job requires considerable experience and a very particular set of skills that are rare in the Commission. These external appointments illustrate how the career-based model can be qualified by the organization’s need of specialist and wide-ranging expertise and experience.

The career trajectories of cabinet members were analyzed separately. Cabinet positions were traditionally much sought after due to the interest of the work and the proximity to decision making, but also because they acted as a stepping stone to top positions within the administration. Although since Delors the Commission has attempted to rein in the cabinets, to diversify their composition and to limit the possibility of *parachutage* due to the impact that it has on morale in the services, it is still believed that recruitment to a cabinet provides a short-cut into a management position for outsiders and that cabinet experience is likely to accelerate the career of those who have it.

Evidence on the purported halo effect of working in a cabinet is somewhat mixed. While Siim Kallas, Commissioner for Administrative Affairs (2004–2010), revealed that between 15 and 20 percent of top posts in the Commission administration went to cabinet members in the Delors, Santer, and Prodi

Commissions, analysis of the EUCIQ data – specifically a comparison of officials who had with those who had not served in a cabinet – does not suggest that cabinet experience confers significant career advantage. Indeed, there is considerable evidence of career building among cabinet members. More than half the cabinet members (52 percent) in our sample reported that they had worked in non-management positions within the Commission, while just over a quarter (26 percent) had been middle managers. In other words, far fewer members of the cabinets than anticipated had been recruited directly from outside the organization.

Gender, nationality, and party affiliation are often thought to affect career prospects. Taking each in turn, as noted above, women are now better represented in the organization, although vertical segregation is still a problem. Comparing the experience of men and women reveals somewhat surprisingly that although there are fewer women in management positions, those that occupy these posts had reached them slightly more quickly than their male counterparts (see Figure 10.7). Male senior managers had on average served for 19 years before their promotion, while women had worked for 18 years. The differential for middle managers is slightly greater: men have served for 15 years and women for 13 years. Interestingly, the picture is reversed for cabinets. Women cabinet members had 11 years of experience in the Commission before their appointment to a cabinet, while the figure for men is nine years.

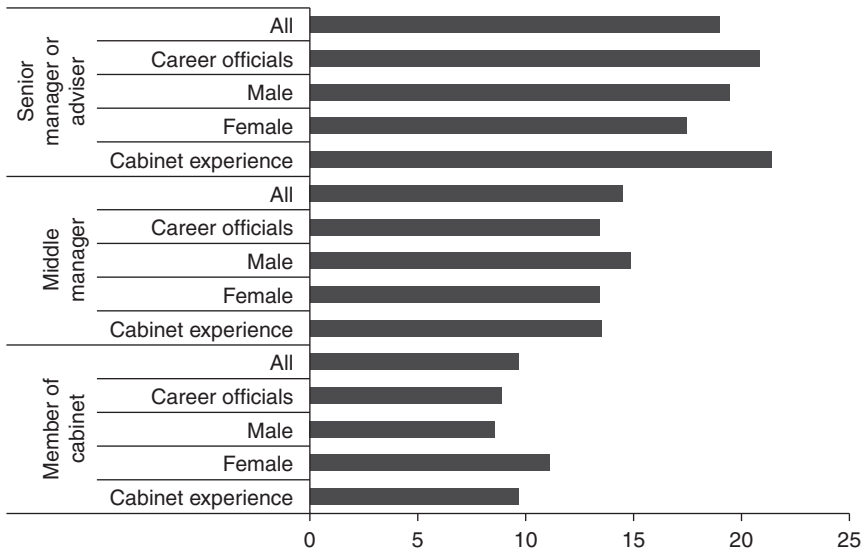


Figure 10.7 Commission officials: Average years of experience before current role

Source: EUCIQ data

These findings are less surprising, however, when viewed against the background of the recruitment exercise undertaken for the 2004 and 2007 enlargements (European Commission, 2011). As part of its efforts to improve gender equality within the organization, the Commission sought explicitly to use the exercise to diminish the imbalance with management ranks between men and women, and was relatively successful in its efforts. Many female senior managers, and especially middle managers in the EUCIQ survey, had been recruited directly to a management position – their first in the Commission – which partly explains at least why they were reached their respective positions more rapidly than their male counterparts.

With regard to nationality, the size of the EUCIQ sample (N=1820) was too small to permit comparisons between individual member countries. Instead, member countries were grouped according to when their home state joined the European Union. Analysis was then undertaken to assess whether officials from the original Six or from member states that joined at the first, second, third or fourth enlargements had enjoyed more rapid career progression than the rest. Having adjusted for other factors, including enlargement, there was no evidence to suggest that nationals from one cohort of member states had advanced more quickly than any others.

Finally, with regard to party affiliation, the evidence from face-to-face interviews conducted with managers (N=119) and members of cabinet (N=28) as part of the EUCIQ project suggests that political partisanship does not play a significant role in recruitment or promotion. Seventy percent of managers and 54 percent of cabinet members thought party affiliation was not important for the career prospects of senior officials. Even more remarkably, in the case of cabinets, where possession of a party card is often thought to be a key consideration, only 11 percent of cabinet members thought party affiliation very important. Forty-three percent believed that it sometimes plays a role and 39 percent thought that it was not very important or played no role. Managers took a roughly similar view.

What officials believe

While the traditional literature views working for the international civil service as a noble vocation (for example, Murray, 1991), there is little similar regard for the 'Eurocrat'. Indeed, Commission officials are frequently depicted as ideologue expansionists, intent on building a European superstate, wanting always and everywhere to extend the competencies of the EU, and ready ruthlessly to impose the will of Brussels. These traits are testable. If Commission officials are indeed zealous federalist centralizers, it is likely that they join the organization for idealistic reasons, that they want more 'Europe' rather than less, that they see the Commission as a future government of Europe, and that, in the spirit

of technocracy, building an ever closer Union prevails over political sensitivity. Empirical evidence in fact suggests otherwise.

Motivation

The online survey conducted as part of EUCIQ asked officials what had led them to decide to pursue a career in the European Commission. It presented respondents with an open list of options and asked them to indicate whichever were relevant. The most popular reason, given by more than 70 percent of respondents, was ‘commitment to Europe’ (Figure 10.8). Over a half cited ‘competitive remuneration’, while 45 percent cited ‘job stability’ and just under 40 percent ‘promising career prospects’. In other words, although idealist reasons are the main motivation, materialist and careerist considerations are also very important.

Beliefs

Investigation of the beliefs of Commission officials as part of EUCIQ offered little support for the view that they are instinctive and unremitting federalist centralizers, driven by a desire to see more power accrue to the European Union or to the Commission. First, although a plurality of officials believe in the Commission’s traditional roles of policy initiator and guardian of the treaties (Figure 10.9), they were not dogmatic. About a third (32 percent) thought that the Commission should share its right of initiative with the European Parliament.

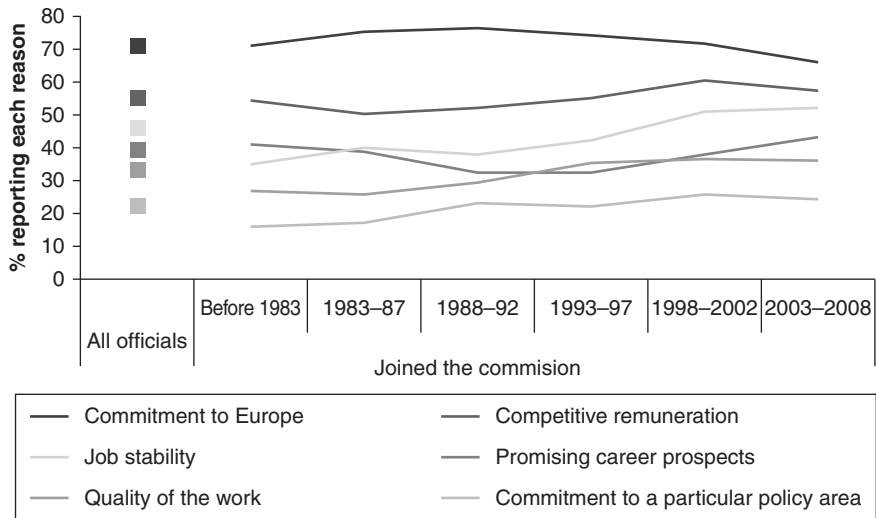


Figure 10.8 Reason cited for decision to pursue a career in the European Commission
Source: EUCIQ data

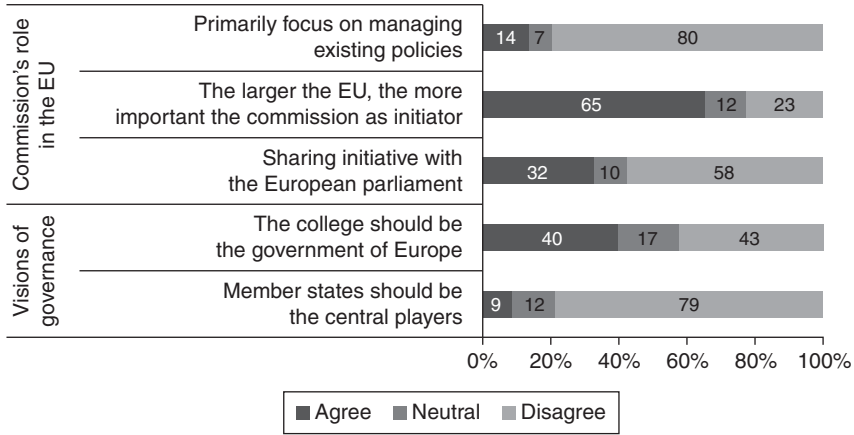


Figure 10.9 Views of commission role and preferred vision of EU governance
Source: EUCIQ data

Second, officials did not universally adhere to a preferred vision of the EU as a federal political system. The forty percent of respondents who thought that the College of Commissioners should become the government of Europe at some point in the future were outnumbered (albeit marginally) by the 43 percent who disagreed. At the same time nine percent thought the member states, and not the Commission or the Parliament, should be the main players, while 79 percent disagreed.⁷

These views were echoed in face-to-face interviews with managers conducted as part of EUCIQ. When asked explicitly about the model of the EU that they preferred, over 90 percent expressed their support for the Commission's traditional role. Only 13 percent saw the Commission as a future government, while 6 percent saw the Commission as an administration at the disposal of the member states. At the same time, there was a measure of pessimism among managers about what the future holds for the organization. More than half who wanted the Commission to continue to play its traditional role believed that it would retain its key functions in the future, while over a third of managers predicted that by the end of the next decade the Commission would be an administration serving the member states. Only six percent believed that the Commission would be a future government by 2019.

A third test was designed to examine the extent to which Commission officials hold expansionist views. In regard to 11 policy areas, officials were asked to indicate on an 11-point scale where they considered that policy-making authority resides, where 0 represents the national or subnational level and 10 the EU level. Then, for the same 11 policy areas and on the same 11-point scale, they were asked where they thought that policy-making authority *should*

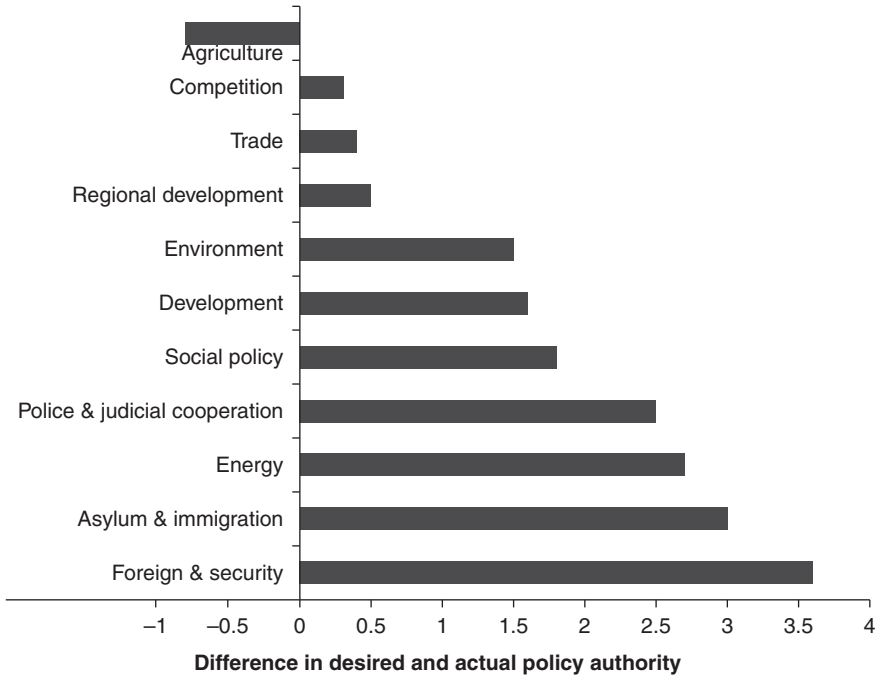


Figure 10.10 Differences in views of officials between where decision making does and should reside
 Source: EUCIQ data

reside. The difference between the two sets of responses gives a measure of where officials would like to see more or less ‘Europe’ in relation to the status quo (Figure 10.10).

The principal finding is that there is no generalized preference for ‘more Europe’. Commission officials are not, therefore, instinctively expansionist; rather, they take a differentiated view of the merits of assigning decision-making power to Brussels. In the case of agriculture, for example – which is important due to its symbolic status as the EEC’s first common policy – officials think that there is too much ‘Europe’ and would like to see decision-making authority devolved to national level. They would like significantly more ‘Europe’ in justice, energy, and asylum, and substantially more in foreign policy. To an extent, these preferences reflect the varying scope of EU responsibility. Officials want less Europe in agriculture, which they rate the second most centralized policy, and more Europe in foreign and security policy, which they rank tenth on the ‘where power actually resides’ scale. Competition and trade stand out, however, as officials want ‘more Europe’,

though of course these are areas where EU competencies are extensive and long established.

Finally, a common criticism leveled against the Commission is that it is a technocratic institution, where it follows that efficient solutions produced by experts based on rational analysis 'should be accepted by all people of good will' (Radaelli, 1999, 4). Although the European Communities have a technocratic past (Featherstone, 1994; Monnet 1978) – the founding fathers envisaged little or no input from political actors or citizens more broadly – there was little evidence that a technocratic mentality persists among managers. In response to the question '[i]n policy-making it is essential for the good of the European Union that technical considerations are accorded more weight than political factors' posed in the online survey conducted as part of EUCIQ, 34 percent of respondents agreed, but more than 60 percent disagreed. Managers also rejected the idea that the performance of the services should be judged on the basis of technical criteria alone. Fifty-three percent disagreed that political considerations should be eliminated in assessing the work of the services. These responses show that Commission officials recognize the importance of political as well as technical criteria and do not believe that their work should be guided by technical considerations alone.

Conclusion

Addressing themes that are often neglected in the literature on international organizations, and issues that are rarely examined systematically in scholarship on the European Commission, this chapter has sought to offer insights into the career trajectories, motivations and beliefs of the people who work for the Commission. As well as seeking to advance understanding of the workforce of an influential international administration, it has tested many of the accepted wisdoms about the organization and found little evidence to support them. The Commission has a far greater diversity of experience and expertise at its command than is often thought. Its staff are motivated by material and career considerations as well as by idealism, and they are not the federalist centralizers of popular imagination, instinctively seeking to extend the Commission's power and dreaming of a European superstate with the Commission as government.

At the same time, the analysis points to problems and potential difficulties. First, the Commission has been slow to redress the imbalance between men and women in administrative roles, especially in middle and senior management, and it has a considerable distance still to travel. Second, the underrepresentation of nationals from several of the larger member states – France, Germany, Italy, Poland, and the United Kingdom – suggests problems ahead, not only in

terms of country-specific expertise but in credibility and even the legitimacy of the organization.

Finally, although the chapter and the research on which it draws have provided a glimpse inside the 'black box' of the European Commission, the Commission is but one of many international administration, albeit one of the most influential. Similar investigation of other international institutions is essential to understanding an increasingly complex world of global governance in which democratic states are enmeshed.

Notes

1. (Spies, 2013) and (Anderfuhren-Biget et al., 2013) are rare exceptions.
2. The chapter draws on data collected as part of 'The European Commission in Question' (EUCIQ), an ESRC-funded project conducted by the current authors together with John Peterson, Michael W. Bauer, Renaud Dehousse, Liesbet Hooghe, and Andrew Thompson (grant no. [RES-062-23-118](#)). An online survey was administered to a representative sample of Commission officials in the autumn of 2008 (N=1901; N=1820 after iterative proportional fitting) and a structured program of interviews conducted with Commissioners (N=5), cabinet members (N=28), and middle and senior managers (N=119, including 15 Directors-General) conducted in 2009 ([www.uea.ac.uk/psi/research/EUCIQ](#)). All interviews cited below are from the EUCIQ project.
3. The Commission also employs staff on a temporary basis. 'Temporary agents' work on highly specialized or temporary tasks, often making up for staff shortages where there are no permanent officials available, in one of the research centers set up by the EU, or in the cabinets. 'Contract agents' work on manual or administrative support tasks in a DG, offices attached to a DG, agencies, or Commission Representations and Delegations, for a maximum period of five years, on a contract that is renewable for up to five years or that can be converted into a permanent contract; or are employed to replace officials absent due to illness, to cover for staff shortages, or to work in specialized fields where permanent officials with the requisite skills are not available, for a period of between three months and three years. 'Seconded National Experts' are recruited from the civil service or universities of EU member states or from international organizations, when their skills and knowledge are specifically required by the Commission. A team led by the current authors and including Michael W. Bauer, Renaud Dehousse and Andrew Thompson is concluding a new project, 'European Commission: Facing the Future', which investigates and compares the careers, beliefs and attitudes of members of all the main staff categories.
4. Noël was executive secretary of the EEC Commission 1958–1967 and (the first) Secretary General of the merged executives from 1967.
5. Language is imperative, given the technical areas in which the Commission is engaged: 'In some cases people who're very fluent in English can be used for cases against the United Kingdom, but even then if you're not a native speaker and you're fighting against lawyers from the City, it's a tall order. So we tend to use nationalities because that's their strength. In DG Competition, for instance, it's quite commonly accepted that people who master the language deal with the case' (EUCIQ interview 72).
6. A-grade, or administrative, staff were responsible for policy work and required a university degree or equivalent, while B-grade officials performed executive tasks and

needed a school-leaving certificate. Secretarial and clerical responsibilities were performed by category C officials, while D officials were usually drivers or performed manual duties.

7. Interestingly, Hooghe (2012) shows that there are strong differences among officials according to nationality and gender.

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11

The Temporary Commission Bureaucrat

Zuzana Murdoch and Jarle Trondal

Introduction¹

The current economic and financial crisis has hit the European economies and their national public finances hard. In their efforts toward budget consolidation, many EU member states are trying to cut administrative expenditure. As in earlier times of substantial (financial) strain, government institutions facing fiscal austerity may tend to initiate budget cuts thereby downsizing permanent staff and upsizing short-term contracted staff (Hall, 2002). This trend – referred to in this chapter as a shift toward ‘contracted government’ – follows one of the curative prescriptions of the New Public Management (NPM) reform wave and is designed to promote greater flexibility in, and performance of, public services (Lægreid and Wise, 2007). Although this trend has been extensively studied for national-level bureaucracies (for example, Hall, 2002; Lægreid and Wise, 2007), contracted government above the state has thus far escaped comprehensive analysis. Moreover, whereas NPM-inspired reforms mainly concerned outsourcing government capacities toward the private sector, ‘contracted government’ involves outsourcing public servants that already are ‘good bureaucrats’ from one government institution to another. Based on novel survey data, this chapter offers a comprehensive analysis of contracted government at actor level – that is, among seconded national experts (SNEs) – within the Commission.

The chapter poses one general and one more specific research question:

- Firstly, will contracted government lead to officials less loyal and attentive to the concerns of government institutions (as compared to permanent officials)?
- As our empirical data address this question on contracted Commission staff, our second question is both more specific and twofold:

- Firstly, are contracted civil servants in the Commission mainly loyal and attentive to the concerns of the Commission, in which they are employed, or to the national governments, which pay their salary, or to both? This question directly addresses whether the ambiguous organizational embedment of contracted Commission staff is accompanied by ambiguous behavioral perceptions among them. In particular, will contracted Commission civil servants in practice serve two masters – domestic governments and the Commission?
- Secondly, what can explain the relative (in)dependence of contracted Commission staff vis-à-vis national governments?

This study shows that contracted civil servants in the Commission – and more particularly the SNEs – are largely integrated and committed to the concerns of the government under which they formally serve. Our data indeed illustrate that SNEs are strongly embedded into the Commission apparatus and do not serve several masters. In effect, the (self-perceived) behavioral patterns among contracted Commission officials can be explained with reference to their *primary organizational affiliation* toward the Commission and its subunits as well as to the *internal organizational composition* of the Commission services. Thus, SNEs do not seem to act as ‘Trojan horses’ for national governments. Therefore, the often-invoked fear that the ‘purposeful and strategic use of seconding may lead to situations where a (small) national state can have substantial impact on decision-making and agenda setting’ (Geuijen et al., 2008, 67) seems unwarranted. The empirical results benefit from a new full-scale survey on the role of contracted officials in the Commission administered to all 1,098 currently active SNEs. The survey, fielded between January and April 2011, received 667 responses, which represents a response rate of just over 60 percent.

SNEs serve as a valuable case in two regards: both as a case of contracted government and as a laboratory for studying the transformation of executive orders in Europe. SNEs have a double allegiance to both their home organization (to which they retain their long-term organizational affiliation and which continues to pay their salaries)² and the Commission, under which they have to serve loyally and ‘behave solely with the interest of the Commission in mind’ (European Commission, 2008 Article 7:1a; see also Trondal, 2006, 2008). They are recruited to AD-level posts on short-term and time-limited contracts (maximum six years) outside the Commission’s normal open competition procedure (Bauer and Ege, 2011) and are generally assumed to return to their home organization after the termination of their secondment contract (Trondal, 2004; Trondal et al., 2008). Nonetheless, during their secondment, most SNEs are integrated as ordinary members of staff, albeit with some restrictions on their responsibilities.³

The chapter proceeds as follows. The next section outlines an organizational approach that specifies two independent variables invoked to explain behavioral perceptions among SNEs: firstly, the organizational affiliations of SNEs (primary and secondary organizational structures); and secondly, the organizational composition of primary structures (the Commission and its sub-units). After having outlined the survey data and methodology applied for data collection, the subsequent section presents the survey's main results. These are presented in two stages. The first stage reports on SNEs' career tracks regarding past, present, and future career patterns. The second stage offers an analysis of the (self-perceived) behavioral, role, and identity patterns evoked by SNEs while working in the Commission.

An organizational approach

According to an organizational approach, organizational structures may serve to systematically buffer the information and role expectations relevant for actors, thereby simplifying their search for alternatives, their preference formation, and ultimately their choice of decision-making behavior (Egeberg, 1999; Thelen and Steinmo, 1992). The local rationality of actors is systematically aggregated by this buffer function into organizational rationality (Gulick, 1937; Simon, 1957). The organizational selection of relevant information, of premises for decision making, and of role enactment may systematically affect how actors think, feel, and act. Subsequently, administrative behavior is expected to systematically reflect organizational structures (Stinchcombe, 2001).

This chapter evaluates how such organizational variables regulate, constitute, and construct the decision-making behavior that emerges within political institutions such as the Commission (Skowronek, 1982). With regard to explaining decision-making behavior among governance actors, formal organizations offer codified and normative structures for incumbents. In order to understand the process whereby actors adopt particular patterns of behavior and roles, organization theory specifies the normative structures embedded in these organizational principles and the logic of action underneath. The mechanism supporting an organizational approach is the bounded rationality and computational limitations of actors (Simon, 1957). Formal organizations provide cognitive and normative shortcuts and categories that simplify and guide actors' choice of behavior and roles (Simon, 1957). They provide frames for storing experiences, cognitive maps categorizing complex information, procedures for reducing transaction costs, regulative norms that add cues for appropriate behavior, and physical boundaries and temporal rhythms that guide actors' perceptions of relevance with regard to administrative behavior (Barnett and Finnemore, 1999; March, 2010; March and Olsen, 1998). Organizations also

discriminate between which conflicts should be attended to and which conflicts should be de-emphasized (Egeberg, 2003). By organizing civil servants into permanent bureaucracies above the state, a system of 'rule followers and role players' is established relatively independently of the domestic branch of executive government (March and Olsen, 1998, 952).

Two sets of organizational variables can be derived from this line of argument:

Organizational affiliations

The first independent variable considered represents the characteristics of the relationships that may develop between organizations. Commission SNEs typically have dual organizational affiliations – both national and international – that may pose a double set of cognitive frames, incentives, and norms of appropriate conduct. However, the bounded rationality of humans reduces their capacity to attend to more than one organization at a time (Simon, 1957). Thus, there may be a hierarchy of organizational affiliations present in the mind of actors. A logic of primacy implies that the *primary* organizational affiliations of civil servants are likely to affect behavioral patterns more extensively than *secondary* affiliations (Ashford and Mael, 2004, 141; Egeberg, 2006).

The SNE contracts prescribe that SNEs have their primary organizational affiliation to the Commission. They are expected to transfer their organizational affiliation from the domestic government to the Commission for a relatively short period of time. Assuming that the behavioral perceptions of SNEs conform to this prescription, they are likely to be more supranationally than intergovernmentally oriented while seconded to the Commission. It would then also be more likely that SNEs attend to concerns of the Commission and its subunits rather than to those of member-state governments and ministries.

The organizational composition of the Commission

The second independent variable is the organizational composition of primary structures – that is, the Commission and its subunits. Organizations tend to accumulate conflicting organizational principles through horizontal and vertical specialization (Olsen, 2010). Firstly, formal organizations may be specialized by the major *purpose* served such as research, health, food safety, and so on (Gulick, 1937). This principle of organization tends to activate patterns of cooperation and conflicts along sectoral cleavages (Ansell, 2004, 237; Egeberg, 2006). Arguably, organization by major purpose served is likely to guide decision-making dynamics within portfolio logic, where preferences, contact patterns, roles, and loyalties are directed toward task portfolios, DGs, and subunits, rather than between them. The Commission DG and unit structure is a prominent example of this horizontal principle of specialization (Egeberg and Trondal,

1999). The Commission is a horizontally pillarized system of government specialized by purpose and with fairly weak organizational capabilities for horizontal coordination at the top through presidential command (Trondal, 2010).

A second principle of horizontal specialization present within the Commission is the principle of the major *process* utilized such as administration, legal service, personnel services, and so on (Gulick, 1937). This horizontal principle encourages the horizontal integration of functional departments and the disintegration of the major purposes served. Within the Commission, internal services such as the Legal Service and the DG for Translation illustrate the process principle. However, the Commission is primarily organized horizontally by purpose and its organization by function is secondary (Egeberg and Trondal, 1999).

Finally, the Commission also embodies a territorial principle of organization as well as a party political component. Firstly, territorial concerns are embedded into the Commission services by the recruitment of *de facto* national officials (which is especially evident in the case of SNEs), notably among Administrators (ADs), cabinets, and Commissioners. Secondly, a party political component is organized into the College, particularly because Commissioners often tend to be political (but also technocratic) heavyweights and because of the creeping parliamentarization of the College (Nugent, 2006).⁴ However, 'territorial components in the organization have continuously been weakened' (Egeberg, 2006, 36) and the party political component is virtually irrelevant at the level of SNEs.

In summary, the Commission is a 'multi-organization' organization, specialized primarily according to two conventional principles of organization (Christiansen, 1997) contributing to 'sending ambivalent signals to Commission officials' (Hooghe, 1997, 105). During SNEs' contract period, the Commission serves as their primary organizational affiliation, rendering them particularly sensitive to the organizational signals and selections provided by the Commission organization. It can thus be expected that the horizontal specialization of the Commission administration by purpose and process is conducive to an autonomization of the behavioral perceptions of SNEs, making them less sensitive to the concerns of member-state government(s) and ministries.

Data and methods

Member-state officials may be organizationally integrated into the Commission in at least two ways. The first is by inviting member-state officials into permanent and temporary *committees* (Egeberg et al., 2003). The second – and the central concern of our chapter – is by appointing them outside the regular recruitment procedures on short-term *secondment contracts* (Trondal,

2004). In fact, the High Authority of 1952 had a large number of SNEs from member-state governments among its staff, and the intention of its first President (Jean Monnet) was that the High Authority should rely on a seconded, flexible staff of top experts (Duchêne, 1994, 240). Although SNEs never actually dominated the Commission staff, their number steadily increased (CLENAD, 2003; Trondal, 2004, 71). Even now, the main rationales for the Commission to incorporate SNEs are the need to have a flexible workforce at the disposal of its permanent staff, to be able to quickly expand the Commission during times of enlargement, and to obtain the ability to exploit outside expertise absent in the permanent staff. From a more strategic perspective, SNEs can also be seen as 'key resources for the European Commission to sound out the acceptability of a particular proposal for a given Member State' (Geuijen et al., 2008, 104). Finally, hiring SNEs is also a way for the Commission to compensate for the rather rigid and slow recruitment processes for permanent AD positions.

The data set for the analysis below derives from a web-based survey administered between January and April 2011 to all 1,098 currently active SNEs in the Commission. We received 667 responses, representing a response rate of just over 60 percent. As not all SNEs answered all questions, the final sample varies between 450 and 550 respondents depending on the question.⁵ Although background characteristics for all SNEs were not made available to us, our sample appears fairly representative. For example, respondents show a wide variety of institutional backgrounds as they derive from 25 different DGs and 12 additional services. Their distribution across DGs compares to that observed in Table 11.1 for all current SNEs. We have more respondents from policy-intensive areas (such as Eurostat, taxation, and climate action) compared to purely administrative areas (such as human resources and language services). The data set also covers 32 nationalities (with France, Italy, and Germany each representing six to seven percent of the sample).⁶ There is also a reasonable gender distribution (40 percent female) and age distribution (no age group represents more than seven percent of the sample, and about 55 percent are between 33 and 47 years old). These numbers fairly closely match the distribution of Commission permanent staff at AD level with regard to age (53 percent between the age of 33 and 47), gender (40 percent female), and nationality (for example, Italy, France, and Germany represent five percent, six percent and six percent respectively of Commission AD-level staff). As there is no reason to assume that SNEs are substantially different from permanent Commission staff in these respects, this suggests that our sample is reasonably representative of the overall SNE population. Finally, our respondents are fairly evenly spread across the four-year SNE term (34 percent of our SNEs were in their first year, while 18 percent, 27 percent, and 21 percent of the SNEs were in years two, three, and four respectively).

Results

One core ingredient of the transformation of the European executive order lies in its increasing integration of government institutions and staff across levels through the use of temporary staff (for example, Hofmann, 2008; Murdoch and Geys, 2012; Thatcher, 2005; Trondal, 2010). The Commission, for example, is increasingly integrating member-state administrations into the fabric of daily decision making, contributing to a 'de-bordering' of executive governance in Europe (Kohler-Koch, 2005, 12). Its White Paper on Governance (issued by the Commission in 2001) particularly stresses the benefits of an 'exchange of staff and joint training between administrations at various levels' (European Commission, 2001, 13). Moreover, the need for more staff to address its growing number of tasks and the accession of new member states has led the Commission to 'increasingly resort to external assistance through temporary employment arrangements, partly due to budgetary stringency and partly to changing agendas that require expertise' (Suvarierol and van den Berg, 2008, 106; see also Geuijen et al., 2008). One particularly striking example is related to Croatia's accession in 2012. While tasks related to the preparation of new member states have traditionally been the domain of permanent AD officials, no fewer than 42 out of 46 additional (full-time equivalent) staff members requested by the Commission in its 2012 budget to help to prepare Croatia's accession were to be contract agents (European Commission, 2011a). Moreover, 'appropriations for 117 other agents (contracted agents and seconded national experts) are requested until full membership of Croatia in July 1, 2013' (Amending Letter No. 2 to the Draft general Budget 2012, 16).

The current austerity environment has further highlighted the potential benefits of such contracted government to the Commission. Indeed, reflecting these 'challenges of today' and the zero-growth policy (in permanent posts) initiated by the Commission in 2007 (see SEC(2007)530), the Commissioner for Interinstitutional Relations and Administration recently proposed the Commission should strive to: (i) meet new political priorities through the internal redeployment of staff; (ii) implement a five percent reduction of staff in all categories in all institutions at the 2012 levels (by exploiting normal turnover rates); (iii) fulfill secretarial and clerical tasks by contractual staff rather than officials with lifetime appointments; and (iv) raise the maximum duration of contracts of other contract agents in the institutions from three years to five years (Šefčovič, 2011, 1–3). In fact, spending on permanent staff declined by approximately 1.5 percent over the 2010–2012 period, while expenditure on contracted SNEs increased by 4.3 percent (Figure 11.1).

Our survey results are presented in two stages. The first stage reports on SNEs' career tracks regarding past, present, and future career patterns. It is important to understand SNEs' motivational and professional backgrounds as

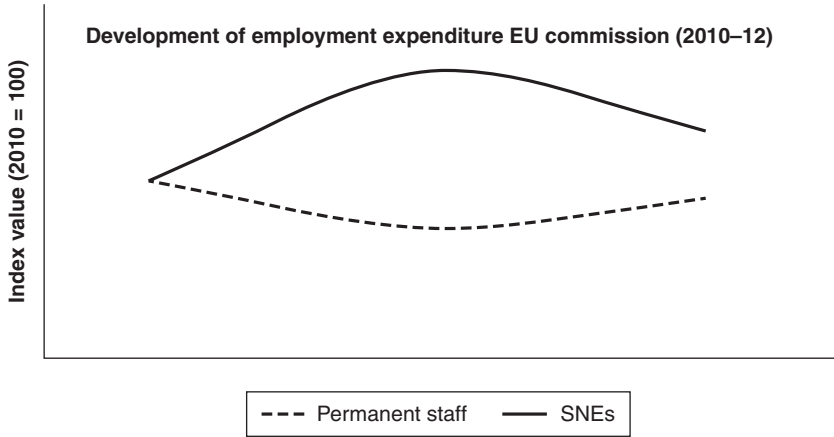


Figure 11.1 Development of administrative expenditure in the Commission (2010–2012)

Source: Own calculations based on European Commission (2011), draft general budget 2012/Section 3 European Commission/appropriations payments for 2011

they can have an important bearing on their decision-making behavior. Stage two brings us to an analysis of the (self-perceived) behavioral role and identity patterns evoked by SNEs while working in the Commission. This analysis intends to elucidate how these patterns systematically reflect both the organizational affiliations of SNEs inside the Commission and also their organizational embedment within the different Commission units and subunits.

Stage I: Career tracks outside and inside the Commission

SNEs are recruited to the Commission on short-term contracts, and Figure 11.2 suggests that a majority foresee a return to (old or new) positions in their home institution when their contract comes to an end. This temporal proximity of their expected 'return home', as well as SNEs' continuous financial connection to their home institution, which continues to pay their salary during secondment, would seem to give SNEs very strong ties to their home institution. In an attempt to overcome this, SNEs have to swear an oath of neutrality and loyalty to the Commission, which effectively transfers their *primary* organizational affiliation temporarily from member-state administrations to the Commission. Even so, they appear to be granted a B-status compared to ordinary Commission officials. Indeed, while SNEs until recently could make decisions within the Commission on *almost* the same footing as permanent AD officials because 'national experts have the same rights and obligations as EU officials' (European Commission, 2002: 50), Article 6 of the new Commission rules claims that an 'SNE shall take part in missions or

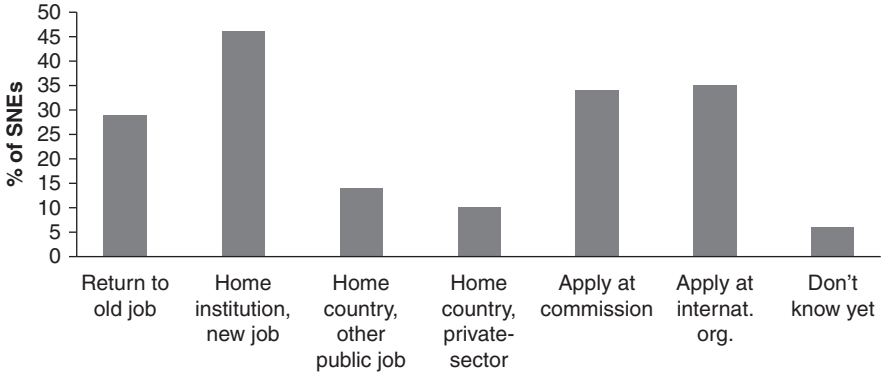


Figure 11.2 SNEs' intention after secondment (N=461)

external meetings only if accompanying a Commission official or temporary agent, or acting alone as an observer or for information purposes' (European Commission, 2004). Interestingly, however, SNEs do not appear to perceive their position in the Commission as secondary. Indeed, as shown in Table 11.1, a very large majority feel they are treated in much the same way as permanent Commission officials. This perception is much stronger with regard to their own DGs, units, and other DGs than relative to the Commission as a whole.⁷

Our data also report the main professional affiliations of SNEs prior to their current secondment. Not surprisingly, most SNEs arrive from domestic government institutions, most notably from domestic ministries, with far fewer coming from domestic agencies and directorates. Interestingly, while the aim of the secondment is to attract expertise and knowledge not available in the Commission's permanent staff, a surprisingly small number of SNEs come from universities or research institutes. Moreover, in our sample the large majority of such 'academic' SNEs work either in Eurostat or the Joint Research Council (JRC), while they remain largely absent in substantive 'economic' DGs such as DG Trade, DG Ecfm, and DG Taxud.

Table 11.1 'In your opinion, are you in general treated the same as permanent Commission officials?' (percent)

	'Always'				'Never'	'Don't know'	Total
By your unit/DG	44	34	13	6	2	1	100(493)
By other DGs	42	29	11	2	2	15	100(477)
By the Commission as a whole	22	34	20	10	4	11	100(476)

Although not tabulated, our data also suggest that most SNEs serve only one term (that is, one contract) in the Commission⁸ – 94 percent of our respondents report that this is their first secondment to the Commission, while 94 percent report having no prior secondments to other EU institutions (such as the European Parliament, the Union Council, and so on). Thus, the experience or expertise brought to the Commission is largely constrained to that obtained by SNEs in their domestic ministry or agency. As most SNEs also plan to return to this home institution (see Figure 11.2), being an SNE clearly seems to be regarded as a one-time experience for most national officials.

This, however, raises the question as to what actually are the initial motivations for national government officials to become an SNE. Why do national officials choose to leave their home office and apply for short-term contracts in the Commission? Prior to their secondment, SNEs may obtain formal and informal briefings about life and work during and after secondment to the Commission (Trondal et al., 2008). These briefings prepare them for behavioral expectancies from the Commission as well as inform them about a secondment's network and career prospects, *before* their own posting. Table 11.2 suggests that most SNEs have a multifaceted set of reasons for becoming contracted to the Commission. There are, however, two particularly recurrent motivations. The one most frequently reported is that national officials 'need a new challenge' in their career. Almost equally important is the wish to work for the Commission. Thus, a combination of more general work–life ambitions and a targeted goal to work for the Commission seem to be important drivers for recruitment. Comparatively fewer SNEs have chosen their secondment to advance their careers.

Partly due to their short tenure in the Commission, most SNEs report having worked in one DG (93 percent) and one unit (85 percent) during their short-term contract, while 12 percent report having worked for two units. This low level of inter-service mobility partly reflects a short tenure within the Commission and the fact that SNEs are not obliged to move organizationally

Table 11.2 'Why did you apply for your current secondment?' (percent reporting 'yes')

I was asked to apply	25
I needed a new challenge	57
I wanted to work in the Commission	50
I wanted to work in the European Union's institutions	37
I wanted to work in an international organization	39
I wanted to advance my career	35
I wanted to contribute to EU integration/EU 'project'	34
Mean N	544

within the Commission services (as are permanent Commission officials). It is, however, also driven to a large extent by the fact that SNEs, by definition, bring a very specific expertise to the Commission. Being explicitly hired as experts in a particular field, their knowledge area tends to limit their ‘usefulness’ to one particular unit and/or DG.

Stage II: Decision-making behavior, roles, and identity perceptions

Given the various ambiguities in SNEs’ status, an empirical question remains as to what behavioral perceptions SNEs actually evoke during daily work. This question obtains additional significance from the fact that SNEs do not necessarily work only on technical dossiers. When asked, a vast majority (76 percent) of SNEs in fact report that their issue area is either ‘very much’ or ‘fairly much’ characterized by public debate and political attention. Most SNEs thus agree with earlier observers’ views that these agents operate ‘in a highly political environment where the stakes for the EC and member states can be very high’ (Geuijen et al., 2008, 68). While the Commission is dependent on the inflow of the expertise brought by SNEs, their work in politically sensitive areas and on files with substantial policy importance may also pose a risk to the Commission. In fact, it is often thought that any member state has an incentive to strategically make use of seconding to gain ‘substantial impact on decision-making and agenda setting’ (Geuijen et al., 2008, 67).

Table 11.3 takes a first look at the empirical relevance of such concerns and shows a fourfold set of roles that SNEs were asked to consider as relevant for their work in the Commission. The observations reported in Table 11.3 clearly reflect the organizational specialization of the Commission and the organizational affiliations of SNEs. As could be expected, the role of a unit and/or DG representative is perceived as slightly more important than the role of a Commission representative. The role of an independent expert, however, is also highly regarded. Importantly, and in line with previous studies on SNEs (Trondal, 2006, 2008), Table 11.3 illustrates that SNEs do *not* perceive their role to be a government representative or a ‘Trojan horse’ into the

Table 11.3 ‘To what extent do you feel you act as an ...’ (percent)*

Independent expert	70
Representative of your country’s government	17
Representative of the Commission	87
Representative of your unit and/or DG	94
Mean N	481

* Table 11.3 combines values 1, 2, and 3 on the following six-point scale: Fully (value 1), very much (value 2), fairly much (value 3), fairly little (value 4), very little (value 5), not at all (value 6)

Table 11.4 ‘When putting forward a proposal, how much emphasis do you put on the following concerns?’ (percent)*

Professional quality/expertise	99
Best interest of my unit/DG	91
Best interest of my home country	22
Best interest of the Commission/European Union	93
Mean N	459

* Table 11.4 combines value 1 and 2 on the following five-point scale: Very much (value 1), fairly much (value 2), fairly little (value 3), very little (value 4), none (value 5)

Commission. Most SNEs indeed perceive themselves to act fairly independently from member-state influence.

Similar patterns are reported in Table 11.4, where we asked SNEs about the emphasis they put on interests and concerns when working on policy proposals. This again shows that SNEs tend to work fairly independently of the particular interests of their home country. A high degree of behavioral independence among SNEs is also reported in recent research among permanent Commission officials (Trondal, 2010). Thus, despite having an ambiguous and dual organizational affiliation (see above), Tables 11.2 and 11.3 do not report (perceived) behavioral ambiguities.

Direct questions such as the ones reported on in Tables 11.3 and 11.4 obviously risk being influenced by socially desirable answers. SNEs know they are supposed to act solely with the interest of the Commission in mind. Thus, when directly asked about their allegiance and decision-making behavior, many may feel socially obliged to report that they do not give much attention to their home country’s best interests, or do not feel they represent their home country during secondment. Taking a more indirect route to the same issue, we also addressed SNEs’ contact patterns and information networks. Indeed, the potential strategic value of SNEs – both to member states hoping to affect Commission policy and to the Commission ‘sounding out’ member states about policy proposals (Geuijen et al., 2008) – strongly depends on the existence of a continuous flow of information between the Commission and member states in which the SNE acts as an information channel.

Table 11.5 reports on the contact patterns evoked by SNEs during their daily work. The multifaceted contact reported by SNEs is systematically patterned by the vertical and horizontal organization of the Commission. Contact is clearly concentrated within one’s own DG and unit, both in terms of one’s direct colleagues and the DG and unit leadership. Relevant colleagues in other DGs are rated third. Interestingly, Commissioners seem to be outside most SNEs’ personal contact sphere. This holds particularly for Commissioners of other DGs, but also to a very large extent for SNEs’ ‘own’

Table 11.5 ‘How frequently do you have contacts and meetings with the following during a typical work week?’ (percent)*

Colleagues in your unit	97
Your head of unit and/or director	79
Your Commissioner	7
Colleagues within other DGs	42
Head of unit and/or directors in other DGs	13
Other Commissioner(s)	0
International organization(s)	32
Domestic ministries and/or agencies in ‘own’ country	31
Domestic ministries and/or agencies in other countries	35
Industry, universities and/or research institutes	33
Mean N	468

* Table 11.5 combines values 1 and 2 on the following five-point scale: Very often (value 1), fairly often (value 2), fairly seldom (value 3), very seldom (value 4), never (value 5)

Commissioner. A very similar pattern arises when asking SNEs about their main sources of information. In particular, SNEs’ main source of information is inversely related to the hierarchical level of the information source in that colleagues are more important than Heads of Unit, Directors, and Commissioners (in that order).⁹

Although SNEs do not work for the benefit of particular national interests, Table 11.5 illustrates that they do seem to have fairly frequent contact with domestic ministries and/or agencies generally. However, such contact is not more frequent than that with ministries and/or agencies in other member states, or with other international organizations, industry, universities, and research institutes. In fact, slightly more SNEs report frequent contact with any of the latter rather than with domestic ministries/agencies. This provides at least suggestive evidence against the idea that SNEs are merely a channel for particular national interests.

A similar observation can be made when asking in more detail about the frequency and nature of SNEs’ contact with their home institution. Our data show that a majority of SNEs (57 percent) have ‘fairly infrequent’ or less contact with their own home institution. When asked about who generally initiates such contact, 43 percent report that this contact is initiated by themselves (‘always’ or ‘mostly’), whereas only eight percent report that it is initiated solely by their home institutions (‘always’ or ‘mostly’) (the remaining 49 percent report a ‘50/50’ share between themselves and the home institution). Moreover, this contact is conceived of as mostly of an informal nature (86 percent) and is characterized by a lack of institutionalized communication channels (for example, conference calls, written reports, and so on, reported by 79 percent of SNEs). Overall, therefore, despite the fact that SNEs do have contact with

Table 11.6 ‘When working as a national expert, seconded to the Commission, how much importance do you attach to the proposals, concerns and arguments from the following?’ (percent)*

Colleagues in your unit	99
Your head of unit and/or director	98
Your Commissioner	74
Colleagues within other DGs	70
Head of unit and/or directors in other DGs	61
Other Commissioner(s)	42
International organization(s)	54
Domestic ministries and/or agencies	56
Industry, universities and/or research institutes	53
Mean N	454

* Table 11.6 combines values 1 and 2 on the following five-point scale: very much (value 1), fairly much (value 2), fairly little (value 3), very little (value 4), none (value 5)

their home institution, this contact pattern seems to be frail due to its informal and non-institutionalized character. This appears to substantiate that such contact is not conceived of, or exploited, as a transmission mechanism for member-state influence.

Table 11.6 reveals how much importance SNEs attach to proposals, concerns, and arguments from different institutions and subunits. As with our findings above, Table 11.6 clearly shows the effect of the Commission’s primary structures on the (self-perceived) decision-making behavior of SNEs. In this case, however, our observations also reflect the organizational composition of the Commission services. Intra-unit and intra-DG proposals, concerns, and arguments are indeed considered more important than those from outside one’s own organization. Table 11.6 also shows that the Commission (as reported by SNEs) is reasonably attentive to the concerns of external institutions such as international organizations, domestic ministries and agencies, industry, universities, and research institutes. Interestingly, these ‘external’ concerns are mentioned more often than those of ‘other Commissioners’ (which are mentioned least of all the options provided). Overall, it is interesting to observe the strong overlap between the importance attached to proposals, concerns, and arguments voiced by certain actors, and the role these actors play in the SNEs’ contact pattern or his/her information network (see Table 11.5). A higher contact frequency, or a more central placement in the SNEs’ information tree, is reflected in higher importance being attached to the concerns and arguments raised by this agent. This also provides a possible explanation for the observation that the administrative leadership (that is, Heads of Unit, Directors) receives substantially more importance than the political leadership (that is, Commissioners) in SNEs’ policy activity.

Table 11.7 'Where do you perceive such conflicts occurring?' (percent)*

Horizontally within your unit	16
Horizontally between different units of your DG	43
Horizontally between different DGs	69
Vertically between heads of unit and directors	18
Vertically between the Commissioner and the directors/head of unit of your DG	27
Between permanent and seconded officials	4
With member-state governments/ministries	37
Mean N	344

* Table 11.7 combines values 1 and 2 on the following five-point scale: Very often (value 1), fairly often (value 2), fairly seldom (value 3), very seldom (value 4), never (value 5)

Finally, patterns of conflict and cooperation are an important proxy of decision-making dynamics within and between government institutions. A majority of SNEs report that 'turf wars' arise within the Commission (57 percent reporting 'very often' or 'fairly often'). Table 11.7 shows the distribution of conflict patterns within the Commission as well as vis-à-vis member-state governments and ministries. Reflecting the organizational composition of the Commission administration, conflicts tend to occur more frequently across than within organizational boundaries. Furthermore, Table 11.7 shows that conflicts tend to be horizontal (especially between different DGs) rather than vertical within the Commission. Thus, patterns of cooperation and conflict are largely facilitated by the Commission structure. However, a third of SNEs perceive that conflicts also occur with member-state governments and/or ministries. Interestingly, conflict perceptions are substantially higher for SNEs working in DG REGIO, DG MARE, and DG AGRI. This holds across all areas of conflict, but especially for those with member states and horizontally across units within these DGs. Given the highly divisive nature of the policies involved (especially agriculture and regional policy) and the size of the stakes involved, this is not surprising. Finally, conflicts do not arise between permanent and seconded officials, at least as perceived by SNEs. This observation supports the above finding of Table 11.1.

Conclusions

As part of a substantial transformation of the European executive order, the past few years have witnessed the increasing integration of government institutions and staff across levels (for example, Hofmann, 2008; Thatcher, 2005; Trondal, 2010). As a consequence, 'Europe's administrative bodies [are] filled with European and member-state bureaucrats, experts and politicians' (Murdoch and

Geys, 2012, 2). Concomitantly, given a constrained budgetary environment and the Commission's zero-growth policy of permanent staff, the Commission's reliance on contracted personnel has increased over the past years and is likely to increase in the years to come.

Both elements represent instances of policy making at European level being 'contracted in', rather than performed by the permanent administrative staff of the relevant institutions. Nonetheless, although such contracted government is clearly gaining prominence at supranational levels, little systematic analysis into this phenomenon exists. This chapter has provided a first step to bridging this gap by studying the behavioral and role perceptions of temporary officials in a supranational civil service. These serve as a particularly valuable case due to their double allegiance to their home organization and to the Commission.

This study shows that contracted civil servants are largely integrated and committed to the contracting government institutions. When under contract, such personnel seem to be mainly loyal and attentive to the concerns of the government under which they formally serve. Concomitantly, contracted government *does not* lead to civil servants being less loyal and attentive to the concerns of government. Above the state level, our data show that contracted Commission personnel are largely integrated into the Commission apparatus and do not serve several masters. SNEs become strongly embedded into the Commission while under contract, and their (perceived) behavioral patterns are explained primarily with reference to their *primary organizational affiliation* toward the Commission and its subunits as well as by the *internal organizational composition* of the Commission services. Thus, an early suspicion voiced by Coombes (1970), that SNEs are highly conscious of their national background, is challenged by this study. A long-held assumption in the literature has been that the 'secondment system would tend to produce an unmanageable cacophony' of officials loyal to the national civil service (Cox, 1969, 208). For example, the Spierenburg Report argued that, '[t]he Commission should ensure that the use made of national experts does not rise significantly above its present level, or again the risk is run of distorting the European character of the administration'. This chapter severely challenges such claims. This conclusion also substantiates the finding in recent works that a portfolio logic is essential both at the level of Commissioners (Egeberg, 2006) and among permanent Commission staff (Hooghe, 2005; Suvarierol, 2007; Trondal, 2010). The empirical observations presented in this study *suggest* that the behavioral and role perceptions of contracted staff are indeed equally affected by primary organizational structures. Contact patterns, perceptions of power relationships, and patterns of cooperation and conflict among contracted officials echo primary organizational structures rather than their paymasters in home governments.

Notes

1. The authors are grateful to CLENAD (especially its President Matthew Snoding) and Nina Bonge for invaluable assistance with the survey. The first author gratefully acknowledges the hospitality of the WZB Berlin, and the E.ON Ruhrgas scholarship programme for financial support. The second author acknowledges the financial support of the Norwegian Research Council ('EUROTRANS: The transformation and sustainability of the European political order'). A previous version of this chapter was presented at the CLENAD General Assembly, 25 April 2012, Brussels. The authors would like to thank Morten Egeberg, Benny Geys, and Matthew Snoding for valuable comments on previous drafts. All usual disclaimers apply. A slightly revised version of this chapter is published in *West European Politics*, 2013, 36, 1–21.
2. Additional financial allowances are granted by the Commission. They include a daily allowance for living expenses and either removals costs (at the start and end of the secondment) or an extra monthly allowance.
3. For example, they do not have the authority to represent the Commission externally or to enter into any commitments on behalf of the Commission.
4. One may argue that more recent Commission Colleges have been increasingly composed of technocratic rather than political heavyweights. The Barroso I Commission may be seen as considerably lighter on political heavyweights than was the Prodi Commission. Also, the Barroso II Commission is perhaps even more technocratic regarding commissioners' background.
5. There is an exception for questions regarding turf wars and conflict. This clearly constituted a sensitive area and the number of respondents here dropped to approximately 350.
6. This exceeds the current number of 27 EU member states since SNEs can also come to the Commission from, for example, EEA countries (such as Norway and Iceland).
7. Similar patterns are reported when asking SNEs whether they are kept sufficiently informed about what goes on in their unit, DG, other DGs, and the Commission as a whole. Generally, SNEs tend to be better informed about intra-unit and intra-DG affairs than about what goes on within other DGs and the Commission as a whole. These observations show patterned behavioral perceptions that are caused by the organizational structure of the Commission services. This silo logic is also reported among permanent Commission officials (for example, Bauer and Ege, 2011; Trondal, 2011).
8. Officials have to wait six years before doing a second term as an SNE. This may cause officials to only have one term as an SNE in the Commission.
9. In contrast, the formality of the information flow is directly related to the hierarchical level of the information source; that is, the information exchange with colleagues and Heads of Unit often proceeds on a substantially more informal basis than that with Directors or, if available, Commissioners.

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12

The European External Action Service (EEAS), the New Kid on the Block¹

Tannelie Blom and Sophie Vanhoonacker

Introduction

In contrast to many of the other institutions discussed in this volume, the creation of a European-level foreign policy administration is of a more recent nature. Coordination of member states' foreign policy only emerged from the 1970s onwards, in the form of the so-called European Political Cooperation (EPC). Being developed outside the Treaty framework, it was initially steered entirely from the national capitals. The exchange of views and formulation of joint declarations was coordinated by the rotating presidency with a key role for the national ministries of foreign affairs. As the member states tried to move beyond a merely declaratory foreign policy, the need for more permanent bodies increased. The establishment in 1987 of a small foreign policy unit in the Council General Secretariat was the beginning of a slow but ever-increasing Brusselization of the European foreign policy machinery (Allen, 1998). The last but most substantial step in this long and incremental process has been the creation of a European External Action Service (EEAS) in December 2010.

Composed of a central administration in Brussels and more than 130 overseas delegations, the EEAS' main task consists of supporting the equally new High Representative for Foreign Affairs and Security Policy in her daily work. Since the Treaty itself merely dedicates one paragraph to the new supporting body (Art. 27 (3) TEU), policy makers have been investing much time and energy in developing the rules and procedures underpinning its daily functioning. This process and the early functioning of the service has been covered extensively both in academia and in think tanks (for example, Duke, 2015; Juncos and Pomorska, 2013; Murdoch, 2012; Murdoch et al., 2013; Spence, 2012; Vanhoonacker and Pomorska, 2013). Rather than echoing the questions already covered elsewhere, this contribution will study the EEAS from a distinct organization theoretical perspective, which perceives organizations as information-processing systems geared to the generation of decisions (Jones

and Baumgartner, 2012; March and Simon, [1958] 1993; Poole, 1978; Sproull and Larkey, 1984; Stinchcombe, 1990; Tushman and Nadler, 1978; Workman et al., 2009). As such, it fits an analysis of the establishment and operations of the EEAS particularly well. Information/intelligence has, of course, always been a key resource for foreign policy making. However, for a long time the EU member states have been very reluctant to delegate information gathering and processing to the European level. In that sense, the establishment of the EEAS, whereby both the Brussels-based branch and the external delegations have autonomous capacities for information gathering and processing, is a watershed, the political aspects of which deserve special attention.

Given the recent character of the EEAS, the main focus will be on the constitutive politics of information – that is, the choices that have been made with regard to the way in which policy-relevant information is accessed, distributed, and processed. Following an introduction into the basic components of an information-processing approach and a historical account of information streams prior to Lisbon, the main sections of this chapter examine the rules and routines that guide information processes in both the Brussels-based branch of the EEAS and the Union delegations.

Analytical framework

The idea of perceiving organizations from an information-processing perspective instead of from a structure-oriented point of view – ‘for which the organizational chart is the ever-present tool’ (Shafritz et al., 2005, 193) – is certainly not new. Basic components of such an approach can be traced back (at least) to Herbert Simon’s doctoral dissertation, published in 1945 as *Administrative Behavior: A Study of Decision-Making Processes in Administrative Organization*. Even from this book, and then more articulately in March and Simon’s *Organizations* (1958), the image arises that organizations exist in the form of subsequent episodes of information processing with explicit decisions as transitional events that mark the end of one episode and the beginning of a new one (March and Simon [1958] 1993, 152ff). We adhere to this ‘ontological’ assumption, yet refine it with the help of Niklas Luhmann’s concept of ‘reflexive mechanisms’ and his analytical decomposition of social structure into three dimensions: temporal, substantive, and social (Luhmann, 1985; Luhmann, 2000). Next we seek to accommodate Terry Moe’s repeated plea for a genuine political theory of public bureaucracies – in contrast to a theory of organizations that has its origins in economics as, for example, provided by the currently popular ‘transaction costs’ based Principal/Agent models (see Moe, 1990, 1991) – by introducing the distinction between ‘constitutive politics of information’ and ‘operational politics of information’ (see below). Indeed, as Coulam and Smith complain, ‘what is generally missing is research that

integrates the political and information processing perspective' (Coulam and Smith, 1985, 13).

Following Luhmann's theory of self-referential systems, the term 'reflexive mechanism' denotes the application of a process to that process itself – for example, learning how to learn, or teaching how to teach. In our context this refers to the fact that organizations inevitably decide on deciding (including decisions not to decide). Reflexive or 'second order' decision making is in fact the mechanism by which organizations establish their formal structure. Organizations use this second-order level of decision making, for example, in an attempt to fix their *temporal* structure: organizations can and do decide *when* decisions have to be made and when information has to be accessed and made available.

In a similar way, organizations decide on their *substantive* structures. A first substantive order is already given by decisions on the (global and less global) goals of the organization and on what kind of information is relevant and should be accessed. Next, organizations can decide on the rules and routines which prescribe how relevant information should be processed with a view to specific objectives. Finally, organizations can and do decide on how decisions should be made, for example, which voting rules have to be followed, and also which values/interests have priority or even have to be 'protected'² when choices are made.

Last but not least, organizations decide also on the *social* dimension of their formal structure. This social dimension is first of all presented by the membership rules of an organization – who is entitled to participate in and contribute to the organizational processes – and next by the rules prescribing the distribution of information – who has the right to be informed, which members have a 'voice' or even a 'say' during which episode, and so on.

Of course, formal structures are more often than not 'incomplete', that is, they are in need of further specification in view of the concrete situations in which they have to be enacted. Moreover, formal rules can be cumbersome and inefficient, provoking organizational members to circumvent them. All this will contribute to the emergence of informal structures, which in turn may be observed by the upper stratum of the organization itself and eventually formalized. However, the overall point to be made is that the core structures of public organizations consist of the rules and routines that prescribe when, how, and by whom information is accessed, processed, distributed, stored, and so on, and decisions are made, irrespective of whether these structures are formal or informal (Stinchcombe, 1990, 2).

In summary, organizations are able to fix, at least partly, *when*, *how*, and by *whom* information has to be processed and decisions have to be made. However, as Moe (1990, 1991) has convincingly pointed out, when it comes to public organizations the decisions that establish their formal structures are

more often than not the compromise outcome of a political struggle between different legislators ('political principals'), all trying to secure the (material, political, and/or ideational) interests of themselves and their constituencies. Put differently, the formal rules and operating procedures of public organizations such as, for example, the EEAS reflect the configuration of interests and preferences that constituted the political context of their establishment. Against this background it makes sense to distinguish, at least analytically, between two types of 'politics', namely between the *constitutive* politics of informing and the *operational* politics of informing (Blom, 2014; Blom and Vanhoonacker, 2014). The constitutive politics of informing concerns first of all the formal institutionalization of the way in which policy-relevant information is accessed, distributed, and processed, possibly including the standardization of its provision and its statistical quantification. As such, the constitutive politics of information is about the choices that have to be made in the institutionalization of the provision of information and advice and about the contestability of these choices and the interests involved. The operational politics of information concerns the exploitation of opportunities for strategic and manipulative acts of 'informing' that present themselves during the 'daily' process of collecting, distributing, and synthesizing information, thanks to, or in spite of, the formal formats and procedures decided upon in the constitutive process. As such, it includes not only the bureaucratic politics of information but also the interventions and tactics which political principals may infuse into daily information processing in order to curb bureaucratic politics.

Information sharing and processing prior to Lisbon

The European Union stands out as a case where the information exchange between countries is dense and highly institutionalized. Information sharing was in fact one of the key pillars underpinning the European Political Cooperation. As noted by the Belgian Permanent Representative Philippe de Schoutheete, one of the erstwhile participants in the EPC, it was an important instrument in gradually building the '*communauté de vues*', which was conditional for common foreign policy action (de Schoutheete, 1986).

One of the reasons for the success of information sharing between member states was that this process was institutionalized at an early stage. In 1973, the nine countries participating in the EPC established the so-called *Correspondance Européenne* (COREU) communication network, which allowed them and the European Commission to exchange enciphered messages (Smith, 2004). This did not only include logistical information such as agendas and minutes but also substantive material feeding into joint declarations (Bicchi and Carta, 2012). In the absence of permanent bodies meeting on a continuous basis,

COREU was the oil that allowed the EPC machinery to respond relatively swiftly to international developments.

In line with the overall character of the EPC, the system operated on a largely intergovernmental basis. The member states were not only the principal source of information but also its ultimate gatekeeper; they decided about the quantity and quality of the information to be shared. Given the wide-ranging difference in foreign policy capacities, the contribution of each country varied to a large degree, with the bigger member states, such as France, Germany, and the United Kingdom, being among the most active contributors (Bicchi, 2014). The processing and analysis of the information was entrusted to the rotating presidency rather than to autonomous Brussels-based bodies (Dijkstra and Vanhoonacker, 2011).

It was only with the Amsterdam Treaty and the creation of a Policy Unit in the Council General Secretariat that the EU finally got a small but permanent body of about 35 seconded diplomats and EU civil servants with the capacity for autonomous information gathering and processing. Furthermore, the development of an EU crisis management role led to the expansion of the Secretariat with new bodies such as an EU Military Staff, a Civilian Planning and Conduct Capability, and even a small intelligence unit known as SitCen (Situation Centre) (Ibid.). Jointly, they provided the EU with the nucleus of a capacity for independent analysis, planning, and early warning. In parallel, the European Commission also tried to professionalize its information and analysis functions. The Commission delegations abroad received the formal task of becoming more active in reporting on the situation on the ground (Duke, 2002). However, practices continued to vary widely and the quality of the accounts differed.

With the Amsterdam Treaty, the principle of independent information gathering and processing at EU level became generally accepted and was increasingly seen as a necessity for the development of an effective European foreign policy. The real milestone, however, was the entering into force of the Lisbon Treaty (December, 2009). The establishment of the EEAS and the transformation of the Commission delegations into EU delegations created for the first time a potential information surplus at EU level.

The constitutive politics of information behind the EEAS

The creation of the new position of a High Representative for Foreign Affairs and Security Policy (HR), supported by a fully-fledged European external action service, is the EU's institutional response to its ambition to increase its international actorness in a globalizing and multipolar world (Laeken Declaration, December 2001). The dual-hatted (and even triple-hatted) HR combines the positions of the Commissioner of External Relations, the HR (formerly based at

the Council General Secretariat), and the chair of the Foreign Affairs Council (formerly a task of the rotating presidency (Helwig, 2013; Morgenstern, 2012)). The existing foreign policy administrations, previously scattered over the Commission (DG Relex) and the Council Secretariat (Policy Unit, DG E) were merged into a new service, which was to also encompass seconded national diplomats. Furthermore, it was decided to transform the Commission delegations abroad into Union delegations and to place them under the authority of the HR (Article 221, TFEU).³

The Lisbon Treaty is very succinct about the new service. Its Article 27 (3) confines itself to a reference to its supporting role and its composition, leaving further details to a later Council Decision.⁴ In what follows we will examine the set-up of the service through the lenses of a politics-of-information approach, making a distinction between the emerging rules of the game in Brussels and in the delegations abroad. Although the main focus will be on the debates about the constitutive rules, we will also include some early insights into daily practice. Based on the assumption that information is one of the key resources in foreign policy, we expect that our mapping exercise of information patterns will also help us to gain a better understanding of the role and place of this newly emerging European foreign policy administration more broadly.

The Brussels-based branch of the EEAS

The EEAS formally started to be operational in December 2010 following the adoption of the 'Council decision establishing the organization and the function of the EEAS' in July 2010 (Council of the European Union 2010). This founding document sets out the key principles and rules that guide the new body in its daily functioning. The Council was acting on a proposal from the HR presented in March 2010, after consulting the European Parliament (EP) and with the consent of the Commission. The HR's proposal was in turn based on a report on the European External Action Service produced by the Swedish Presidency of the EU (23 October 2009). A further key document with 'constitutive' implications is the Commission's *Working Arrangements between Commission Services and the European External Action Service in Relation to External Relations Issues* of 13 January 2012 (SEC (2012) 48).

The struggle over the EEAS reached its pinnacle during the first half of 2010 when representatives from the EP, the Commission, the Spanish EU Presidency, and Ashton were negotiating the HR's proposal and amendments in the so-called quadrilogue. Just before the adoption of the Swedish Presidency report, the EP had already adopted rapporteur Elmar Brok's *Report on the Institutional Aspects of Setting up the European External Action Service* (EP, 2009). Brok's report made clear that for 'further developing the community model in the Union's external relations' (note 2) the EP wanted the EEAS to be closely related to, if not part of, the Commission. From the EP's point of view this

would result in more transparency and accountability (see Wisniewski, 2013). In line with this, the EP claimed the right to ‘hear’ nominees for high staff positions in the EEAS. Moreover, it insisted on a formal obligation of the HR/VP to inform the EP on a regular basis, including on Common Foreign and Security Policy (CFSP) issues. Pointing out that ‘as a service that is *sui generis* from an organizational and budgetary point of view the EEAS must be incorporated into the Commission’s administrative structure’, the EP also sought to ensure budgetary oversight of the EEAS. It made it quite clear that it would not hesitate to use its budgetary powers over the EU’s external policy instruments and reminded the other institutional actors (note 8) of the need to find an agreement with the EP on the necessary future amendments of the Financial Regulation and Staff Regulations. The *Proposal for the Establishment of the EEAS* made public on 6 April 2010 by the EP rapporteurs Brok and Verhofstadt neatly sums up the EP’s ‘essential points’: ‘These primarily concern budgetary prerogatives, political accountability, including the hearing of top EEAS staff by the European Parliament prior to taking up their posts, as well as the need for a strengthened consultation mechanisms regarding Council decision-making on the Common Foreign and Security Policy (CFSP)’.

The Commission was not very eager to give up its competences in external policy areas outside the domain of CFSP/CDSP such as Trade, Development, Neighborhood, or Humanitarian Aid. Development policy in particular was vehemently defended as a competence of the Commission, with the support of the EP. In general the Commission held that if the EEAS was not to be part of the Commission then it certainly should not have much autonomy and that non-CFSP policies and operations should remain under the supervision of the relevant Commissioners and their DGs.

Precluding an EEAS with strong autonomy was also the aim of the member states, but already the Swedish Presidency report on the EEAS, stipulating that it ‘should be a service of a *sui generis* nature’ (point 16), made clear that the national capitals were certainly not willing to strengthen the Commission’s external policy competences. The central dilemma, particularly for member states with extensive networks of external representations and embassies, such as France, Germany, and the United Kingdom, was how to reconcile the wish for a common, unitary European foreign policy with their own diplomatic interests (Furness, 2013; van Vooren, 2011).

Ashton, appointed as HR/VP at the end of 2009, also played a key role in the negotiations, backed by her High Level Group. The most urgent task for her was to set up the EEAS as a coherent, smoothly operating organization that also had to include the Union Delegations. Given the multitude of tasks that the HR/VP was foreseen to execute and manage (see Missiroli, 2010), it was important for Ashton to put in place an efficient system of delegation and personal representation in the different forums the HR/VP formally has to attend. Here she

clashed with the EP which criticized, inter alia, that the proposed organization was too hierarchical, with a too strong position for the Secretary-General. Moreover, the EP found it hard to swallow that the HR/VP and therewith the EEAS could be represented, if need be, by non-political actors such as General or Deputy Secretaries. In its view, this should either be the role of the HR/VP, a relevant Commissioner, or a minister of foreign affairs from the Council. Another point that bothered Ashton, but was not resolved, was the 'anomalous status' of EU Special Representatives in relation to the system of Union Delegations (EEAS, 2013).

One of the key debates in the set-up of the EEAS concerned its *substantive* structures. At the core was the question of whether the service would cover all aspects of external action, including CFSP, CSDP, trade, and development, or whether it would primarily deal with foreign policy in the narrow sense of the word (Duke, 2008; Grevi and Cameron, 2005; Vanhoonacker and Reslow, 2010). The final decision was in line with the position presented in the Swedish Presidency report adopted by the European Council in October 2009 (see: Swedish Presidency of the EU Council (2009)). It includes a transfer from the Council General Secretariat of all civilian and military crisis management structures⁵ as well as the Situation Centre (the EU's Intelligence unit), but leaves DG Trade and part of DG Development in the European Commission (Annex, Council Decision, 2010).

From an informational point of view, this set-up has important consequences. It perpetuates the existence of an autonomous information-gathering and processing unit in the field of crisis management and equips the HR with a (small) intelligence analysis center, since 2012 renamed as INTCEN. Although Ashton has adopted a rather minimalist view with regard to the EU role as a crisis manager (Vanhoonacker and Pomorska, 2013), from a long-term perspective it is a significant choice. It reaffirms the recognition by the member states that even in the sensitive field of security a further pooling of information resources in Brussels is indispensable. Given the importance of seconded national diplomats, military staff, and policemen in crisis management, the national capitals remain a key information provider. This is also the case with INTCEN, where the seconded officials of national intelligence services represent up to 70 per cent of the staff (Duke, 2014).

For information and expertise in the area of trade and to some extent also development, the HR and the EEAS remain dependent on the European Commission. The fact that the staff dealing with these policy fields are spread between two different institutions has led to new coordination challenges. The 'Vademecum on Working Relations with the European External Action Service' (European Commission, 2011) and its 'complement', the 'Working Arrangements between Commission and the EEAS in Relation to External Relations Issues' of 2012, foresee that when trade and development issues are involved, initiatives have to go through CISnet, the Commission inter-service

consultation tool (Marangoni, 2013). The EEAS also occasionally acts as a supporting service to different DGs in the Commission, for example, to the Commissioner responsible for the European Neighborhood Policy regarding policy matters, or to DG DEVCO for the strategic and multiannual programming cycle (European Commission, 2011, 11–12). The sensitivity and complexity of the relationship is exemplified by the fact that it took one year to negotiate the practical guide on their mutual interaction (European Commission, 2012).

Lisbon and the creation of the EEAS have also affected the *social* structures of foreign policy coordination. For a long time, the six-monthly rotating presidency was at the center of the system. As the chair of the meetings at all levels, and the face of the EU toward third parties, it was a key hub for both incoming and outgoing information. The data collected by Bicchi and Carta (2012) on outgoing messages of the COREU system are very revealing in this respect. They show that prior to Lisbon the rotating chair was responsible for about 10 percent of the messages sent. This did not only concern logistical information about agendas and minutes mostly sent by the Council Secretariat but also content-related information. The privileged position of the presidency was also reflected by the fact that it was the only member state which could also exchange bilateral messages with either the Council Secretariat or another member state (via the CGS) (Bicchi and Carta, 2012).

With Lisbon this picture radically changes. Through the transfer of several General Secretariat units to the EEAS, the responsibility of the HR/VP for coordinating all external policies, the EEAS' responsibility for chairing the Political and Security Committee (PSC) and the CFSP working groups, and the upgrading of the Community Delegations to Union Delegations, the EEAS 'has become the pivotal actor of communications via COREU' (Bicchi, 2014). In only two years the EEAS has become the sender of around 30 percent of the messages circulating through COREU (Ibid.).

From a social perspective – who has to inform whom and who has the right to be informed – it is not unimportant to note that the establishment of the EEAS was also an opportunity for the EP, traditionally kept out of COREU, to secure access to classified information. Although this was not noted in the HR's proposal of March 2010, Recital six of the Council Decision stipulates, '[s]pecific arrangements should be made with regard to access for Members of the European Parliament to classified documents and information in the area of CFSP'.

Apart from the stipulations in Article 13 – that the HR shall submit a report on the functioning of the EEAS by the end of 2011 (Article 13.2) and that 'by mid-2013 the HR shall provide a review of the organization and functioning of the EEAS' (Article 13.3) – the Council Decision establishing the EEAS is not very explicit about the *temporal* dimension of the service's operations. However, the suggestions of Article 9 concerning the role of the EEAS in the programming

and management cycle of the various external action instruments do form the basis of the much more detailed elaboration of the temporal dimensions of the EEAS's contributions to the programming of these instruments in the 2011 'Vademecum' and the 2012 'Working Arrangements'.

As is to be expected, these temporal specifications mirror and confirm the social structures of the EU's composition of a common foreign policy. For example, the Working Arrangement identifies ten subsequent steps in the preparation of the multiannual programs of the Development Cooperation Instrument, the European Development Fund, and the European Neighborhood and Partnership Instrument. Typically, the EEAS is mainly involved in the first steps, 'setting out the main objectives and principles to be followed for the programming process' (European Commission, 2012, 18). It could be argued that by preparing these guidelines on behalf of the relevant Commissioners, the EEAS has the strategic lead, determining the priorities of the multiannual programs for these external action instruments. The Commission, however, takes the decisive tenth step when it decides on the adoption of the program. Moreover, the Commission is also in charge of the annual action programs and their implementation, including financial oversight.

The Union delegations

The second branch of the European External Action Service is its external delegations. These so-called Union delegations are the successors of the Commission delegations and operate under the direct authority of the HR (Art. 221, TEU). Their composition reflects that of the Brussels-based branch of the EEAS: a mixture of staff from the Commission, the Council Secretariat, and the member states. In light of the general objective of continuity and coherence of EU external action, the delegations have taken over from the rotating presidency as the main body for coordinating EU action abroad (Drieskens, 2012; Maurer, 2013). When it comes to rules on information sharing and processing, it is important to distinguish between the interaction of the Union delegations with the Brussels-based institutions and the cooperation with the diplomatic mission of the member states. The latter in particular has proven to be an extremely sensitive matter.

A key document on the interaction between the Union delegations and Brussels is again the 2012 'Working Arrangements between Commission Services and the EEAS in relation to External Relations Issues'. The section on working arrangements with EU delegations deals primarily with the *social* dimension of who should receive what. It stipulates that the delegations – who since Lisbon not only deal with trade and development (if applicable) but also CFSP – have to report to the HR/VP, the President of the European Commission, the relevant Commissioner(s), the EEAS, and the Commission services. The Commission DGs may request reporting in the area of their competence

but have to do so through the Head of the Union delegation, who falls under the direct authority of the HR. This stipulation clearly puts the HR and the EEAS (head of delegation) at the top of the information hierarchy, above the Commission, and reflects the broader mandate of the HR to guard the coherence of EU external action. This is also reflected in the requirement that the geographical desks of the EEAS should be copied into all reports relative to their country, including those related to trade and development or other policy dimensions where the Commission has key competencies.

The Working Arrangements furthermore specify that information flows between Brussels (EEAS/Commission) and the delegations should have a two-way character. The Brussels desks are not merely at the receiving end but are also supposed to be responsive to the possible information needs of the delegations about relevant developments or policy orientations. The warning in the letter from 12 foreign ministers to the HR in December 2011 that Union delegations can only function properly 'if the Head of delegation receives all necessary information in good time' indicates that this has been challenging (Non-paper Foreign Ministers, 2011).

The upgrading of the Commission delegations to Union delegations has also affected the *substantive* and *temporal aspects* of the political reporting process. The ad hoc approach of the pre-Lisbon period has given way to a more systematic and professional way of reporting, according to certain guidelines in terms of content, presentation, and frequency. The reports, drafted by the political counselors of the delegations, give an account and analysis of the political situation on the ground, preferably accompanied by policy recommendations. Important sources of information include the press and other open sources, local governmental and non-governmental players, and delegations from member states. Since in many delegations the number of political counselors is limited to one, the information provided by the national embassies is very welcome. At the same time, however, the EEAS has made it clear that the political reports are non-negotiable. In other words, they only express the view of the delegation, which may or may not coincide with that of the member states (Bicchi, 2014). This is an important step since it establishes the autonomous character of the EEAS as information processor. It also implies that the member states are losing control over the message that is being transmitted to Brussels and that will be fed into the policy-making process. Furthermore, the frequency of the reporting has increased from a monthly (or less) to a weekly basis (Bicchi, 2014).

The second series of rules relates to the interaction of the Union delegations with the member states. Article 35 of the Lisbon Treaty specifies that the new delegations and the national embassies have to closely cooperate, and it explicitly identifies the exchange of information as a way to realize this goal (Art. 35, TEU). The draft Council decision establishing the EEAS prepared by the HR

(March 2010) is more specific. It stipulates that the Union delegations and the national diplomatic services 'shall, on a reciprocal basis, provide all relevant information' (Draft Council Decision, Art. 5, par. 9). Interestingly, the reciprocal character of the cooperation has been deleted in the final text ultimately adopted in July (Council of the European Union 2010). Paragraph 9 of Article 5 on the Union delegations simply states that '[t]he Union delegations shall work in close cooperation and share information with the diplomatic services of the Member States'.

This omission is reflective of the desire of the member states to keep control over the information they share. While in some cases states may indeed be keen to disclose particular material and data to influence the policy process, in others they may find it more advantageous to keep their cards close to their chest and decide to strategically use their informational surplus at a later stage or not at all. The reluctance may have been further reinforced by the initial lack of a secure communications network (Non-paper Foreign Ministers, 2011).

Despite their continuing dependence on the national embassies for part of their material, the information position of the delegations has nevertheless strengthened since Lisbon. Firstly, they are the ones who determine the content of the reports sent to Brussels rather than the member states, who may have provided part of the input. The delegations have made it clear that they are not willing to negotiate over the substance and their analysis of the facts. Secondly, the sharing of these reports with the member states is no longer standard practice as it used to be in the past. Under pressure from the EEAS in Brussels, the delegations no longer automatically share their reports with the national embassies on the ground (Bicchi, 2014). This reflects a desire to exploit the informational advantage resulting from their central position as chairs of coordination meetings between heads of mission and lower levels. This new practice has led to criticism on side of the member states, especially the smaller and medium-sized ones. In a time of budgetary restraints, increased reliance on EU political reports is seen as a way to deal with the reduced human and material resources. From the point of view of the HR, the position is understandable. As chair of the Foreign Affairs Council, it further strengthens her position if there is a situation of informational asymmetry between her and the member states.

Conclusion

In its final form, the EEAS is the outcome of a struggle not only between inter-governmental versus supranational orientations but also between an interest in a unitary European foreign policy and diplomacy versus the specific foreign policy interests of different member states (see van Vooren, 2011). Since none of these forces have a definite upper hand, the EEAS that came into existence is a

rather hybrid body, indeed *sui generis* in the Union's overall institutional landscape and also when compared to national states and their foreign ministries. It is not an EU institution in the sense of Article 13 of the TEU nor has it been granted explicitly the legal personality that EU agencies enjoy (see Erkelens and Blockmans, 2012). Except in the area of CFSP, it is strongly entwined with the different Commission DGs which deal with external action, the Commission being moreover the budget authority for all its operations. However, even in the field of CFSP the EEAS has no autonomous decision competences; it *supports* the HR/VP in this field, who in turn has to follow the general guidelines and priorities as formulated by the General Affairs Council and adopted by the European Council.

From a formal, institutional perspective, the EEAS may thus seem a weak body, an inter-institutional service with (too) many tasks but hardly any autonomous competences. However, from a politics-of-information perspective, things look rather different. Apart from its Brussels-based administration, comprising almost 540 AD posts, the EEAS holds another important aspect, which in the future may give it an impressive and, from an operational politics-of-information perspective, highly relevant informational surplus: the network of Union Delegations. As pointed out above, once operational, the EEAS consciously attempted to secure an informational advantage by fencing off its political field reports from member states and their delegations. These operational politics of the EEAS may partly be an act of counterbalancing the hesitations of member states to share with the EEAS all the information available to them. However, in combination with its chairing functions in the Political and Security Committee and in CFSP working groups, its own channeling of information may well give the EEAS an edge over member-state representatives, especially in policy areas that, if not crisis driven, are a confronting and highly volatile environment. Furthermore, it could be hypothesized that given the HR/VP's co-right of initiative in CFSP/CSDP, and given the EEAS's task of supporting the HR/VP in this policy area, informational asymmetries resulting from the interplay between the Brussels branch and its external delegation will lend the EEAS opportunities for informal, yet substantial policy influence. Only time will show whether such opportunities will indeed present themselves and whether the EEAS will be able to seize them in order to strengthen its interdependent standing and to expand its own territory.

Notes

1. 'Protected values' are 'values that resist trade-offs with other values' (Baron and Spranca, 1997, 1; Ritov and Baron, 1999; Tetlock, et al., 2000).
2. Article 221, TFEU stipulates that the 'Union delegations in third countries and at international organizations shall represent the Union' and that 'Union delegations shall be placed under the authority of the High Representative of the Union for Foreign

Affairs and Security Policy. They shall act in close cooperation with Member States' diplomatic and consular missions.'

3. Article 27 (3), TEU stipulates that: 'In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission.'
4. This includes the Crisis Management and Planning Directorate (CMPD), the Civilian Planning and Conduct Capability (CPCC), and the EU Military Staff (EUMS).
5. It concerns the players dealing with the first three stages of the program cycle (programming, identification, and formulation).

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Part III

EU's Parliament Administration

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13

The European Parliament Administration: Organizational Structure and Behavioral Implications

Morten Egeberg, Åse Gornitzka, Jarle Trondal, and Mathias Johannessen

Introduction¹

Administrative personnel are present not only within political executives but also within legislative bodies. There are indications that the staff of parliamentary assemblies have grown and become professionalized, thus making parliaments less dependent upon the expertise and administrative capacity of the executive (see below). Officials within parliaments, however, seem to have got marginal scholarly attention (see Dobbels and Neuhold in this volume): scholars interested in parliaments have traditionally focused on the parliamentarians themselves, and those specializing in bureaucracies tend to concentrate on the executive branch, thus leaving parliament administrations in a 'no-man's land' in the literature. This lack of knowledge regarding parliaments' staff also holds for the European Parliament (EP) (Hix et al., 2003), which contains a considerable administration, both in the form of the EP secretariat and in the form of the secretariats of the various political groups. Three clusters of research on parliamentary bureaucracy may be envisaged, of which this chapter focuses on the first one. This first research question concerns the behavior of parliamentary staff and the extent to which it is systematically shaped by their organizational location. As discussed more thoroughly in the conclusion, the second and third potential research questions focus on the power of parliamentary bureaucracy vis-à-vis members of parliament and on the extent to which the administrative resources of members of parliament enable them to exert influence on inter-institutional relations.

In this chapter we apply the same perspective on administrative personnel within legislatures as has been applied in the study of such personnel within executives: these personnel deserve attention because they may take part in decision processes and thus may affect the content of decisions. Like government officials, they may draft policy documents and give various kinds of

advice, and thus provide important decision premises even though they do not make the final political decisions. We argue that a proper understanding of how the EP works presupposes knowledge about the actual role of EP staff. Such knowledge becomes even more crucial when the competences of the EP are growing. We draw on an organizational approach, focusing on officials' organizational affiliation (EP secretariat versus political group secretariat) in order to explain their actual behavior; that is, their tasks and contact patterns, and the weight they assign to various concerns, considerations, and arguments. The chapter suggests that the EP staff activities, mainly revolving around ideological and sectoral concerns, underpin patterns of cooperation and conflict that characterize the behavior of members of the EP. Ideological and sectoral cleavages have also been observed in the Council of Ministers (Hagemann and Hoyland, 2008; Hayes-Renshaw and Wallace, 2006) as well as within the College of Commissioners (Egeberg, 2006; Wonka, 2008). This study suggests that officials in the EP also contribute to the *spanning* of such cleavages *across* institutions. These observations may be seen as deviating from a basically intergovernmental portrayal of the EU (for example, Kassim and Menon, 2010). Since ideological and sectoral cleavages cut across intergovernmental patterns of cooperation and conflict, they may challenge the inherited intergovernmental order and may contribute to its transformation.

Like other parliaments, the EP's organizational structure reflects three principles of specialization: ideological, sectoral/functional, and territorial. EP officials are formally anchored either in the ideologically arranged structure (that is, political party groups) or in a mainly sectorally/functionally arranged structure (that is, EP secretariat). Our study, based on new survey data (N=118), shows that political group officials network considerably with external actors sharing their party-political leaning, be it within the Commission and the Council presidency, or with national governments, or national or European-level political parties. Moreover, they are primarily committed to the concerns of their respective political groups and tend to assign particular weight to the arguments of those external actors which have similar party affiliation (within the Commission, Council presidency, or national governments). EP-secretariat officials, on the other hand, give priority to sectoral and expert concerns. However, since most group staff are affiliated to a particular committee, they also emphasize sectoral concerns, including the concerns of particularly affected interest groups. Finally, given that both groups of officials have a European-level organization as their primary affiliation, it makes sense that both are clearly inclined to rank European interests above national interests and to emphasize the arguments of the Commission more than the arguments of any other institution. In summary, EP staff's emphasis on ideological, sectoral, and European concerns, *across* institutions, clearly deviates from a simple intergovernmental portrayal of the EU.

The chapter is organized as follows: The next two sections offer a short overview of the formal characteristics of EP staff and a 'state of the art' presentation. The theoretical argument is then outlined, followed by a section on data and method. The subsequent part gives the empirical findings, before a final conclusion that also suggests avenues of future research.

The structure of the EP administration

The EP's administrative support structure is organized in three main parts: (i) the General Secretariat, (ii) the staff of the EP's political groups, and (iii) the MEPs' personal assistants.

The *General Secretariat* constitutes the main part of the EP administration. It is an elaborate organization headed by the General Secretary as the EP's highest official. Since the EP was established there has been a dramatic growth in its General Secretariat. According to Corbett et al. (2011, 218) the number of posts increased from 37 in 1952, to almost 2,000 in 1979, to almost 3,000 by 1984, to around 6,000 officials currently working for the EP General Secretariat. The expansion of the EP administration has come in the wake of an increase in the number of MEPs (from 78 to 785), nationalities (from 6 to 27), and working languages (from 4 to 23), as well as the major task expansion of the EP. It is divided into eight Directorates-General and the EP Legal Service. These basic units perform a wide-ranging set of tasks from, for example, information, translation/publishing, infrastructure/interpretation, and assisting in the daily operations of the EP, to managing the finances and budget of the EP. The majority of these posts are either assigned to the language services of the EP or to maintain the three locations of the EP and its information offices in the member states, that is tasks that are not (directly) relevant to EP decision making. Three directorates in particular (the Directorate-General for the presidency, and the Directorates-General for Internal Policies and for External Policies) (see also Table 13.1) have tasks closely related to the decision-making processes of the EP, such as coordinating legislative work and providing technical and expert assistance to parliamentary bodies and MEPs. The permanent officials in the General Secretariat are employed under the same conditions as civil servants working in other EU institutions, and the political groups and MEPs have relatively little influence over their appointments (Corbett et al., 2011, 219–222). According to the Staff Regulations, 'an official shall carry out his duties and conduct himself with the interests of the Community in mind' and 'shall neither seek nor take instructions from any government, authority, organization or person outside his institution'.

The *staff of the EP political groups* are the second main part of EP administration, currently comprising almost 900 posts (Corbett et al., 2011, 112). These posts are mostly temporary, funded by the Parliamentary budget, and allotted

Table 13.1 Number of recipients, respondents, and response rates across organizational units

Political groups	Recipients	Respondents	Response rate %
ALDE	43	11	26
GUE-NGL	34	6	18
ECR	37	2	5
EFD	31	5	16
EPP	69	7	10
Greens	35	8	23
S&D	78	13	17
Total	327	52	16
EP DGs			
DG internal policies	137	46	34
DG external policies	43	13	30
DG presidency	29	10	34
Total	209	69	33
Total (survey)	536	118¹	22

1) 118 submitted a filled-in questionnaire. Summarizing the number of group respondents (52) and EP secretariat respondents (69) gives 121. This is due to the fact that some respondents had marked that they were employed both places.

Acronyms: ALDE = Alliance of Liberals and Democrats for Europe; GUE-NGL = Confederal Group of the European United Left/Nordic Green Left; ECR = European Conservatives and Reformists Group; EFD = Europe of Freedom and Democracy Group; EPP = European People's Party; S&D = Progressive Alliance of Socialists and Democrats in the European Parliament.

to each of the political groups according to their size. The political groups reserve the right to hire this category of EP staff (Raunio, 1997, 45). However, the MEP's *personal assistants*, the third component of the EP administration, are hired by individual MEPs as part of their secretarial allowance, and the MEPs have considerable discretion over their assistants' terms of employment and how they are used. These staff, which are not included in our study, tend to be junior personnel with a high turnover (Michon, 2008).

Previous research on parliamentary staff

Legislative staff have been a subset of legislative studies, particularly within the US scholarship (DeGregorio, 1988; Hammond, 1996; Salisbury and Shepsle, 1981), and these studies are also useful as a backdrop for research in the context of the EU. This literature identifies how the staffing of parliamentary assemblies varies in terms of size and organizational differentiation – from the US Congress, where elected members and committees have a vast body of professional staff at their disposal, to parliamentary committees, which borrow expertise from the executive branch's bureaucracy (Strøm, 1998). This variation is found to be systematically linked to the *constitutional principles*

of political systems. The principle of separation of powers is particularly associated with having well-developed administrative apparatus within the legislative assembly, with the US Congress as the prime example (Dann, 2003).

MEPs have received growing scholarly attention concomitant with the expanding role of the EP in EU decision making. However, little research has so far addressed the question of the internal organization of the EP (Hix et al., 2003), and the literature on its administrative apparatus is even sparser (see Dobbels and Neuhold in this volume). The expanding scholarly work on the EP does, however, *indirectly* concern the EP's staff and secretariat, in particular when seen as part of the EP's internal resources. The study of the influence of the EP from an inter-institutional perspective, for example, calls to attention how the EP's institutional resources affect its capacity to exert influence over policy. The staffing of parliamentary assemblies is generally viewed as a component of such resources (Judge et al., 1994, 47). The literature that looks at legislative behavior from the perspective of information theory (for example, Krehbiel, 1992) indirectly addresses how the administrative resources of legislative bodies affect their internal operations. Ringe (2010, 52), for example, notes how EP staff resources matter for how MEPs handle the 'informational deficit' they are confronted with when making policy choices and in their voting behavior. None of these studies, however, are concerned with the role of EP staff as such.

What, then, does the literature tell us about the EP administration more explicitly? In general, most presentations of the considerable institutionalization and empowerment of the EP leave the role of its administration unaccounted for (for example, Scully, 2005), although some observe how the role of EP staff has changed over time. Gungor (2009) notes how the incremental increase in the complexity and volume of EP administration is testament to the institutionalization of the EP. The dramatic increase in the administrative support structure that came in the wake of the introduction of direct elections to the EP also contributed to the EP's basis for autonomous action. The EP administration has been seen as particularly independent and important prior to the direct elections of MEPs. The absence of MEPs during large parts of the year prior to 1979 'provided for considerable independence of the secretariat' (Neunreither, 2002, 46). Westlake (1994, 197) makes a similar observation, pointing to how recruitment waves into the EP's General Secretariat brought in young, gifted, institutionally committed officials that became engaged in a 'creative exploration of the Parliament's potential'. Costa (2003) also points to the administrative apparatus as a key to the parliaments' counter-power vis-à-vis executive power, yet he warns against seeing the increase and internal differentiation of the EP administration as a sign of increasing administrative power *within* the EP.

An internal study within DG II of the EP's General Secretariat in the early 1990s showed that as many as 80 percent of officials reported assisting parliamentary reports beyond technical and procedural questions (Neunreither, 2002, 49). This suggests that the EP administration may conduct tasks of a politically important nature, and thus may have political influence in non-trivial tasks. This finding is also corroborated by a study by Neuhold and Radulova (2006, 57) showing that EP secretariat officials see themselves as important when it comes to drafting a report or an opinion. This is corroborated by a recent study of two EP committees, building on interviews with committee officials, MEPs, and MEP assistants. This study concluded that committee officials hold more than a technical role and are substantively involved in the political work of the EP, particularly in shaping the informational foundations of policy making. However, the boundaries of their role seem fluid and their autonomy is under the hierarchical constraints of political superiors (Winzen, 2011). Thus, there is evidence that EP staff do matter, but insight into in what way they matter is still scant. The added value of our study may first of all be that we start unveiling *which* concerns and *whose* arguments officials in the EP assign weight to when shaping the informational foundation for policy making.

The theoretical account

Students of the executive branch of government routinely focus on the role of bureaucracies in addition to that of executive politicians. Although politicians at the top formally decide on issues considered to be of political importance, power and influence are also inherently linked to what takes place at other stages of the policy process – stages at which bureaucracy tends to play a crucial role. Thus, the exercise of discretion that may have policy implications could also be found in the agenda-setting stage, in the stage in which various policy alternatives are elaborated, during policy implementation, and, finally, when interpretations of the effects of public policies are fed back into new policy processes (Olsen, 2006; Page and Jenkins, 2005). In a sense, then, decision processes can be seen as endless streams of premises from which choices occasionally happen (Simon, 1965). Thus, although the existence of administrative staff without doubt increases the action capacity of executive politicians, such staff simultaneously tend to acquire a powerful position vis-à-vis their political masters.

Our rationale behind studying staff in the EP is parallel to the one outlined above. As in the executive, administrative personnel within legislatures may provide background information, give advice, and draft documents for politicians, thus inserting premises for future policy choices. In institutions in which politicians come and go, administrators may play a vital role in taking care of institutional memory, knowledge of procedures, and inter-institutional

affairs. Even though the number of administrators in relation to the number of politicians is not as large in parliaments as in executives, the staff size is considerable and has been growing (see above). Thus, arguably, parliament administrations deserve scholarly attention in much the same way as executive bureaucracies do.

Bureaucracies do matter in the policy process, but what kind of concerns, interests, and arguments can we expect officials to assign weight to? According to Weber's ideal-type theory of bureaucracy, public bureaucracy is an instrument of executive politicians at the top. It follows that when bureaucrats exercise discretion in conjunction with rule application or preparation, they look to the political level of the organization for signals regarding how to behave. However, in the ideal-type bureaucracy, rule orientation and political attentiveness are blended with expert concerns (Weber, 1970). Weber's conception is, however, not without its competitors: the theory of representative bureaucracy, both a normative and an empirical theory, contends that officials' discretion is (or should be), at least partly, circumscribed by the interests of the respective societal groups from which bureaucrats originate (Wise, 2003). However, studies have shown that background factors, except for educational background, seem to have only a modest impact on officials' actual behavior: their organizational (departmental) affiliation tends to be more crucial (Christensen and Læg Reid, 2009; Egeberg, 2003; Meier and Nigro, 1976; Olsen, 1983). This seems to hold for international administrations as well (Egeberg, 1996; Trondal, 2010; Trondal et al., 2010). Therefore, this chapter leaves out the representative bureaucracy model.

The EP secretariat differs from the executive branch bureaucracy in the sense that it is not there to serve a particular political leadership, but rather the whole institution. Thus, we expect expert concerns to clearly override partisan interests among EP-secretariat officials. Furthermore, the fact that the staff of political groups are political appointees gives reason to believe that partisan concerns would be those most emphasized. However, since they are recruited in order to support the groups in various ways, including to provide expertise, emphasis on expert concerns could also be expected. However, in order to be able to present more nuanced expectations regarding officials' behavior, we will now look at the potential relationship between their organizational position on the one hand and their tasks and decision behavior on the other.

We would expect the organizational context within which the officials are embedded to make some behavior more likely than others. Due to limited cognitive capacities, decision makers are unable to attend to all alternatives and consequences; however, an organizational structure provides a simplification that tends to focus decision makers' attention onto some problems, solutions, and lines of conflict rather than others (March, 1994; Simon, 1965).

One key organizational variable supposed to have behavioral consequences is the way in which the structure is horizontally specialized. For example, while we would expect a territorially arranged institution to induce spatial perspectives among officials and to focus attention along geographical cleavages, sectoral specialization is supposed to emphasize sectoral concerns that may cut across territorial borders (Gulick, 1937). Like other parliaments, the EP's organizational structure reflects three different principles of specialization: ideological (here along EP political group lines), sectoral/functional (here along standing committee lines), and territorial (here along national lines). EP administrators are formally and primarily anchored either in the ideologically arranged structure (that is, political party groups) or in the sectorally/functionally arranged structure (that is, the EP secretariat). However, political group staff may also be linked to the work of particular standing committees, thus giving such personnel an additional sectoral affiliation. We would expect that this variation with regard to the organizational position of EP staff may make a difference to their actual behavior: for example, we would expect party group administrators to be primarily committed to the concerns of their respective political groups. It is far from obvious, however, whether they would also network with *external* actors sharing their party-political leaning (within the Commission, with national governments, and so on) or would pay particular attention to the arguments of such actors. Arguably, this will depend on the extent to which the ideological dimension is present within the respective institutions. For example, if party politics is virtually absent among commissioners, as reported by Wonka (2008), we would not expect much party-based interaction between the EP administration and the Commission. If, however, the partisan role is part of a commissioner's role set, as claimed by Egeberg (2006), such interaction seems quite reasonable. Similarly, party-based interaction with governments or the Council does not make sense if one considers the EU to be basically an intergovernmental polity in which national interests trump other kinds of interests (see Kassim and Menon, 2010). However, it would be different if coalition formation along ideological lines takes place in the Council, as shown by, for example, Hagemann and Hoyland (2008). Furthermore, group officials who are assigned to follow the work of particular committees may also become particularly attentive to various sectoral concerns, including the concerns of particularly affected interest groups. Again, this is not self-evident: although politics along sectoral lines have been observed in the Council (Hayes-Renshaw and Wallace, 2006) and in the Commission (Egeberg, 1996, 2006; Trondal et al., 2010; Wonka, 2008), such a cleavage has not been emphasized in analyses of the EP (Hix et al., 2007). However, we would expect EP-secretariat officials to primarily emphasize the concerns of the policy sector in which they work (in addition to expert considerations). Thus, the involvement of EP staff in EP decision

making may underpin the patterns of cooperation and conflict (ideological and sectoral/functional) that cut across an intergovernmental pattern, thus contributing to transforming the inherited political order. Moreover, political group staff and EP-secretariat officials both have a European-level organization as their *primary* affiliation, meaning that they are expected to spend most of their time and energy within an EU-level organization. We can therefore expect them to be more inclined to pursue European interests rather than national interests.

Data and method

This study builds on an online survey among staff in the EP, comprising officials employed by the EP secretariat as well as officials employed by the various political groups within the EP. Two basic criteria were applied in order to establish the population: Firstly, we decided to concentrate on staff at the level of administrator/adviser and above (the 'AD' category). In this way we hoped to include staff who are most likely to be involved in the policy process, in accordance with the selection criteria used in studies of executive bureaucracies. Secondly, among the staff at AD level, we have aimed to include those most clearly taking part in the policy process; thus, excluding those in important support functions such as translation/interpretation, information, internal (for example, personnel) administration, and information technology. With regard to the EP secretariat, this means that only relevant AD officials within DG Presidency, DG Internal Policies, and DG External Policies have been selected. Our final selection consisted of 327 group officials and 209 secretariat officials. Information about names, positions, and addresses were found on the EP's website.

Before the online questionnaire was circulated, the Secretary General of each of the seven political groups as well as of the EP secretariat were informed about our project in a formal letter. Following two reminders, 99 responses had been registered. We then informed the recipients about the low response rate, particularly regarding the political groups, with the result that the number of respondents climbed to 118 (22 percent). The result, however, reveals a striking difference in terms of response rates between the political groups on the one hand and the secretariat's Directorates-General on the other, a difference we are unable to account for. The difference implies that while group officials make up a clear majority among recipients, they constitute a minority among those who have responded. Thus, regarding the variable 'organizational affiliation' (whether one is employed by a group or the EP secretariat), we know that the data are not representative for the selected population as a whole. In the data presentation this fact will be handled by always controlling for officials' organizational affiliation. We do not know the extent to which the material

is representative or not along other dimensions. Since the final response rate within the EP secretariat was 33 percent, it is more likely that representativity is generally better here than among group officials, although this is not necessarily the case. Thus, the results need to be interpreted carefully, and particularly so regarding group staff. However, if understandable and significant patterns are observed across several variables, more trust can probably be ascribed to the findings.

Results: The behavior of officials in the EP

Table 13.2 shows that EP officials conduct a multiplicity of tasks, including those that may provide ample potential for exerting influence on MEPs, such as drafting documents, giving advice, and facilitating compromises. As predicted, officials employed by the political groups tend to spend significantly more time on political advice than officials employed by the EP secretariat. Group staff also spend more time on facilitating compromises within the EP. This makes sense since such activity mainly involves national as well as EP party groups.

Table 13.2 EP officials spending much time on the following tasks, by organizational position (percent and Pearson’s r)

	Employed by the EP	Employed by political groups	Pearson’s r ^a
Drafting documents for MEPs	63	63	-.09
Providing scientific, technical, legal advice to MEPs	54	56	-.07
Giving political advice to MEPs	31	88	-.57**
Providing background information for MEPs	67	74	-.02
Meeting/contacting people on behalf of MEPs	34	50	-.18*
Facilitating compromises within the EP	46	70	-.19*
Facilitating compromises with the Commission and/or the Council	39	38	.06
Monitoring executive bodies (Commission, EEAS, EU agencies)	27	12	.16
Mean N	67	50	117

Notes: *p ≤ 0.05, **p ≤ 0.01
^aOrganizational position is coded as follows: Employed by political groups (value 1), employed by the EP (value 2). The dependent variables contain the original five-point scale.
 Key: This table combines values 4 and 5 on the following five-point scale: No time/very little (value 1), fairly little (value 2), somewhat (value 3), fairly much (value 4), very much (value 5).

However, the EP official's affiliation does not affect the extent to which they give expert advice and provide background information to MEPs. In fact, the two types of EP officials' behavior converge when it comes to tasks associated with an *epistemic* bureaucratic role. A majority of both groups spend much time on such tasks. These findings also indicate that staff employed by political groups combine an epistemic role with a politically oriented role.

Table 13.3 next reveals the contact patterns of EP officials. EP officials have a multiplicity of contact as part of their daily work. The most important contact points are the Commission, the Council, EU-level interest groups and firms, national governments, and political parties. However, a patterned variation among the two groups of EP officials is also reported. Contacts with political bodies – such as Commissioners' cabinets and political parties (both national and European) – are pursued significantly more by officials employed

Table 13.3 EP officials having much *contact* (meetings, e-mails, phones, etc.) with the following institutions, by organizational position (percent and Pearson's r)

	Employed by the EP	Employed by political groups	Pearson's r^a
Commission DG(s)	52	36	.17
Commission General Secretariat	14	16	.02
Commissioner(s)/Cabinet(s)	17	35	-.19*
European External Action Service	15	6	.08
Council Presidency	26	18	.12
Council Secretariat	30	12	.38**
EU agency(ies)	6	4	.02
Other EU institutions	12	18	-.06
EU-level interest group(s)/firm(s)	25	43	-.20*
National-level interest group(s)/firm(s)	6	22	-.21*
National government(s), incl. missions in Brussels	24	38	-.14
National parliament(s)	12	12	-.01
National party(ies)	6	32	-.61**
European party federation(s)	9	28	-.42**
International organization(s)	20	20	-.02
University(ies)/research institute(s)	11	4	.04
Mean N	66	50	116

Notes: * $p \leq 0.05$, ** $p \leq 0.01$

^aOrganizational position is coded as follows: Employed by political groups (value 1), employed by the EP (value 2). The dependent variables contain the original five-point scale.

Key: This table combines values 4 and 5 on the following five-point scale: Never/very seldom (value 1), fairly little (value 2), somewhat (value 3), fairly often (value 4), very often (value 5).

Table 13.4 EP officials reporting the following reasons for having contacts with Commissioner(s) and Cabinet(s), by organizational position (percent and Pearson's r)

	Employed by the EP	Employed by political groups	Pearson's r ^a
Because of Commissioner's/Cabinet's party-political leaning	3	27	-.47**
Because of Commissioner's/Cabinet's similar sectoral or functional portfolio(s)	69	72	-.02
Mean N	60	50	100

Notes: *p ≤ 0.05, **p ≤ 0.01

^aOrganizational position is coded as follows: Employed by political groups (value 1), employed by the EP (value 2). The dependent variables contain the five-point scale described in the key above, thus coding value 8 as system missing.

Key: This table combines values 4 and 5 on the following five-point scale: Not at all/very little extent (value 1), fairly little extent (value 2), somewhat (value 3), to a fairly great extent (value 4), to a great extent (value 5), no contact (value 8).

by political groups than by officials employed by the EP secretariat. These officials also tend to have more external contact with interest groups and firms. A rather modest proportion of political group officials (12 percent) mention the Council secretariat as a key interlocutor. This may reflect that this secretariat has become less interesting from a political point of view subsequent to the transfer of executive functions within the areas of justice and home affairs and foreign policy to the Commission and the EEAS, respectively.

The next two tables reveal the reasons EP officials give for having contact with Commissioners and cabinets (Table 13.4) and national governments (Table 13.5). Reflecting most officials' sectoral affiliation toward standing committees, they mainly have contact with Commissioners and cabinets with a similar sectoral or functional portfolio. Our data show that officials employed by the EP secretariat and political groups are equally affiliated to particular EP committees (77 and 74 percent, respectively). However, those employed by political groups also tend to emphasize contact based on the party-political leaning of Commissioners and cabinets (R = -.47**). Moreover, officials employed by political groups have contact with national governments due to the party-political leaning of the government significantly more than officials employed by the EP secretariat (Table 13.5).

We next asked the officials how they emphasize particular concerns and considerations when carrying out their daily work. Firstly, as Table 13.6 shows, officials in the EP have a primary affiliation toward EU level – EP staff rank common/overall European concerns far above national ones. Secondly, reflecting the sectoral affiliation toward standing committees, officials in the EP also tend to emphasize the concerns of the policy sector in which they

Table 13.5 EP officials reporting the *reasons* for having contacts with national government(s) is much due to the party-political leaning of the government(s), by organizational position (percent and Pearson's r)

	Employed by the EP	Employed by political groups	Pearson's r ^a
N	3 100 (59)	47 100 (47)	-.66** 100 (99)

Notes:**p ≤ 0.01

^aOrganizational position is coded as follows: Employed by political groups (value 1), employed by the EP (value 2). The dependent variables contain the five-point scale described in the key above, thus coding value 8 as system missing.

Key: This table combines values 4 and 5 on the following five-point scale: Not at all/very little extent (value 1), fairly little extent (value 2), somewhat (value 3), to a fairly great extent (value 4), to a great extent (value 5), no contact (value 8).

Table 13.6 EP officials who assign much weight to the following *concerns/considerations*, by organizational position (percent and Pearson's r)

	Employed by the EP	Employed by political groups	Pearson's r ^a
Party political concerns/considerations	27	84	-.61**
The concerns of particularly affected parties, clientele	26	42	-.20*
Professional/scientific/expert concerns	58	57	.07
The concerns of the policy sector in which I work	65	59	.16
National concerns	8	33	-.37**
Common/overall European concerns	77	74	.20*
Mean N	66	49	111

Notes: *p ≤ 0.05, **p ≤ 0.01

^aOrganizational position is coded as follows: Employed by political groups (value 1), employed by the EP (value 2). The dependent variables contain the five-point scale described in the key above, thus coding value 8 as system missing.

Key: This table combines values 4 and 5 on the following five-point scale: Not at all/very little extent (value 1), fairly little extent (value 2), somewhat (value 3), to a fairly great extent (value 4), to a great extent (value 5), no contact (value 8).

work. Thirdly, EP officials emphasize professional, scientific, and expert concerns, reflecting their roles as highly educated professional administrators. These three concerns constitute a *common* set of concerns to which EP officials give weight. However, there is a significant patterned variation based on their internal employment in the EP. Party-political concerns and the concerns of affected parties and clientele are emphasized significantly more by officials employed by political groups than officials employed by the EP. The data further underline that staff employed by political groups *combine* expertise and political considerations in their work, that is, these two aspects of their role are complementary rather than mutually exclusive.

Table 13.7 reveals how much weight EP officials assign to arguments from different institutions. Most emphasis is put on arguments from the Commission, next to those from the Council. Scientists and academics also seem to be relatively highly regarded by both groups. Moreover, officials employed by political groups tend to emphasize arguments from national governments and interest groups and firms slightly more.

Finally, we asked the respondents how important party-political leaning is when they assign weight to arguments from the Commission, the Council, and particular national governments. The observations in Table 13.8 show that the party-political leaning of the respective institutions is significantly more emphasized by EP officials employed by political groups than officials employed by the EP secretariat.

Table 13.7 EP officials who assign much weight to *arguments* from the following, by organizational position (percent and Pearson's *r*)

	Employed by the EP	Employed by political groups	Pearson's <i>r</i> ^a
Commission	81	68	.17
Council	70	50	.17
EU agencies	15	26	-.06
Other EU institutions	26	20	-.07
Particular national governments	15	32	-.23*
EU-level interest groups/firms	19	36	-.13
National-level interest groups/firms	5	10	-.26**
International organizations	31	24	.02
Scientists/academics	45	48	.02
Mean N	66	50	112

Notes: **p* ≤ 0.05, ***p* ≤ 0.01
^aOrganizational position is coded as follows: Employed by political groups (value 1), employed by the EP (value 2). The dependent variables contain the five-point scale described in the key above, thus coding value 8 as system missing.
 Key: This table combines values 4 and 5 on the following five-point scale: Not at all/very little (value 1), fairly little (value 2), somewhat (value 3), fairly much (value 4), very much (value 5), not relevant (value 8).

Table 13.8 EP officials who assign much weight to *party-political leaning*, by organizational position (percent and Pearson's r)

	Employed by the EP	Employed by political groups	Pearson's r^a
When assigning weight to the arguments from the Commission, this is much due to the party-political leaning of the Commissioner/cabinet	5	34	-.52**
When assigning weight to the arguments from the Council, this is much due to the party-political leaning of the Council Presidency	8	34	-.44**
When assigning weight to the arguments from particular national governments, this is much due to the party-political leaning of the government	15	42	-.47**
Mean N	65	50	108

Notes: ** $p \leq 0.01$

^aOrganizational position is coded as follows: Employed by political groups (value 1), employed by the EP (value 2). The dependent variables contain the five-point scale described in the key above, thus coding value 8 as system missing.

Key: This table combines values 4 and 5 on the following five-point scale: Not at all/very little (value 1), fairly little (value 2), somewhat (value 3), fairly much (value 4), very much (value 5), not relevant (value 8).

Conclusion

Except for studies on staff in the US Congress, research on national parliament administrations is almost non-existent. This is also the case for the EP. Although the EU polity displays some semi-parliamentary features, such as the coupling of European elections' outcome and the choice of Commission President, the current EU, like the United States, seems to be perceived mainly as a system characterized by the separation of powers. Thus, since the availability of adequate expertise and administrative capacity within parliaments may be deemed more critical in the latter case, the lack of focus on the role of EP staff is even more surprising. We have witnessed that such staff have grown considerably over the years, both within the political groups and within the EP secretariat. This chapter applies the same perspective on legislative personnel as has been applied on administrative personnel within ministries: since influence may also be exercised at stages at which initiatives are taken and policy alternatives elaborated (although not formally decided upon), scholarly attention should also be paid to those who provide information and advice, and draft documents. This

study shows that officials in the EP actually do perform tasks that may involve 'policy shaping'; tasks such as providing background information and various kinds of advice, drafting documents, facilitating compromises, and so on.

In order to account for the interests, arguments, concerns, and considerations that officials emphasize in the policy process, researchers in the field of administrative behavior tend to assign more weight to organizational variables than to variables describing officials' backgrounds. This chapter, therefore, uses the organizational position of officials as the independent variable. From an organizational perspective, the structure provides simplifying cues for individual action in a complex and information-rich world. Our study shows that the way in which the EP administration is organized significantly affects officials' role in EP decision making. Political group officials find themselves mainly embedded in an ideologically specialized setting, although often complemented by a sector-committee connection. Accordingly, we have observed that their actual behavior (contact patterns, concerns, and arguments emphasized) to a considerable extent reflects their political group affiliations, in the sense that attention tends to be directed toward actors sharing their political leaning (be it within the Commission and the Council presidency, or with national governments, or national or European-level political parties). However, in addition, sector concerns loom large on their agenda, including the interests of particularly affected clientele. We notice that group staff pay more attention to interest groups than EP-secretariat officials. This may reflect that the former, as 'political appointees', have more leeway with regard to incorporating various external demands into policy documents. However, EP-secretariat officials, anchored in a predominantly sectorally arranged structure, emphasize primarily sectoral and expert considerations and arguments. Thus, there are significant differences in their behavior that can be attributed to their position within the EP staff apparatus with regard to how they balance the various elements of their role.

The results also demonstrate that there are two key areas where the behavior of EP staff converges. Both groups of staff have an EU-level organization as their primary affiliation. Accordingly, this data set reports that both groups, in their work, clearly rank European concerns far above national ones. This EU-level affiliation may also help to explain why officials in the EP, across units, tend to pay more attention to the arguments of the Commission than to the arguments of any other institution. They may simply be more sympathetic to the viewpoints launched by the supranational Commission. However, the Commission is also a powerful institution that *has* to be listened to regardless of sympathy. In addition, the quality of the argument may be a reason to pay attention. This finding may be interpreted as being at odds with the widespread statement that the Commission is losing ground and being placed at the bottom of the Commission-Council-EP triangle (for example, Dinan, 2011, 118).

The orientation toward expertise and professional considerations also constitutes a *common* core of the EP administrative corps. The results show a striking similarity in how the officials emphasize such considerations in the tasks that they perform and the arguments they pay heed to in their work. The work of EP staff contributes to funneling expert information into EP policy making. Giving professional, scientific, and technical advice is a major part of the work for a majority of both EP-secretariat officials and the administrative staff of the political groups. The data also show that in the case of the latter type of staff, political and technical/professional role conceptions and tasks coexist. Consequently, the political orientation exhibited by staff that is in close organizational proximity to political groups does not exclude an expert orientation in the work of such staff. This indicates that also in the case of parliamentary staff an alleged *conflict* between a political orientation and behavior based on expertise is overstated (see also Fouilleux et al., 2005; Gornitzka and Sverdrup, 2011; Radaelli and O'Connor, 2009 on this distinction). The group staff's role perception is more *compound* than is the case for officials in the EP secretariat. It can be argued that the particular combination of political and expertise-based behavior is linked to the dual organizational affiliation of staff employed by the political groups.

In summary, the activities of staff in the EP, mainly revolving around ideological and sectoral concerns, underpin patterns of cooperation and conflict that characterize the behavior of members of the EP (Corbett et al., 2011; Hix et al., 2007). Ideological and sectoral cleavages have also been observed in the Council of Ministers (Hayes-Renshaw and Wallace, 2006; Hagemann and Hoyland, 2008) as well as within the College of Commissioners (Egeberg, 2006; Wonka, 2008). Interestingly, this study suggests that officials in the EP also contribute to the *spanning* of such cleavages *across* institutions. These observations may be seen as deviating from a basically intergovernmental portrayal of the EU (for example, Kassim and Menon, 2010). Since ideological and sectoral cleavages cut across intergovernmental patterns of cooperation and conflict, they challenge the inherited intergovernmental order and may contribute to its transformation.

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14

Officials ‘Pre-Cooking’ EU Affairs? The Role of EP Officials in the Ordinary Legislative Procedure (OLP)

Mathias Dobbels and Christine Neuhold

Introduction¹

The European Parliament (EP) has been hailed as one of the ‘winners’ of the Lisbon Treaty (Mahoney, 2010). Indeed, since its entry into force, the EP is a co-legislator in almost all regulatory fields of the EU. The co-legislative powers of the EP now cover 85 Treaty articles and were extended into thus-far uncharted waters such as fisheries and the common commercial policy, to name just two examples. Moreover, what used to be the third pillar of freedom, security, and justice now falls in its entirety under the ordinary legislative procedure (OLP, formerly known as the co-decision procedure).

The implications of the transformation the EP has gone through, from unelected assembly to full-fledged co-legislator, have been reflected in the literature. We now have a fairly comprehensive insight into how the co-legislators interact in the legislative process (for example, Farrell and Héritier, 2003; Reh et al., 2013; Shackleton, 2000); into the voting patterns and alliance formations in the EP (Hix et al., 2009; Hix and Noury, 2009); and regarding the normative implications of the increased democratic input into the policy-making process (for example, Rittberger, 2005). However, the impact of the extension of the parliament’s legislative powers on the patterns of interaction between political and administrative players within the institution remains largely eclipsed within the academic debate. This might come as a surprise, given the vast literature on the delegation of authority to administrators by the US Congress (Huber, 2000). Here, the point of departure is fairly simple: elected officials (principals) cannot take all policy decisions on their own and have to delegate some of their decision-making authority to administrative officials (agents) and then ‘seek some ways to control what they (bureaucrats) do with that authority’ (Arnold, 1987, 279).

Against this background, the hypothesis driving this chapter is that, due to the exponential growth of the parliament's tasks, EP civil servants have been empowered to an extent that they have a substantial impact on policy shaping and, as such, 'pre-cook' legislation within the EP. By focusing on EP civil servants from the General Secretariat working for EP committees (from this point on, called EP civil servants) as the unit of analysis, the objective of this contribution is to isolate the factors that influence the types of tasks that are delegated by elected actors to these players, which as a result cause different roles adopted to be by officials. Put slightly differently, the main aim of the chapter is thus to shed light on the factors that lead to a variation of roles that EP officials may activate as a result of the delegation of tasks by Members of European Parliament MEPs.

In this context, the chapter focuses on case studies from two policy domains and is set up as follows: Firstly, the theoretical framework will be outlined by drawing upon three sets of literature. The debate on the interplay between civil servants and their political masters – albeit not only within parliaments – will be reviewed in order to distill general factors that determine the delegation of tasks. The specific literature on the types of policy tasks performed by civil servants will be linked to the debate on the role of administrations within the European system of governance, with a special focus on parliaments, in order to generate assertions. Subsequent to an overview of the EP's administrative system, these assertions will then be examined by way of two case studies stemming from two different policy domains: a 'regulatory' policy being the novel foods regulation and a 'constitutive' policy being the new system of comitology. In this quest ten in-depth interviews were conducted with officials from the three EU institutions (the Commission, Council, and EP) involved in the files under study.²

The delegation of authority to administrators: Defining factors

General factors for delegation and the resulting roles: A literature overview

Any study on the interplay between civil servants and their political masters goes back to Max Weber, who stressed that an ideal bureaucracy is characterized by hierarchical organization, where career officials are neutral experts. However, practice at best only comes close to the ideal type. Civil servants have interests and power of their own that they may find hard to separate from the process of politics (Weber in: Olsen, 2006). In this context some have argued that civil servants are given too much discretion and too much policy-making authority. Accordingly, Congress has transferred too much power, in that it has created a 'runaway' bureaucracy in which (unaccountable) officials take important policy decisions (Lowi, 1979).

Gailmard and Patty examine the question of how to minimize the risks of this process. Based on a formal model, the authors show that the risks of delegation are held in check if issues are delegated to civil servants (agents) that have ‘some measure of control over policy issues they care about’ (Gailmard and Patty, 2007, 886). ‘Politicized competence’ is thus described as the ‘best kind available in equilibrium’. Civil servants are seen to be one of two types: policy-motivated ‘zealots’ or policy-indifferent ‘slackers’. A main incentive for zealots to invest in developing their expertise is a merit system that builds on job tenure protection combined with discretion setting by the legislature (Gailmard and Patty, 2007, 874–875). Politicized competence is seen as an investment in expertise development and is not to be confused with politicization, that is, political partisanship (Peters, 2013).

In combination with DeGregorio’s (1994) findings that legislators are inclined to empower civil servants, especially in complex policy matters, this seems to resonate with Patterson’s (1970, 26–28) hypothesis that experienced civil servants are allowed to perform substantial policy-making tasks. Accordingly, an administrative system allowing for the development of politicized competence would facilitate the delegation of substantial policy-making tasks to civil servants. This in turn raises the question of how such tasks are to be defined.

Page and Jenkins (2005) have revealed different types of policy roles of middle-level civil servants working for ministries in the United Kingdom in order to establish what civil servants actually do and how this relates to instructions from policy makers. Basing their observations on sociological theories of bureaucracy, and drawing on a large set of interviews (140), Page and Jenkins (2005, 79) observe that ministers ‘do not give a detailed steer of all the things in the policy process’, so civil servants essentially have to draw up the rules of ‘how policies should work in practice’. Three types of policy roles for middle-level administrators are identified:

- (1) a *production role* when it comes to drawing up policy drafts and documents (Page and Jenkins, 2005, 60);
- (2) a *maintenance role* in tending to and managing particular policies. This type of task is more prevalent within ministerial bureaucracies, and the main objective is to ensure that policies run according to agreed principles (Page and Jenkins, 2005, 69); and
- (3) a *service role* in offering knowledge and skills to those involved in the policy process. Offering advice to the executive is seen as the clearest example of service work (Page and Jenkins, 2005, 71).

Although this research does not center on civil servants working within parliaments per se, it gives us a first indication of the tasks performed by civil servants within political administrative systems.

The academic debate on the role of EP administrators in (an EU) context

Recently academics have shifted their attention to the EU, no longer focusing on the intergovernmental order 'inherited from the past' but instead examining the changing nature of executive power in Europe. This transformation is ascribed to the advent of the EU (and its predecessors). Curtin and Egeberg (2008) relate this phenomenon to the establishment and consolidation of the European Commission as an executive center (for example, Bauer, 2009; Kassim et al., 2013).

Some studies have also stressed the role of officials in the achievement of a 'pre-agreement' in the Council of Ministers (Fouilleux et al., 2005; Haegel, 2007; Reh, 2007). Reh (2007), when striving to explain whether and under which conditions constitutional decisions in the Europe Union were de facto taken by officials, comes to the conclusion that government officials pre-decided the largest part of (the Amsterdam Treaty) reforms (Reh, 2007, 1202). Officials can act as pre-decision makers, capable of reaching agreement and thus effectively cooking the politicians' books (Reh, 2007, 1189).

Accordingly officials need three sets of resources – epistemic and procedural assets – in order to be effective:

1. Firstly, delegates need the expertise to be able to grasp both the legal and the political dimensions of an issue and the implications of these at European and national level (Reh, 2007, 1189);
2. Secondly, representatives require experience both in negotiating internationally and in implementing political decisions (Reh, 2007, 1189);
3. Thirdly, this is linked to an observation that Reh identifies as the effective preparation of a multi-issue negotiation, which requires information about how negotiations proceed *en grand* and about how separate issues could be combined into a 'comprehensive' package (Reh, 2007, 1189f).

These insights can be linked to a more general debate on the properties of parliamentary structures in Western democracies. In this context, Harfst and Schnapp (2003, 12) see parliaments as resorting to a plethora of instruments to control the executive; for example, by installing committees, by holding the executive to account through question time, and by setting up parliamentary means of support such as research units. The authors posit that parliaments that have built up rich bases of material resources will also pay attention to boosting their formal resources and structures of control. The information-processing capacity of parliaments enlarges with the increase of staff members available to MPs or committees. The United States is in the lead in this context, with around 24,000 staffers working for Congress, while Japan has 4,100 staff members. Germany, Italy, Australia, and France follow suit with an average of 2,333 staff members and 1,000 bureaucrats (Harfst and Schnapp, 2003, 24).

Overall, the literature on parliamentary administrations in EU member states is, however, thus far mainly descriptive and rather limited. The main observations relate to the principle of political neutrality that administrators have to adhere to – for example, in the French system and in the British parliamentary administrative system (Baron, 2013; Campbell and Laporte, 1981; Ryle, 1981).

The EP's administrative base has also until recently been almost eclipsed from the scholarly debate. Neunreither (2006) can be seen as having started this debate. Despite administrative procedures, the development of a non-partisan and independent service within the EP is seen as being far from guaranteed. A number of factors have contributed to such a development. Before the first direct elections to the EP in 1979, the chamber was an unelected assembly composed of delegated members of national parliaments who had to divide their time between their member state and the EP. This allowed a considerable independence of the secretariat during MEPs' absence. After the direct election the EP doubled in size, with most MEPs now working full time. Gradually, these policy makers had to become familiar with EU policy making but civil servants still had considerable room for maneuver and influence (Neunreither, 2006).

More recently scholars have built on this work by examining the role of officials in the Committees of the European Parliament. Winzen (2011, 41) stresses that the literature indicates that officials are involved in the policy process, but the open question remains as to whether their work is fundamentally technical or actually of relevance to policy making. Although officials are involved in both secretarial and political work, their role is constrained by their position in the parliamentary hierarchy. Officials can be reduced to mere paper-keepers and have 'very limited administrative autonomy'. In addition, political principals also make the hierarchical distinction between 'technical' and 'political' issues when attributing tasks to officials (Winzen, 2011, 28). A broader approach is taken by Wlezien (2005) who, albeit in a different context,³ reflects on political salience or political importance. Wlezien (2005, 557) argues that a distinction should be made between an issue and a problem; an issue is not salient or important by definition, but by the degree to which it is perceived as a political problem. Egeberg et al. (2013) also examine the activities of EP staff by way of an online survey and find that the activities of these actors mainly revolve around ideological and sectoral concerns, with European issues ranking far above national ones. Marshall (2012) has a slightly different take on this issue and examines the type of advice protagonists from the General Secretariat provide to rapporteurs. In this context it is posited that administrators are generalists that are dependent on the input of lobbyists and even the Commission itself and as such indirectly lobby MEPs (Marshall, 2012).

The discussion so far can be summarized as in Table 14.1.

Table 14.1 Delegation of competences to civil servants: factors and implications⁴

Factors behind delegation	Implications for political process
Political masters delegate competences if there are clear administrative procedures and rules (McCubbins et al., 1987)	A 'bureaucratic drift' can be minimized given that competences are delegated to civil servants that possess 'politicized competence', i.e. that are willing to invest in expertise development (Gailmard and Patty, 2007)
Principals are unable to give a detailed steer of all issues, which gives rise to a need to delegate policies (Page and Jenkins, 2005). A distinction between 'technical' and 'political' issues will be made by political masters when distributing tasks to officials (Winzen, 2011)	Civil servants then assume three different types of policy roles when implementing policies into the practical political process (Page and Jenkins, 2005). The activities of EP staff will mainly revolve around ideological concerns and policy issues (Egeberg et al., 2013). EP officials can rely both epistemic and procedural resources in order to be effective (Reh, 2007)

The debate leads us to formulate the following assertions:

- An administrative system that is built on a merit-based system, providing a high degree of tenure for civil servants, fosters the development of 'politicized competence' which enables elected actors (in this case MEPs) to delegate policy-making tasks that go beyond a production role to civil servants. Due to the fact that EP officials have built up considerable expertise in inter-institutional negotiations with the Council, they can rely on epistemic and procedural resources that allow them to influence policy making.
- In policy fields where MEPs have built up limited expertise – for example, in areas where the EP obtained new competences under the Lisbon Treaty – civil servants can fulfill a role that goes beyond those stipulated by Page and Jenkins (2005), which we would classify as a *steering role*. This would imply that EP civil servants try to influence the issue at stake beyond the instructions of MEPs (or because of the lack thereof) and as such contribute to policy shaping.
- Closely linked to this is the assertion that the role of civil servants is more limited when it comes to more 'politicized' policy domains or dossiers. Thus, the 'political importance' attributed to certain issues will have an impact on the type of role that EP civil servants exert.

Before probing into these assertions by way of case studies, a brief overview of the EP's administrative system follows in order to set the context for the analysis.

An overview of the administrative system of the EP

It is important to note that the EU's administrative system was set up according to French traditions and concepts. The backbone of this system is the recruitment of civil servants for the General Secretariat (GS) on the basis of general competition (the so-called *concours*) and is based on a high degree of tenure and impartiality. Moreover, it has to be stressed that officials working for the GS of the EP are not the only unit of officials in the EP. Indeed, the political hierarchy in the EP facilitated the development of a three-level structure of administrative machinery: at the level of the EP itself in the GS, at the level of political groups (political groups staff), and at the level of MEPs (accredited assistants). It would go beyond the scope of this chapter, however, to direct the focus of the empirical analysis beyond the permanent staff of the EP assigned to the GS and working for EP committees.

Permanent staff of the parliament is assigned to the Secretariat General (SG). The number of officials working in the SG in 2010 amounted to 5,273, while in 1952 only 37 civil servants were working for the EP (Corbett et al., 2011, 226). Corbett et al. (2011) remark that the current figure is much higher than that of national parliaments. However, it is important to note that 1,350 are employed as translators and interpreters, while less than a fourth (1,150) are administrators (Corbett et al., 2011, 220). This is still rather substantial when compared to national parliaments (Harfst and Schnapp, 2003). Most officials in the SG hold tenured posts but rotate every three to seven years. Tenure is awarded after nine months of recruitment. Their promotion is partly based on seniority, but in recent years also builds to a large extent on annual evaluations in staff reports, thus rendering the system more merit based (Corbett et al., 2011, 228).

This unit of analysis differs from that of political group staff, a majority of which are temporary agents. Most of parliament's temporary agents are hired via competitions modeled on the ones for European institutions, including oral and written exams and language tests, rather than by way of the *concours* (Corbett et al., 2011, 113).

Political group staff is recruited to work for the political groups directly, and as such political convictions can play a role. Each of the political groups has a different ratio of civil servants to MEPs, ranging from the lowest ratio in the European People's Party (EPP) to the highest ratio in the 'far left' political group (GUE/NGL) (Romanyshyn and Neuhold, 2013). Overall, 862 officials worked for political groups in 2011 (Corbett et al., 2011, 219).

Moreover, every MEP has a number of assistants at his or her disposal. The status of accredited parliamentary assistants was upgraded by way of a Council regulation in 2009. This means that assistants enjoy similar social benefits to those of EP civil servants, with their salaries graded accordingly. All contracts

automatically end at the end of each legislature. MEPs are entirely free in the selection of candidates they want to work for them. Generally, between one and three accredited assistants work for each MEP, resulting in a total number of 1,535 assistants (Romanyshyn and Neuhold, 2013).

The staff of the SG are subject to the same requirements as civil servants working in other European institutions. According to Article 11 of the Staff Regulations of Officials of the European Communities (2004), 'an official shall (...) neither seek nor take instructions from any government, authority, organization or person outside his institution. He shall carry out the duties assigned to him objectively, *impartially* and in keeping with his *duty of loyalty to the Communities*' (emphasis added).

It becomes apparent that although the tasks of civil servants in the EP are regulated, they give much room for interpretation in the practical process, as will be shown by way of selected case studies.

Case studies

The case study design is one of 'most different cases' (Peters, 1998, 37–41). The basic principle of this design is to find relationships among variables that are valid in a range of different cases. It attempts to find out how robust the relations among these variables are and whether they hold up in a variety of cases. This design looks for the general rather than the particular. Or, as Peters (1998, 144) writes, '[i]f the pattern of relationship among variables holds up in that "most different" case, then we have even greater assurance that the relationship is indeed very robust, and there is reason to accept that there is some stable and reliable pattern of political behaviour'.

The two cases are the new system of conferring implementing and delegating powers to the Commission, based on Articles 290 and 291 of the Treaty on the Functioning of the European Union (formerly known as comitology), and the regulation on novel foods. Not only do they belong to different policy fields, but their outcomes and decision-making procedures and the nature of the negotiations differed as well. The regulation on the new comitology regime was successfully concluded in its first reading, while the regulation on novel foods failed in conciliation. This outcome is remarkable since it is only the second time conciliation negotiations failed to lead to an agreement between the Council and the EP. The case of novel foods is a 'classic' piece of EU legislation insofar as it reflects how very technical provisions can become highly politicized and shape the debate that divides the institutions, while the dossier on comitology is more of an institutional/procedural nature.

The contrasting natures of the two domains should therefore shed light on the question as to whether the observations hold true in highly different circumstances. Indeed, both fields contrast in the sense that the regulation on

novel foods was a highly politicized file, eventually failing in conciliation, whereas the regulation on the new comitology regime attracted hardly any political interest in the European Parliament (Christiansen and Dobbels, 2012). The factor of the 'political importance' attributed to the dossiers will thus vary. Moreover, the fact that the European Parliament is a new player in legislating the mechanisms for control in comitology will enable an assessment of the prevalence of 'politicized competence' in connection to expertise, as it is presumably a field where MEPs have less expertise than a field such as food safety, in which the EP has been co-legislator for a longer period.

The role of EP civil servants in the regulation on novel foods

The revision of the regulation on novel foods is part of a field that was not affected by the entry into force of the Lisbon Treaty and constitutes an area where the EP previously had co-legislative rights. It is a topic which attracts a high degree of political attention, in which both industry and consumer-rights organizations showed interest. The original regulation 258/97 EC (European Communities, 1997) regulates food that does not have a 'significant history of consumption' before May 1997 or foods and food ingredients with a new or intentionally modified primary molecular structure. The regulation created an EU-wide approval system for such foods before they enter the market, which reduced the cost for approval considerably. The Commission proposal of 2008 (European Commission, 2008) for a revision of the regulation of 1997 addressed certain gaps in the old regulation, aimed at centralizing and considerably simplifying the authorization procedure, and attempted to formulate an answer to the ever-changing process of technological progress in the domain of (industrial) food production. The proposal included a simplified procedure for 'traditional' food coming from third countries, and provisions on foods modified by nanotechnology,⁵ and food produced by non-traditional breeding techniques such as cloning.

The European Commission introduced its proposal in January 2008 and 12 months later the EP voted its report in first reading. The Council adopted its common position in March 2010, after talks to reach an early second reading agreement had collapsed over the issue of food coming from cloned animals or their descendants. The EP advocated the total removal of such food from the scope of the regulation, demanded a separate instrument, and wanted to introduce a transitional ban on such food being put on the market. It then voted for virtually the same amendments in second reading in July 2010. In between, attempts were made to come to an agreement through informal negotiations, but the positions of the EP on the one hand and of the Commission and (a divided) Council on the other hand were not reconcilable. After the Council rejected the EP's amendments, a conciliation procedure was started in early 2011, which failed to hammer out a deal after three lengthy nights of

negotiations. The procedure thus ended in failure on 29 March 2011, the first time since the Working Time directive in 2009, which until then had been the only file to not survive conciliation (Eurofond, 2012).

In terms of the role officials played during the negotiations on this file, it should be emphasized that the rapporteur belonged to the far-left European United Left/Nordic Green Left group and that the file therefore required considerable coordination with the other groups, and even more so when it went into conciliation. The file was, however, characterized by a highly unified position on the part of the EP, mainly on the issue of cloning. The politicization of the regulation around the question of foods coming from cloned animals or their descendants originates in a resolution, piloted by the rapporteur, which was voted on with a wide majority in 2008. In this resolution, the EP called upon the Commission to submit proposals prohibiting the cloning of animals, the farming and importing of cloned animals, and the placing on the market of products derived from cloned animals and their offspring (European Parliament, 2008). When it became apparent that such foods fell within the scope of the regulation, the EP, under the leadership of the rapporteur, defined its position in opposing the inclusion in the scope of the regulation (interviews 3, 4, and 5). All interviewees agree that the rapporteur dominated the negotiations but some also point to the initial lack of political interest on behalf of the bigger parties and the virtual impossibility for a politician to argue in favor of placing food on the market that has any link to cloned animals (interviews 1, 2, and 3).

Even though the file was thus attributed a high degree of political importance, the EP was unified and the politicization of the dossier only aggravated the divergent views between the EP, the Council, and the Commission rather than causing internal conflict. This allowed the secretariat to play the role of 'guardian' of the EP's position. A similar observation was made within the fisheries committee where problems were of a more institutional nature (Dobbels and Neuhold, 2013). As in other files, the assistant of the rapporteur teamed up with the secretariat, and the experts backed up the rapporteur by providing briefings and co-authoring the official documents (interviews 1, 3, and 4). Several interviewees described the secretariat's role as vital, not only in terms of coordination but also in the substance of the file (interviews 1, 2, and 4). Together with the assistant, it was the secretariat that was the main interlocutor in preparing trilogues and informal contacts in the first and second reading (interview 2). Usually, once a file enters conciliation the conciliation unit in the secretariat takes over most of the work, as it has the procedural expertise to handle the conciliation negotiations (Romanyshyn and Neuhold, 2013). However, as there were around 100 open amendments going into conciliation, the substance and technical details were still key, and the committee secretariat thus continued to play an important role when it came to

determining the substance of the dossier (interview 2). It briefed the vice president chairing the conciliation as well as the other members of the committee (interview 5). Its role on substance was evident insofar as several interviewees describe the secretariat as a 'hardliner' on the issue of cloning, being very careful and even reluctant to compromise because it was of the opinion it could get a better deal at the very end of the conciliation procedure (interviews 1, 2, and 3). The secretariat also played an important role in terms of coordination, by always making sure that even with informal meetings between the EP representatives and the other institutions, all groups would be either present or at least extensively briefed on what was said when possibly compromising proposals were to be launched. It did so in order to close ranks and to not give in too much too soon to the Council (interviews one and two).

The observations in this file point toward the fact that even though the dossier was attributed a high degree of political importance, the secretariat played a key role in defending the position of the EP in inter-institutional negotiations. It did so not only by promoting its expertise on the subject, but also by intervening within the organizational aspects of the negotiations – yet always in tandem and in accordance with the MEPs and their staff. The secretariat therefore assumed a role going much further than the mere production of documents, which can be placed between service and steering. It did more than just defend the stance of the respective MEPs and the position of parliament and influenced the direction of the negotiations by way of its expertise on the substance and by handling organizational aspects of the negotiations. What is key here is that officials have the expertise to judge not only the legal aspects of an issue but its political implications for the EP. Thus, they are not policy experts per se, but act as guardians of the EP's rights and position.

The role of administrative players in establishing the new system on implementing and delegated acts

The European Union has its own system of conferring powers of implementation from the legislative institutions – that is, the Council of Ministers and the European Parliament to the executive, the European Commission. These powers used to be exclusively subject to control by member states through committees consisting of their representatives, a system referred to as 'comitology'. The Lisbon Treaty reformed this system to a certain extent by introducing two new legal bases, namely Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU), respectively dealing with delegated acts and implementing acts.

Article 290 TFEU includes post-hoc rights of control (objection and revocation) for the Council and the European Parliament on the powers delegated to the Commission for measures modifying non-essential elements of the basic legal act. Although Article 290 did not need any further implementing measures in order to be operational, at the request of the EP a Common Understanding

was negotiated between the three institutions on the practical arrangements concerning the use of delegated acts. Article 291 TFEU is similar to the old system of comitology as it requires rules and procedures to be laid down which regulate the mechanisms of control exercised by member states regarding the Commission's implementing powers. For the first time, such rules were to be decided in a regulation adopted under the ordinary legislative procedure, with the EP being co-legislator. The EP has a long history of wanting to have a say in this process (see Kietz and Maurer 2007; Neuhold, 2008), so the Lisbon Treaty was considered something of a victory for the EP (Christiansen and Dobbels, 2012). After the entry into force of the Lisbon Treaty, in March 2010 the European Commission put forward its proposal for a regulation on Article 291 TFEU, and both legislators came to an agreement by the end of the year. A Common Understanding on the practical arrangements to implement Article 290 TFEU was agreed in early 2011. It is the negotiations on these two instruments that constitute the focus of this (case) study.

In terms of the role played by civil servants, we see that the 'usual tandem' of assistant and secretariat does not apply to this case. Instead, there was a close working relationship between the civil servant working for the political group of the rapporteur and the committee secretariat. This was because of reasons of expertise as the political group staff had a stronger legal background than the rapporteur's assistants. The division of labor between the secretariat and the group staff was along technical and political lines, meaning that the secretariat was responsible for most of the drafting of documents and amendments, and the group staff was responsible for the political coordination with the other groups and committees. Of course, in actual practice this division was not that strict, but their respective roles can nevertheless be defined as such.

The secretariat has been described as the absolute expert in the file, partly because the head of unit of the JURI secretariat was a member of the working group during the Convention that drafted the two new treaty articles (interviews 6, 7, 8, 9, and 10). The combination of a strong secretariat, a knowledgeable group staffer, and a rapporteur with experience in the area of comitology made a strong team inside parliament. Moreover, a close working relationship based on trust from both sides resulted in a fruitful cooperation, not only with regard to the internal coordination – where they worked together to keep the ranks closed – but also vis-à-vis the Council in representing a unified EP position.

Trilogues were extensively prepared by the secretariat together with the presidency at the level of civil servants, with complete agendas and even scenarios where it was pre-decided which potential compromises would be tabled when. The secretariat thus had a great impact on the substance of the EP's position, but this was always with the 'blessing' of the rapporteur and his staff. When the EP's idea of negotiating a Common Understanding on the delegated acts

was refused by the other institutions, the rapporteur was asked to contact the responsible Commissioner directly and managed to convince him of the EP's stance. The secretariat also played an important role in ensuring that all other interested parties in the JURI committee and in the other committees were regularly briefed by the rapporteur on the proceedings of the negotiations with the Council.

Although questions can be raised about the actual impact of the EP on the outcome of the negotiations on the new system of delegated and implementing acts, it must be emphasized that this was more to do with a lack of political interest, the extremely short time frame in which the negotiations took place, and an interest in what other institutions considered non-essential elements, rather than a lack of expertise or poor administrative support (see Christiansen and Dobbels, 2012).

In terms of the roles as defined in the theoretical framework, we observed that the secretariat again played a role beyond production and service, and steered the file without, however, going beyond the instructions and mandate given by the rapporteur. The reason why the secretariat had such a considerable impact on the file was mainly due to its expertise in the file and its excellent working relationship with the rapporteur and his supporting staff, making it a classic case of 'politicized competence'. By having an overview of how the negotiations with the Council proceed *en grand* (Reh, 2007), and by having experience in inter-institutional negotiations, EP officials were thus again able to contribute to a consensual solution across institutional boundaries that safeguarded the interests of the EP.

Analysis and concluding remarks

Overall, our observations point to the role of officials within the EP being not only a phenomenon that is in need of more systematic research, but also being players who (can) exert more influence over the policy process than has been highlighted so far in the academic debate. Even in cases of high political importance, such as the dossier on novel foods, EP administrators played an important role by determining some key organizational aspects. The secretariat assumed a role that can be placed between service and steering, by substantially pre-cooking the negotiations. The assumption that administrators play a minor role when it comes to files of high political salience thus does not hold. It seems that the extent to which the EP is divided or not offers a better explanation to determine the role of a civil servant (see also Dobbels and Neuhold, 2013). The dossier on establishing the new system on implementing and delegated acts points again toward civil servants being able to steer the file based on a high degree of 'politicized competence'. In this light, it is necessary to stress the importance of the personal working relationship between the civil servants

Table 14.2 Factors influencing the types of tasks delegated to EP civil servants

Factors	Degree of politicized competence and political importance	Type of role
Degree of politicized competence of EP civil servants	High degree of politicized competence	Can go as far as steering role
	Low degree of politicized competence	Reduced to production role
Political importance attributed to policy domain and respective dossier	High political importance attributed to respective dossier	Can still go as far as service/steering role
	Low political importance attributed to file	Can go as far as steering role
Degree of unification of EP	Highly unified EP position	Can go as far as steering role
	Highly divided EP position	Reduced to service role

and their political masters. A strong personal interconnection based on trust enables the delegation of far-reaching tasks (Table 14.2).

These observations highlight that EP civil servants are not mere ‘paper-keepers’ (Winzen, 2011) but actually can exert considerable influence. This could also be explained by the fact that the EP is a somewhat special case when compared to the role of administrators in either ministries, agencies, or even some national parliaments. As illustrated above, the number of staff is comparatively high, which fosters the delegation of tasks. More importantly, due to the fact that the staff of the General Secretariat – for the most part – escape control of the EP political groups, as they have their own staff at their disposal, EP civil servants have rather a lot of room for maneuver at their disposal. Both cases shed light on the fact that EP officials possess epistemic and procedural assets that enable them to ‘pre-negotiate’ solutions that safeguard the institutional interests of the EP. As such, EP officials are not policy experts per se but their policy-shaping role relates to guarding the EP’s role in intra- and inter-institutional negotiations. Politicized competence thus can be related to expertise development when it comes to achieving a consensual stance rather than to policy expertise or political partisanship.

Notes

1. This chapter builds in part on: Neuhold, C. and Dobbels, M. (2014) Paper-keepers or policy-shapers? The conditions under which EP officials impact on the EU policy-process, *Journal of Comparative European Politics*, accepted for publication in April 2014. doi: 10.1057/cep.2014.7.

2. For the role officials play in information-processing in the EP, see: Dobbels, M. and Neuhold, C. (2014) Who Selects What and How? How the European Parliament Obtains and Processes Information for Policy-Making, in: Blom, T. and Vanhoonacker, S. (2014): *The Politics of Information. A new Research Agenda*, Basingstoke: Palgrave Macmillan, 78–92

All interviews are anonymous as requested by the interviewees. The interviewees have been selected according to their relevance for the files under study. They include officials from all three institutions at different levels. The interviews were carried out between April and July 2011. The primary focus of the interviews was the inter-institutional negotiations of the files under study and the role of committee civil servants therein.

3. The respective context is the study of voting behavior in the United States.
4. The conceptual framework is inspired by the work of Charlotte Burns (2005).
5. Nanotechnology makes it possible to manipulate structures at nanometer scale (one billionth of a meter). In practical terms, nanotechnology can, for example, be used to change fat, sugar, or salt levels while retaining the full taste. It can also be used to deliver vitamins more goal effectively, or to cancel out the effect of allergy incitors in food. In addition, nanotechnology can also be applied to food packaging by increasing the shelf life, reducing bacteria, or making food look and smell better. It is a multi-billion euro industry but, with many unknowns about the mid- and long-term side effects on the environment and the human body, it remains somewhat controversial (Mahoney, 2010).

Interviews

Interview 1 with an official from one of the EU institutions, Brussels, 07 February 2012.

Interview 2 with an official from one of the EU institutions, Brussels, 22 February 2012.

Interview 3 with an official from one of the EU institutions, Brussels, 16 March 2012.

Interview 4 with an official from one of the EU institutions, Brussels, 13 April 2012.

Interview 5 with an official from one of the EU institutions, Brussels, 16 May 2012.

Interview 6 with an official from one of the EU institutions, Brussels, 03 May 2012.

Interview 7 with an official from one of the EU institutions, Brussels, 16 June 2012.

Interview 8 with an official from one of the EU institutions, Brussels, 17 May 2012.

Interview 9 with an official from one of the EU institutions, Brussels, 24 May 2012.

Interview 10 with an official from one of the EU institutions, Brussels, 25 May 2012.

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Part IV

EU's 'Intergovernmental' Administration

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15

The EU Council(s) System and Administrative Fusion

Wolfgang Wessels, Peter Valant, and Tobias Kunstein¹

Political and academic relevance: A neglected but significant part of the EU's multilevel system

The European Union (EU) is arguably of central importance for the policy making of its member states. To fully grasp the working of the EU, the administrative infrastructure that links the national and supranational levels needs to be studied. One is confronted with a high degree of bureaucratic complexity, which public perceptions generally label as ineffective and too slow. The academic analyst also needs to deal with considerable evolution and transformation: the Lisbon Treaty, which entered into force in 2009, has considerably changed the EU's institutions and with it the EU's administrations. Moreover, reforms in response to the financial and sovereign debt crises since 2008 have rendered the EU system even more difficult to assess.

One major characteristic of the EU's unparalleled construction is the way in which civil servants from several political levels have framed and shaped the preparation, formation, implementation, and control of binding decisions of the EU. At the same time, it appears that the channels that national civil servants from several ministries and agencies, and at various levels of the administrative hierarchies, have created and expanded form a neglected part of EU studies. Thus, these administrative interactions have to be considered not only in the narrow focus of just the Brussels arena but also as a significant gateway into a dynamic multilevel system (Bulmer, 1994; Putnam, 1988, 431) in which national governments search to influence all stages of the EU policy cycle (see Figure 15.1).

This complex set of networks can be analyzed and assessed by different theoretical approaches (for an overview of relevant approaches, see Saurugger, 2013, and more specifically Wessels, 1998). The process of an ever-increasing involvement of national civil servants can be interpreted as a typical indicator of traditional neo-functional spill-over process dragging national administrators

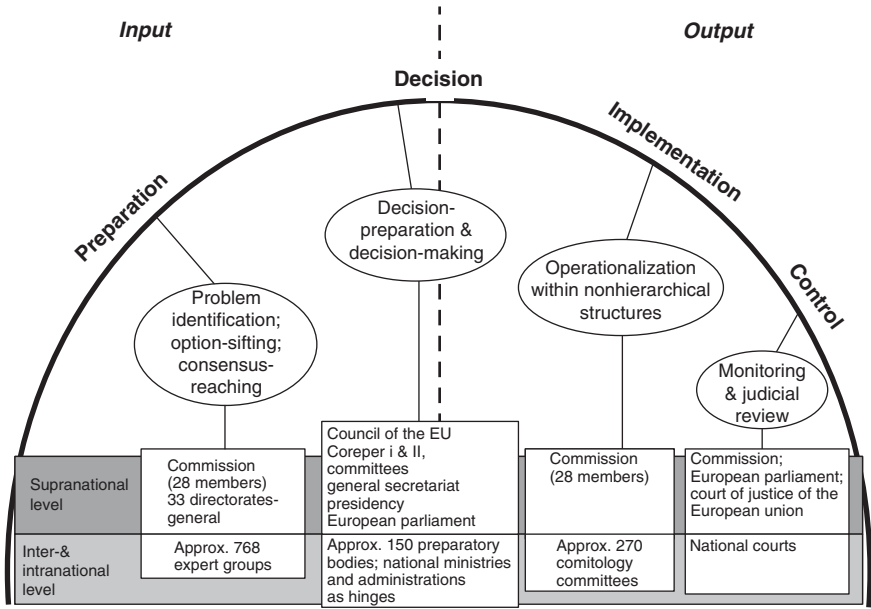


Figure 15.1 The EU policy cycle
Source: by the authors

into the EU machinery by shifting their loyalty to supranational institutions. Alternatively, it can be explained as an intergovernmental strategy by member states as principals to control the Commission as an agent (see Pollack, 1997). Other observers describe this process as the upward Europeanization of national bureaucracies in a multilevel system. Referring to some assumptions from these approaches, we argue that the increasing involvement of national bureaucracies in supranational policy making is the telling indicator for a fusion process by which member states and supranational bodies pool and merge national competences and instruments with those allocated by treaties at EU level. Such a process can be explained by a dilemma that governments face: on the one hand, they perceive the advantage of solving transnational problems by effective and efficient EU policies, while on the other hand, they strive to protect national sovereignty and autonomy. As a way out of this dilemma, EU member states create an administrative multilevel system characterized by increasing institutional and procedural differentiation and an ever-increasing degree of complexity of which administrative fusion is a key part (Miles, 2011; Mittag, 2011; Wessels, 1997; Wessels, 2005).

This chapter focuses on the European Council and the Council of the EU, the two ‘intergovernmental’ institutions which are composed of representatives of EU member states’ governments. At first glance, it appears counterintuitive to focus on these institutions, as the administrative set-up is a comparatively small

one, at least when measured against the number of civil servants (the following figures include only staff with a permanent contract above assistant level, referred to as ‘administrators’). The adopted budget of the EU for the financial year 2013 anticipates 1,392 posts of this category for the European Council and the Council (European Parliament, 2013a, 264), whereas the corresponding figure is 2,585 for the European Parliament (European Parliament, 2013a, 196), and 11,202 for the European Commission (European Parliament, 2013b, 1316). However, such a quantitative indicator conceals to some extent the way the EU administrative infrastructure works. The structure as described below (see especially graph 2) helps to show the considerable variations of paths and channels by which national civil servants participate in the decision making of the European Council and the Council of the EU.

Given that this chapter studies the administrative infrastructure of the EU Council(s) system, preparatory bodies in the Council substructure form a key part of the analysis. The overall salience of this analysis lies in the starting observation that the Council of Ministers and, linked to it, the European Council are key institutions in the EU decision-making process. The Lisbon Treaty on European Union (TEU), which entered into force in 2009, has deeply influenced the EU institutional landscape (see Hofmann and Wessels, 2008; Piris, 2010), directly and indirectly impacting on and extending the network of involved national civil servants. The challenges for administrations have grown, not least because the number of provisions allowing member states to overrule the opposition of other governments by a qualified majority has been increased. This means that civil servants – like their political superiors – cannot rely on a veto, but have to carefully plan their strategy in the shadow of possible votes (notwithstanding a number of caveats on voting in the Council, such as its rareness; see Hayes-Renshaw and Wallace, 2006, 259–297).

The TEU also put the European Council into the institutional framework (Art. 13 TEU), created the office of a permanent President of the European Council (Arts 15 (5) and (6) TEU), and installed the High Representative of the Union for Foreign Affairs and Security Policy (Art. 18 TEU). A specific innovation is the new foreign service of the European Union, the European External Action Service (Art. 27 (3) TEU), in which national civil servants work with colleagues from EU institutions (see Helwig et al., 2013; High Representative of the Union for Foreign Affairs and Security Policy, 2011). The task to analyze the Council infrastructure is thus as topical as it is challenging.

The administrative maze: Where national civil servants enter the game

Figure 15.2 provides a simplified overview of the main relevant bodies and the structure of the EU Council(s) system. In looking at the various elements in more detail, we start from the top with the European Council in the next

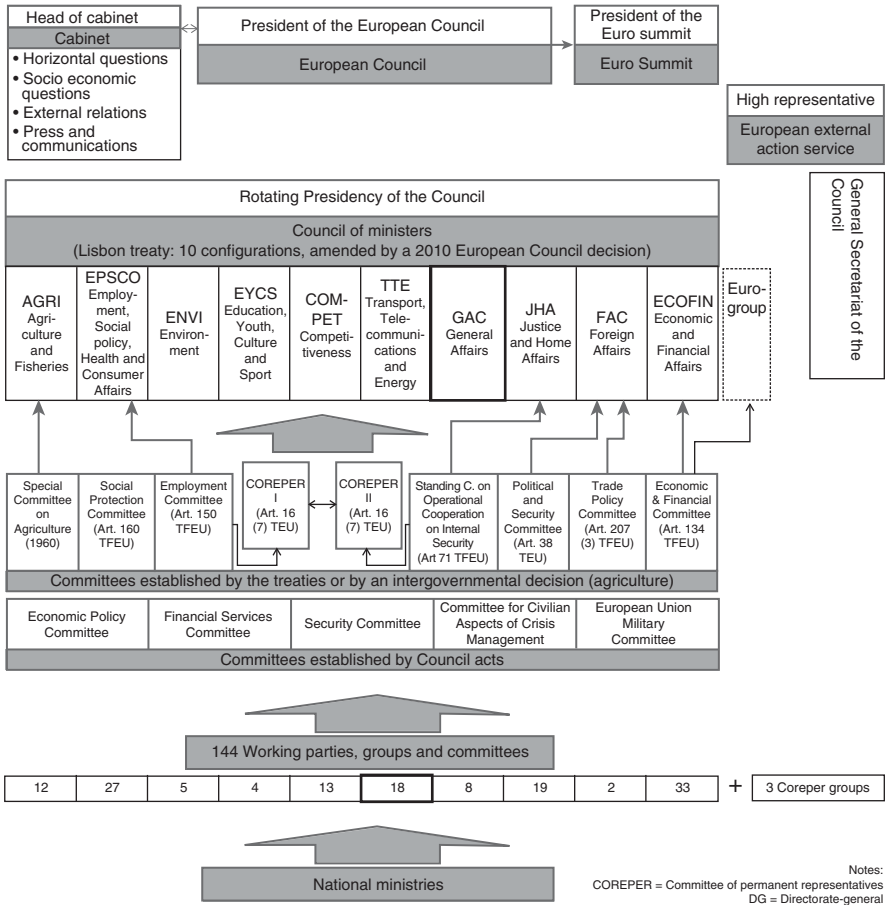


Figure 15.2 The EU council(s) structure
 Source: By the authors based on European Commission (2013a, b); Council of the EU (2013b)

section. The subsequent section then deals with the ministerial and administrative levels. It should be noted that, given its intention to present the large number of relevant actors in a structured way, the figure abstains from trying to represent all the relationships between them. A few arrows illustrate important channels without being exhaustive.

The European Council and its impact on the Council administration

Since its creation in 1974, the European Council has arguably turned into the constitutional architect of the EU polity. It has taken over a system-making role, transforming the EU through deepening and widening, and has become the ultimate decision-making body for a large number of policy issues, for

example on the Union's own financial resources and the 'multiannual financial framework' in particular (see Wessels, 2014). The activities and acts during the crisis years from 2009 onward have once more confirmed the key role of this institution. The conclusions of the European Council show that the heads of state or government have pursued a state-like agenda, covering nearly all fields of public policies. The European Council's activities thus have an impact on the work of civil servants from all ministries.

Like other institutions, the European Council needs an administrative infrastructure. In all stages of the EU policy cycle (see Figure 15.1), the Secretary General and the administrative set-up of the Council had supported the (rotating) presidency in a number of ways since the early days of the Council. They prepared 'Notes to the President' which included analyses, assessments, and advice on the tactics designed to move the institution toward consensus (Hayes-Renshaw and Wallace, 2006, 117). These contributions led to some of the European Council's most notable outputs. To name only one example, the Legal Service of the Council Secretariat regularly drafted formulations for treaty amendments and revisions for the presidency before and during inter-governmental conferences (Christiansen and Reh, 2009, 191). Working behind the scenes for the presidency without their own – at least public – profile and agenda, these experts quite often played the role of *éminences grises*. One relevant innovation of the Lisbon TEU in this respect was to install a full-time President of the European Council, replacing the rotating presidency. The new post has affected the administrative set-up of the Council in that the General Secretariat of the Council as expert administration has lost some of its relevance as a source of advice and influence.

After a pragmatic low-key evolution over the decades, the Treaty on the Functioning of the European Union (TFEU) now stipulates: 'The European Council shall be assisted by the General Secretariat of the Council' (Art. 235 (4) TFEU) which acts 'under the authority of its Secretary-General' who 'shall take all the measures necessary for the organization of proceedings' (European Council, 2009, Art. 13 (1) (2)). A new division of labor between high-ranking civil servants of the Council Secretariat and the personal cabinet of the President and the President himself was established. In accordance with the treaty provisions, a unit within the Council Secretariat is earmarked to support the President. One of the highest ranking civil servants of the Secretariat, also present at the meetings of the European Council, serves as a link between the President, his cabinet, and the services of the Council. The permanent President, however, is not at the hierarchical top of the Council Secretariat.

As is customary in EU institutions, the President is assigned a cabinet made up of personal advisors and administrative assistants. The Head of Cabinet plays a key role in terms of the organization of the work of the President. The Head of Cabinet and his or her colleagues have considerable experience

of EU procedures. The distribution of tasks inside the cabinet indicates the extended scope of the President's activities (see Figure 15.2). With the President's priorities set on socioeconomic questions and external relations, the cabinet has a size comparable to that of the Commission President's cabinet. The European Council President, like the President of the Commission, will be assisted by the newly founded European External Action Service in the exercise of the office's respective functions 'in the area of external relations' (Council of the EU, 2010, 32).

Agreements of the European Council have also had a major impact on the organizational functioning of the Council and on the internal distribution of powers. The constitutional architect has reduced the cases requiring unanimity in the Council (see above).

Other structural consequences of the European Council's decisions concern the institutional and procedural rules of the Council. The heads of state or government have the right to adopt the list of Council configurations (see Art. 16 (6) TEU and Art. 236 TFEU). By reducing the number of Council configurations from 22 to nine in the early 2000s (following the coming into force of the Lisbon Treaty, their number was raised to ten), the chief national executives have altered the Council's set-up, which has also had an impact on the civil servants involved. It should be noted that the list of Council configurations was formally adopted by the Council of Ministers in 2009, whereas the European Council slightly modified the designations of two Council configurations in 2010 (Council of the EU, 2009a; European Council, 2010). Moreover, through the creation and incremental reinforcement of the Eurogroup, a specific – if still largely informal – forum for the management of the single currency area at ministerial level, the European Council has reduced the power of the treaty-based configuration, in this case the ECOFIN. The European Council also decides upon the list and timing of the rotating presidencies (Art. 236 TFEU).

The Lisbon TEU has also introduced some intra-institutional shifts, for example by establishing the High Representative for Foreign Affairs and Security Policy as permanent chairperson of the Foreign Affairs Council (FAC) for five years. In so doing, the High Contracting Parties arguably downgraded the role of the rotating presidency among the member states, although they maintained national responsibility for chairing the General Affairs Council (GAC) and the different sectorial configurations.

Another administrative body that is arguably weakened by the European Council is the Committee of Permanent Representatives (or COREPER, by its French acronym). Tasked with preparing the meetings of ministers in the Council, this committee has for a long time been characterized as a 'place where many decisions are effectively made' (Lewis, 2012, 325). COREPER is still involved in preparing the Conclusions of the European Council, but quite often does not play a central role in reaching final agreement on the most disputed

and sensitive issues. In contrast to the Council meetings, in which the Permanent Representatives sit next to their respective ministers to give advice, they are typically required to wait outside the conference room of the heads of state or government.

For the functions of the Council and respective tasks of its administration, it is significant to take into account other effects of the European Council. On numerous occasions of treaty-making, the heads of state or government have introduced new procedures, giving more powers to supranational institutions such as the European Commission and the European Parliament as well as the Court of Justice of the European Union. The extension of the supranational Community method indicated by the increased use of the ordinary legislative procedure (Art. 294 TFEU) increasingly made the European Parliament the co-legislator of the Council of Ministers. This move toward more supranational modes of governance poses a challenge to the civil servants of the Council. In negotiations, they need to take the positions of other EU institutions and their administrations into account. One case is the intensive use of the *trilogue* – informal three-way meetings between the Parliament, the Council, and the Commission in the framework of the ordinary legislative procedure – in which the current presidency's Permanent (or Deputy Permanent) Representative speaks for the Council. Although deemed effective, the *trilogue* system has made the legislative process even more intransparent (Obholzer and Reh, 2012).

As part of their attempts to stabilize the Eurozone during the recent financial and sovereign debt crisis, the European Council and the Euro Summit of the heads of state and government of the Eurozone have established an additional administrative set-up (see Kunstein and Wessels, 2011, 318–320) for an emergent *gouvernement économique* (Van Rompuy, 2010; see also De Schoutheete and Micossi, 2013, 4). This set-up largely mirrors the existing structure with several levels (heads of state or government, ministers, administration).

Of specific relevance for the EU's institutional architecture and its administrative infrastructure is the creation and use of the Euro Summit (see Table 15.1). The heads of state or government of those EU member states whose currency is the euro have met in this format since 2008. The Euro Summit itself adopted 'Ten measures to improve the governance of the Eurozone' (Euro Summit, October 2011, Annex 1). Rules of procedure, entitled 'The guiding principles for the conduct of proceedings of Euro Summit meetings', were officially adopted in March 2013 (Council of the EU, 2013c).

These rules also established a deep administrative infrastructure for the civil servants of the Eurozone members in parallel with the traditional ECOFIN machinery. Euro Summits are primarily prepared by the Eurogroup – informal meetings of the finance ministers of the Eurozone from which the

Table 15.1 Institutional reforms of economic governance

EUROPEAN UNION		EUROZONE	
European council (EU summit)^a 27 Heads of state or government, president of the European council, president of the commission		Euro summit 17 Heads of state or government, president of the euro summit ^b , president of the commission	
Status quo: • Provides strategic orientations • At least 4 meetings per year • Quasi-permanent president since december 2009	Reforms: • None	Status quo: • Irregular informal meetings since may 2008	Reforms ^c : • Continuity: at least 2 meetings per year • Own president designated along with president of the European Council • President of the euro summit keeps non-euro countries and European parliament informed about summits
ECOFIN council 27 Ministers of finance and economic affairs		Eurogroup^e 17 Ministers of finance and economic affairs, commission, ECB	
Status quo: • Formal decision-making body (EMU-related topics: only euro countries vote) • Rotating presidency	Reforms: • Modified decision-making procedures, e.g. regarding the stability and growth pact ^d • Strengthening of general secretariat ^e	Status quo: • Informal meetings since 1998, regularly on the eve of ECOFIN meetings since 2000 • Elects a president from its members since 2005	Reforms ^c : • Prepares euro summits • Currently discussed: full-time president
Economic and financial committee^f Max. 54 high-ranking officials from national ministries and central banks, commission, ECB		Eurogroup working group 17 High-ranking officials, commission, ECB	
Status quo: • Set up in 1999, prepares ECOFIN • Elects a president from its members • Own secretariat which is attached to commission services but independent	Reforms ^c : • Strengthening of secretariat	Status quo: • Prepares eurogroup meetings since 2003 • Chair: president of economic and financial committee	Reforms ^c : • Full-time chairman • Possibly more permanent sub-group
The president of the euro summit, the president of the commission, and the president of the Eurogroup meet at least once a month; the president of the ECB may be invited to participate. ^c			

^a Art. 15 TEU; Art. 235–236 TEU.
^b Pending the next election of the president of the European Council, the current president of the European Council will chair the Euro summit meetings.
^c Annex 1, Euro summit statement of 26 October 2011.
^d Council of the European Union: press release, 3115th meeting of the council. Economic and financial affairs, Luxembourg, 4 October 2011, doc. 14890/11.
^e Protocol (no. 14) on the Eurogroup, official journal of the European Union, no. c 83 of 30 March 2010, p. 283.
^f Art. 134 TFEU; revised statutes of the economic and financial committee, official journal of the European Union, no. L 15 8 of 27 June 2003, p. 58.

Source: Kunstein and Wessels (2012)

euro-outs are excluded. For a discussion of the administrative substructure of the Euro Summit and the Eurogroup, see below.

Horizontal and vertical differentiation in the Council

The survey of the Council structure offers an insight into several levels and channels of the ways national politicians and civil servants contribute to and in the Council. Since the coming into force of the Lisbon Treaty, the Council meets in ten configurations (see above). In legal terms, the General Affairs Council (GAC) has a special role as it both is ‘to ensure consistency in the work of different Council configurations’ and ‘[...] shall prepare and ensure the follow-up to meetings of the European Council’ (Art. 16 (6) TEU). In fixing

the agenda and proposing the draft Conclusions of the European Council, the GAC is the formal gateway through which the President of the European Council launches his or her proposals. However, in view of a coordinating role, the GAC apparently has difficulties in establishing itself as a *primus inter pares* among the various Council configurations.

The list of Council configurations also documents the state-like agenda which the national governments pursue in and through the EU. It is not even fully comprehensive, given that Eurozone finance ministers meet – albeit informally – in the Eurogroup; and that in one formal Council configuration more than one group of ministers may meet: for example, the FAC can bring together defense ministers, development ministers, or trade ministers, depending on the topic at hand. Generally speaking, Council configurations deal with key issues of national policies: Economic and Financial Affairs Council (ECOFIN), Justice and Home Affairs (JHA), Employment, Social Policy, Health and Consumer Affairs (EPSCO), Competitiveness (COMPET), Transport, Telecommunication and Energy (TTE), Agriculture and Fisheries (AGRI), Environment (ENVI), and Education, Youth, Culture and Sport (EYCS). The number of ministerial meetings per year increased from 20 in 1958 to around 120 in 2004 (Häge, 2008, 31). In 2012, there were 74 meetings (Council of the EU, 2013a).

One relevant role for managing the work of the Council and its administrative infrastructure is that of the presidency, which rotates every six months – except for the Foreign Affairs Council which is chaired by the high representative (Art. 18 (3) TEU). The European Council decides on the order of rotation (Art. 236 TFEU), which does not only apply to ministerial level but also to each of the administrative committees and working groups. The civil servants of the country holding the presidency usually have to deal with considerable challenges to steer the work of their peers. Among other things, the presidency of the Council ‘shall take the steps necessary to advance work between meetings’ (Council of the EU, 2009b, Annex V). It shall further ‘ensure that a file is submitted to COREPER by a working party or by a committee only when there is reasonable prospect of progress or clarification or positions being achieved at that level’ (ibid).

With a view to the rotating presidency, the position of the President of the European Council has gained more significance over the last years. The growing complexity of the EU decision-making system requires a stronger coordination between the EU institutions. As a result, the country holding the presidency of the Council needs to align its program to the strategy set out by the President of the European Council.

An additional, informal configuration of the Council is the Eurogroup (see above). Besides Eurozone finance ministers, these meetings include high-level representatives of the Commission, the Council Secretariat, the European Central Bank and the Economic and Financial Committee (EFC). The

Eurogroup was created in 1998. In order to alleviate fears of member states outside the common currency of being sidelined, it remained informal. Formal decisions were (and are) taken within the ECOFIN Council. However, with the entry into force of the Lisbon Treaty, the Eurogroup has been acknowledged, for the first time, in primary law (Protocol No. 14 on the Eurogroup).

Below the level of ministers, we observe a large variety of administrative bodies. At the highest administrative level, the picture looks particularly complex. The Lisbon Treaty stipulates in Article 16 (7) TEU that COREPER 'shall be responsible for preparing the work of the Council' (Art. 16 (7) TEU; Council of the EU 2009b, 46). In general, COREPER convenes twice a week. It consists of representatives from the member states with the rank of member states' Ambassadors to the European Union and is chaired by the member state which holds the Council presidency. Given the workload, COREPER meets on two levels. COREPER I is composed of Deputy Heads of Mission and deals primarily with social and economic issues, whereas the Ambassadors in COREPER II address the more politically sensitive questions.

COREPER occupies a pivotal position in the Community decision-making system, in which it is a forum for dialogue – both among the Permanent Representatives and between them and their respective national capitals. It is also a means of political control, guidance, and supervision of the work of the expert groups and even of controlling the work of the Council. Although it does not have the power to 'take formal substantive decisions' (Craig and de Burca, 2011, 41), it 'has evolved into a veritable decision-making factory' (ibid). COREPER deals with all areas of the Council's work and proposes an agenda for the Council, which is divided into 'A' and 'B' parts. While the former deals with items which can be adopted by the Council without further debate, the latter items need discussion. According to academic analyses, up to 70–80 percent (Craig and de Burca, 2011, 44) of all Council decisions are decided as 'A' points.

Parallel to this, and in a not-always clearly defined relationship to COREPER, high-level committees of national civil servants prepare the session of 'their' Council. They are partly established by the Treaty and partly by Council decision. One of the first was the 'Special Committee on Agriculture (SCA)' created already in 1960, which was supposed to support the agricultural ministers. Other high-level committees cover nearly all areas of the Council work.

Two committees in particular deserve more attention. The Economic and Financial Committee (EFC) (Art. 134 TFEU) is responsible for '[...] the preparation of the work of the Council' and has 'to keep under review the economic and financial situation of the member states and of the Union [...]'. Members are senior officials from national ministries and central banks. The European Central Bank, the Council Secretariat, and Commission officials participate on a regular basis. Following a revision of the EFC statutes in 2003, the representatives of national central banks attend only occasionally. The EFC is

chaired (since 2011) by a Brussels-based, full-time chairperson elected among its members for a two-year term and is supported by a secretariat attached to, but independent from, the European Commission. Within this set-up of all EU members, the Eurozone members have installed a separate administrative infrastructure, the Eurogroup Working Group (EWG), referred to in Article 1 of Protocol No. 14 on the Eurogroup. Representatives from those member states that have not introduced the euro do not take part in these meetings. The EWG, currently also chaired by the EFC President, is the main preparatory body for the Eurogroup, whereas the EFC as a whole prepares the ECOFIN Council.

A second special case is the Political and Security Committee (PSC). Article 38 of the TEU states that it '[. . . shall] contribute to the definition of policies by delivering opinions to the Council at the request of the Council or of the High Representative of the Union for Foreign Affairs and Security Policy or on its own initiative'. The members of this committee are permanently located in Brussels in their own representation. An appointee of the High Representative chairs the meetings.

In the area of external relations, the treaties link another administrative structure to the Council, albeit in a somewhat ambiguous way: the European External Action Service (EEAS) is 'a functionally autonomous body of the Union under the authority of the High Representative' (Council of the EU, 2010, 30). The respective council decision establishing the organization and functioning of the EEAS (*ibid.*) lists in its annex the departments and functions which needed to be transferred 'en bloc' from the Commission and from the Council Secretariat to the EEAS. In view of the involvement of national civil servants, a third of the staff is recruited from national diplomats. The organizational structure documents some features of a normal foreign office and some that are more specific for the complex EU set-up.

Major departments of the Council's General Secretariat Policy Unit shifted to the EEAS are the Crisis Management and Planning Directorate (CMPD), the European Union Military Staff (EUMS), the EU Situation Centre (SITCEN), and a number of directorates of Directorate-General E (see Figure 15.3).

As the next, lowest level of the administrative infrastructure, the committees established by the treaties, by intergovernmental decision, or by Council act, are in turn supported by 144 working parties, working groups, and committees (Council of the EU, 2013b) that are composed of national and EU civil servants. Working parties are assigned to a particular Council configuration and prepare the concrete texts to be decided at the next higher level. They are particularly numerous for the AGRI Council (such as the Working Party on Horizontal Agricultural Questions, the Working Party on Animal Products, and the Working Party on Olive Oil), for JHA (for example, the Working Party on Integration, Migration and Expulsion, the Asylum Working Party, and the Working Party for

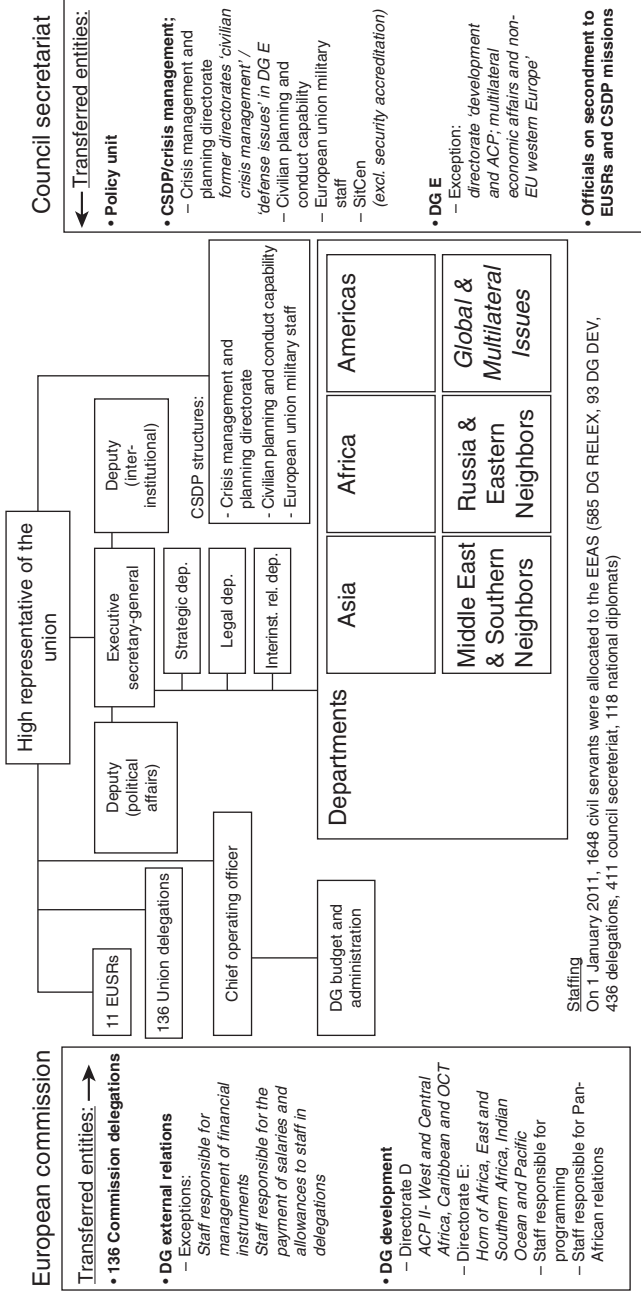


Figure 15.3 The administrative structure of the EEAS
Source: Helwig and Stroß (2011, 9)

Schengen Matters), and for the FAC Council (for example, the Working Party of Foreign Relations Counsellors, the Working Party on Human Rights, and the Working Party on Humanitarian Aid and Food Aid) (*ibid*).

There are considerable variations concerning membership and internal organization within the bodies forming the Council substructure. Eight committees and working groups have elected/appointed chairs, namely the EFC, the Employment Committee, the Social Protection Committee, the European Union Military Committee (EUMC), the Economic Policy Committee, the Financial Services Committee, the Military Committee Working Group (EUMC WG), and the Code of Conduct Group (Business Taxation) (*ibid*). Six Committees and working parties – the Security Committee, the Working Party on Information, the Working Party on E-Law, the Coordination Committee for Communication and Information Systems, the Working Party on Codification of Legislation, and the Working Party of Legal/Linguistic Experts – are chaired by the General Secretariat of the Council. The chairmanship in the Council working groups and treaty-based committees in the area of external action, which mostly had been chaired by the rotating Council presidency, are now in 19 cases chaired by civil servants nominated by the High Representative of the Union for Foreign Affairs and Security Policy. All the remaining committees and working parties remain under the chair of the rotating Council presidency (*ibid*).

To cope with the fragmentation of the groups and with the increasing workloads of the highest level committees, the Council has established the ‘Antici’ and the ‘Mertens’ groups, which contribute to the proper preparation of COREPER.

A final part of the administrative set-up is the Council Secretariat. This is organized into seven Directorate-Generals, which prepare and contribute to the work for groups of Council configurations. The responsible civil servants are often highly knowledgeable experts – both in terms of procedure and substance – and are supposed to help the chairperson to get to a result. Due to their knowledge and experience from various presidencies, they play an important operational role behind the scenes.

Toward a complex administrative fusion

The set of available empirical observations points to the broad and multifaceted involvement of several levels of administrations for all traditional national ministries in the Council and the administrative structure related to it. In a broader perspective, we observe similar developments in the growth and differentiation of agencies (for example, the establishment of the three European Supervisory Authorities in the area of financial markets in 2010) and also in the context of the European Central Bank – including the challenging implementation of the ECB’s role in the supervision of banks as part of the European Banking Union.

The complexity also grows with trends toward a differentiated set of flexible integration as documented by the Euro Summit, and the Eurogroup and its preparatory committees and subgroups. Correspondingly, the Council Regulation on a Banking Union stresses that, '[...] to the extent that this is institutionally possible, the banking union should also be open to the participation of other Member States' (Council of the EU, 2013d, 64).

National actors are also apparently inclined to deal with their normal agenda points increasingly within the EU system. Such a 'problem-solving instinct' increases the involvement and engagement of national political and administrative actors in the highly differentiated networks at supranational level. They interact through the EU's structures as a matter of daily business. These activities lead to the emergence of a shared system of government with a complex administrative fusion.

This observation raises questions not only as to the transparency, accountability, and legitimacy of such a 'fused' polity but also as to the efficiency and effectiveness of the multilevel structure that member states have developed over the decades. The broad and intensive involvement may either reinforce trends toward a 'post-democratic executive federalism' (Habermas, 2011, 12) or, in an alternative view, toward a 'consensus model of democracy' (Lijphart, 1999, 42).

Note

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16

The Institutional Context of the European Union's Council System and the Intentional Design of Discretion for Preparatory Agents

Jeffrey Lewis

Introduction

The focus of this chapter is a puzzle: why does the EU Council system produce such a high incidence of consensus-based outcomes (nearly 85 percent of all legislative acts) and what makes consensus seeking so durably institutionalized? Following a growing interest in international relations (IR) theory on understanding why international organizations behave the way they do, a key initial step is to treat the institutional context as 'a distinctive social form of authority with its own internal logic and behavioral proclivities' (Barnett and Finnemore, 2004, 3). However, there is still a general tendency to treat such international institutional settings as fixed and given, with no independent causal effects on the actors who regularly participate in them. This is true, for example, of the two-level-game literature which circumscribes the autonomous role for international bargaining contexts themselves (see Putnam, 1988, 439), with the ironic result that the promise of a 'double-edged' approach loses a good deal of its interactive quality between the domestic and international chess boards.

The argument within this chapter stresses instead how the EU Council system is endowed with a 'corporate culture' to produce consensus-driven outcomes, and that this culture rests on a range of durably institutionalized practices that reward consensus-seeking behavior. To substantiate this argument, the chapter makes three interconnected claims, elaborated below. First, and the focus of the next section, is the argument that EU member states intentionally design 'club-like' Council settings for national agents who are granted slippery patterns of discretion, which encourage consensus-seeking behavior within a group deliberative process of assessing national bargaining claims. The following section elaborates on this by linking the relational aspect of trust among

Council negotiators and between them and their home capital principals, as the heart of what makes a durable consensus culture possible. Going one step further, a third claim is that the long-term historical durability of consensus seeking is aided by a 'habitus' of cooperation closely affiliated with the Council's technocratic preparatory structures, such as the Committee of Permanent Representatives (Coreper). Drawing support from a growing body of empirical IR scholarship known as the 'international practices' turn (Adler and Pouilot, 2011), the chapter concludes by suggesting further ways to connect macro-level consensus trends to a fine-grained micro-foundational 'community of practice' where consensus seeking is internalized by Council agents as part of a taken-for-granted practical knowledge of how things are done.

Delegation and slippery discretion: What makes consensus seeking work

One of the enduring puzzles in EU Council research is how to operationalize measures of member-state control over the national negotiators who represent them in Brussels. As the principal-agent (PA) literature makes clear, measuring agent autonomy faces the methodological hurdle of 'observational equivalence': does the absence of overt sanctions mean the agent is relatively autonomous, or do agents rationally anticipate a principal's reaction to certain behavior and act responsively without overt control? (Pollack, 2002, 202). Huber and Shipan (2002, 24) add: 'the possibility of a responsive bureaucracy depends on the extent to which the political system allows politicians to trust the bureaucrats to make choices that the politicians would want them to make'. However, the feedback dynamics between national interest coordination at capital level and the EU interaction context remain obscure and hard to measure directly.¹ After all, data limitations reflect the confidential nature of information exchanges intended at a level of frankness not meant for public consumption. To better understand the nature of discretion, we need observable proxies to gauge the intent by member-state principals. For example, recent findings connect the *intentional* design of institutional environments to the informal institutionalization of cooperative negotiation styles (Checkel, 2007; Johnston, 2008, 26–32; Lewis, 2010). In these studies, there is an emphasis on the scope conditions, such as *in camera* negotiation providing insulation from domestic audiences that enable cooperative institutional environments to form and become routinized in participants' cognitive frames. Fewer have asked when and why states would encourage such institutional settings, although there is a convincing rational choice institutionalist (RCI) argument that states calculate the costs and benefits of transparency, sometimes opting for more opaque arrangements in order to discourage 'postering' and 'pandering' (Stasavage, 2004, 2006). The merits of insulated deliberative

methods are reiterated by Novak, who argues that closed-door consensus practices are ‘triggered by a strategy of blame avoidance’ to mask opposition that would otherwise be publicized in instances of formal voting (Novak, 2013, 1092). The implication is that a consensus culture promotes a group deliberative process of assessing national claims while simultaneously serving to depoliticize, or at least not publically broadcast, who the legislative winners and losers are.

Rather than view delegation as simply control over potentially runaway agents, the intentional discretion image adds a view of relatively autonomous agents who are dealt ‘slack’ in order to promulgate cooperative styles of negotiation that result in a high output of collective deals. This view makes a certain intuitive sense, since how else could one square the evidence of *both* durable normative standards that, in practice, delimit the bounds of instrumentalism as well as national interest coordination procedures that constantly monitor Council performance and regularly adjust maneuverability through the instruction-reporting process? However, again, PA models are often narrowly pitched in how they think about patterns of control. This stems largely from ignoring the Council’s institutional context and the way member-state principals design the clublike settings (Lewis, 2010). Rather than positing preformed exogenous preferences and testing for slippage by wily agents, what if the member-state principals delegate a more slippery form of agency in the first place? The question one should ask is thus: why do member states empower preparatory agents and delegate de facto decision-making authority, which appears to involve intentional discretion?

The emphasis in many principal-agent models is on the extent of control mechanisms and incentive structures to *limit* agents’ opportunism. As Mark Pollack explains, the ‘central problem’ in principal-agent modeling is the potential agency losses that can arise from ‘bureaucratic drift’ (or ‘shirking’) as well as ‘slippage’, which ‘occurs when the structure of delegation itself provides perverse incentives for the agent to behave in ways inimical to the preferences of the principals’ (1997, 108). Framed in these terms, it becomes hard to understand why there would be preparatory mechanisms such as a Coreper at all. In this view, the ‘perverse incentives’ of agency discretion only appear as such if we assume tight control over opportunistic agents is the primary motivation. If this were the case, the ‘club-like’ settings of the Council would look rather differently, if they existed at all. Member states could, of course, design EU preparatory structures very differently. As Kassim and Menon (2003, 122) note, principals can contractually restrict agents’ leeway *ex ante* or engage in extensive monitoring through the instruction and reporting process. One available alternative would be to fragment preparatory authority along the sectoral lines of the Special Committee on Agriculture (SCA) model that works to prepare AGFISH Councils with narrow mandates and a more

competitive negotiation style (Daugbjerg, 1999; Lewis, 2010, 654, 658–659). Member states *could* do this, yet the constitutive politics of what we observe in capital–permrep relations is something quite different. Namely, member states *encourage* collective norms and deliberative processes to reach consensus outcomes among insulated ‘clubs’ of officials, which more slippery forms of delegation enable and help to sustain.

There is growing interest in the range of principal–agent relations found in international institutions. One useful distinction is the conceptual difference between agency slack and discretion. Agency slack is steeped in assumptions of opportunism, as it involves ‘independent action by an agent that is undesirable by the principal’ (Hawkins et al., 2006, 8). Discretion, on the other hand, can be a more codetermined form of leeway, which ‘entails a grant of authority that specifies the principal’s goals but not the specific actions the agent must take to accomplish those objectives’ (ibid., 8). Discretion for preparatory agents who work in a norm-rich and consensus-driven environment transforms national representatives into relatively autonomous interpreters of their national mandates in a collective institutional environment. The incomplete contracting of this discretionary authority means that ‘permanent representatives’ can become ‘permanent traitors’ in interpreting mandates, or as some describe, placing specific instructions into a more global perspective, and conveying to the capitals what consensual, collective outcomes based on a deliberative techniques look like. Discretion essentially means the Permanent Representatives (permreps) can obtain a causal role in the process of defining and defending national positions. The implications of this information flow challenge the general RCI claim that there are no causally relevant feedback effects from the international institutional environments in which agents operate back into the national preference formation process (Moravcsik, 1998). It also raises a more theoretically incisive criticism that IR theory tends to ignore the causal impact of international institutional contexts on the actors who regularly participate in them.

EU permrep officials typically describe the EU responsiveness to principal mandates in the following generic terms: First, permreps do not operate without mandates from their political principals. Many stress they would not have legitimacy in Coreper without a mandate behind them. Of course, mandates take a wide range of forms, from the formalistic British model, which works to always make sure ‘there is a policy’ (Wright, 1996, 161), to the highly informal Belgian approach, which results in group disbelief when a Belgian permrep claims to have strict instructions. Second, at the same time, mandates have agent input built into them. This ranges from input into the instructions themselves, and making suggestions with linkages to other files or precedents, to sometimes even being authorized with more leeway: some mention being told by a minister that they are the decision maker on a substantive point, or to

present an argument but to drop it if it does not receive support. The Brussels-based Coreper personnel have a unique structural view of the main consensus lines across the Council's legislative workload, which has feedback effects in shaping national positions. Hayes-Renshaw and Wallace (2006, 233) note, 'their systematic and close association with the formulation of national positions can be an important asset in the setting of realistic negotiation goals.' For member-state principals, Coreper agents are masters of the art of the possible. What is more, this preparatory influence has expanded over time. The wider application of qualified majority voting (QMV) and the anticipation effects that accompany the shadow of the veto heighten the role for Brussels-based officials to 'influence the content of proposals at an early stage' (*ibid.*, 239). The expansion of codecision is another clear example, seen in the choice of Coreper agents (primarily the Coreper I Deputies) as representatives for the Council in EP-Council negotiations and the high reliance on *in camera* methods for compromise on which the 'trilogue' formula depends. Finally, the adaptation speed of Eastern newcomers to the EU consensus culture speaks to the capacity of preparatory structures to socialize novice members through mechanisms such as 'active observer' status and a higher reliance on 'written statements' as a safety valve for expressing dissent and differing interpretations (see also below). But what sustains this slippery discretion and how does consensus seeking imprint the Council's institutional environment so durably over time? The following section examines the role of trust as an essential scope condition and ties this pattern to the EU's institutional context.

Trust as a scope condition and 'normative core' of Council consensus seeking

One essential scope condition for the Council's institutional environment is a precondition of high levels of trust and trustworthy reputations that such a delegation pattern requires. Slippery delegation presupposes the kind of confidence level Russell Hardin describes as 'I trust you because your interest encapsulates mine, which is to say that you have an interest in fulfilling my trust' (2002, 3). For example, Coreper agents are entrusted with the confidence to deliver many collective solutions through consensus-based practices. Here, the capitals have evolved a discretionary form of delegation that empowers 'Janus-faced' agents. This is consistent with Aaron Hoffman's idea of trust as 'an actor's willingness to place its interests under the control of others based on the belief that those actors will honor their obligation to avoid using their discretion in a harmful manner' (2002, 394). The 'external influence' of Brussels on member-state coordination designs thus includes internalized standards of social influence and appropriate behavior, which, in the case of consensus-seeking expectations, may involve treating initial positions as subject to a

group process of legitimation (see Cortell and Peterson, 2006, 260). The logic of appropriateness associated with serving a particular international social purpose or normative value leads the international organization (IO) to understand its job in ways that may run counter to states' preferences. The staff may see itself not simply as the states' agent but also as a member of an international community delegated the responsibility of overseeing the community's values.

Consensus-seeking practices have evolved intangible social rewards and punishments for pro-norm behavior. As part of the Council's institutional environment, these normative expectations should be treated as part of the 'community' values of EU collective decision making. Kassim and Peters also find support for this view in what they call an 'alternative image' with roots in neo-functionalism, 'fusion' theory, and sociological institutionalism. Specifically, they find 'Officials at the permanent representation are able to play this "dual role", because they have learnt the written rules and unwritten codes of EU decision making and take a long-term view, appreciating that they are involved in an iterative game' (Kassim and Peters, 2001, 298).

From a rational egoist perspective, assuming bounded rationality and standard Bayesian updating, the major advantage of 'Janus-faced' negotiators is twofold: (i) the ability to reach many collective decisions without recourse to public votes, which openly display winners and losers and (ii) the durability of informal discursive processes to collectively assess and legitimate national demands and preferences. There is a 'peer-review' quality to assessing individual preferences in a collective, consensus-seeking system that is supported by high levels of trust and expectations of mutual responsiveness. As Heisenberg explains,

the norm in the Council is that when a legitimate domestic problem crops up, the other member states will work around that constraint. This is a key element of the EU's success in not alienating the member states. Consensus tends to temper the overweighting of small states, while still curbing the power of the large.

(2007, 73)

Michel Crozier's work on trust is particularly revealing in understanding the 'Janus-faced' pattern. He argues that trust is a 'relational construct' where 'I trust John because over time I built a relationship that is strong enough for each of us to know the other will live up to his word' (Crozier, 1991, 307–308). The relational aspect of trust among EU preparatory agents in Coreper and between the Permanent Representatives and the principals at home lies at the heart of what makes a durable consensus culture possible. Trust is not just a scope condition, it is a 'normative core' in how the Council's institutional environment operates.² In Crozier's words,

participants... recognize the collective results of such patterns of trust and they realize that they will be punished if they are not trustworthy... good behavior is also rewarded and may provide clear advantages, such as positions of honor or even of material gratification, which are built into the social fabric.

(2001, 308)

Seen from this viewpoint, the 'social fabric' of Council negotiations incorporates consensus seeking as part of the community's values and rewards behavior consistent with those practices. In the case of preparatory bodies such as Coreper, the information flows between the capitals and the permreps sustain and reproduce the virtuous circle between trustworthy agents, slippery discretion, and a high incidence of consensus-based outcomes in everyday EU decision making. The following section builds on this argument by suggesting the 'international practices' turn in IR can help us to understand the long-term institutionalization of EU consensus seeking as a 'habitus' of cooperation.

Why so durable? The 'habitus' of consensus and the 'international practices' turn

The consensus culture has deep roots in the Council's institutional environments. Actor socialization to this culture fits an historical institutionalist sequence of path dependence and lock-in effects. Actors internalizing the rules of the game help to account for the durability of this culture over time, to the point where playing by the rules is less a conscious calculation than a 'habitus' and even a taken-for-granted assumption about how things are done.³ From the earliest days, neo-functionalists diagnosed a norm-based 'procedural code' as part of the collective decision-making process (Haas, 1958; Lindberg, 1963; Lindberg and Scheingold, 1970). Haas observed this characteristic even when the Council was based in Luxembourg City, where 'the very privacy of the site is symbolic of the impression engendered by the Council. Like Plato's nocturnal council, it is credited with exercising the true government of ECSC' (Haas, 1958, 486). Some cite the work of the 1955 Spaak Committee as a precursor to institutionalizing such a decision-making culture (Lewis, 2012, 318; Noël, 1967). Others emphasize the mid-1960s empty chair crisis and the self-reinforcing properties of consensus seeking that resulted from the ambiguity of invoking (and successfully selling) a Luxembourg Compromise claim (Heisenberg, 2007; Palayret et al., 2006).

Council preparatory bodies, because they operate outside of the limelight and in such regular face-to-face interactions, are particularly germane to study how a 'habitus' of consensus seeking can become institutionalized (Aus, 2008; Lewis, 2005; Niemann, 2004). As a social order and 'habitus' of cooperation, the technocratic preparatory structures are among the Council's eldest

source material, pregnant with implications of path dependence and what neo-functionalists termed 'cultivated spillover'. Perhaps the crowning example of preparatory insulation is found in the Economic and Finance Committee (EFC), which group senior civil servants from the finance ministries and central banks to deliberate Eurozone macro-economic policy. The EFC reports directly to Ecofin/Eurogroup, and has an internally selected chair and even its own independent secretariat (Puetter, 2007, 1302). EFC representatives in most cases do not even file written reports of meetings to their political authorities at home (that is, no paper trail at all). While the euro has enhanced the EFC's autonomy, the organizational culture goes far back in time to the Monetary Committee's precursor role in 'socializing' Europe's macro-economic policy community since the late 1950s (Westlake, 1995, 264).

It can be equally instructive to trace how consensus habits emerge or are replicated in *new* Council contexts. Two contrasting examples will serve to illustrate the point. Firstly, there has been a night-to-day contrast within the field of Justice and Home Affairs, from the early post-Maastricht days when officials viewed each other with mutual suspicion to the pattern which has evolved in the last decade. Close accounts of the JHA field are complementary in the portrayal of deeper forms of cooperation (and higher legislative output) coinciding with more insulated, less visible forums such as the JHA Counsellors group, which often quietly finesses politically charged issues for their political superiors (Aus, 2008).

A second pattern is how codecision has come to rely on Council–EP negotiation in more informal and less visible venues (Shackleton and Raunio, 2003). The best example is the 'trilogue' method, which has both formal and informal variations designed to maximize the chances for Council–EP compromise in the first or second reading stage. Trilogue gets its name from putting a more restrictive group of key principals together from the EP, the Council, and the Commission and encouraging a frank, open exchange of views. Shackleton (2000) argues that a 'new legislative culture' has emerged between EP–Council negotiators and the results speak for themselves: now over 80 per cent of all codecision files are completed during the first or second reading.

In a continuous negotiation context, slippery 'Janus-faced' standards of representation become internalized and, over time, obtain a habitual quality that appears more taken for granted than something contingent, say, on the basis of an individual negotiator's interpersonal skills.⁴ The path-dependent development of a 'habitus' for consensus seeking rested partly on the patterned trail of preparatory agents becoming embedded in a collective decision-making environment rich in group standards that serves member states' interests by finding solutions. In the unique case of Coreper (as opposed to other thick-trust, deliberative forums like the EFC or the Political and Security Committee (PSC)),⁵ they have secured 'senior' preparatory status in the treaties because of

their horizontal capacity to deliver results across a range of issue areas, competencies, and formal decision rules. Long ago, Coreper (or, more accurately, its predecessor Cocor) was established as the senior Council preparatory body operating at both high-issue density and insulation. The reputation for doing deals behind closed doors strongly suggests an early establishment of relative autonomy and, in some national delegations, a considerable margin for maneuver. In the context of EU decision making, this trait evokes the logic of what Peter Evans describes as ‘returns to “slack” ’ in designing relative autonomy for international negotiators, and of his claim that COGs (that is, chief negotiators) ‘prefer slack to tied hands’ (Evans, 1993, 402–403).

The ‘international practices’ approach recently developed by Adler and Pouliot (2011) offers new insight into how one can explain the institutional durability of the Council’s consensus culture. Two features in particular stand out. Firstly, they argue that practice is a patterned performance, which, in a given social context, tends to ‘reproduce similar behaviors with regular meanings’ (Adler and Pouliot, 2011, 6). Secondly, they emphasize that practice involves group standards of competent (and incompetent) performance that work in a ‘socially meaningful and recognizable way’ (ibid., 6–7). As they illustrate with the case of G8 summitry, ‘corporate practices’ become embodied in ‘communities of practice’ that form distinct social environments resting on deeply held ‘background knowledge’ about ‘pervasive understandings of reality’ (ibid.). Treating the Council’s consensus culture as a ‘community of practice’ has the advantage of focusing attention on how the ‘habitus’ of consensus seeking becomes engrained over time. In the Council’s tightly knit forums of like-minded officials (in particular, groups such as the Coreper, the EFC, or the PSC) a voting culture is anathema to the shared knowledge of the benefits of mutual accommodation as well as to expectations to subject individual claims to a collective legitimation process. Empirically, the focus in an ‘international practices’ turn is to uncover and explain the acculturation process that leads to such practical knowledge among a community of practitioners. In Pouliot’s apt phrase (following Goffman), one must try to reconstruct a negotiator’s ‘sense of place’ (Pouliot, 2011, 555). To do this, we can study multilateral diplomacy such as EU Council negotiations from the perspective of a ‘social bubble’ that ‘structure relations along mutually recognizable lines’ (ibid., 547). In the context of the Council system, several features stand out as institutionalized elements of a distinct ‘community of practice’.

First, there is a shared responsibility, or what can even be called a sense of duty, among negotiators to deliver collective results. Voting is a last resort, and, in some settings, the group even gains the consent of the isolated minority to be outvoted before discussions end (a legacy of the ‘very important interests’ safeguard?). In some settings, such as the EFC, voting is effectively taboo. For the EU Permanent Representatives, with treaty-based senior preparatory rights, many

stress that sending an unresolved issue for the ministers to decide is considered a failure. More cognitively complex is the pattern where EU negotiators perceive finding collective solutions is an informal yet permanent mandate from their capitals. Some EU permreps claim they have unwritten global instructions to find results that everyone can live with. Some note generic mandates that instruct 'oppose unless isolated, then drop.' In the EU's consensus culture, one's 'sense of place' requires a 'Janus-faced' perspective of delivering results both at home and collectively. Crucially, this perspective has come to rely on collective outcomes that are reached by consensus.

Second, there is what Pouliot (2011) refers to as a 'pecking order', although this is very hard to discern in any straightforward manner. The pecking order does not neatly fit into big–small, old–new, net budget contributor–recipient patterns.⁶ Even in the 'high politics' summitry of the European Council, where size clearly matters, so too does the seniority of tenure (de Schoutheete, 2000). An increasing number of Council specialist forums also have internally selected 'permanent' chairs, which grant them both agenda setting and preferential power in packaging collective agreements. This includes the Eurogroup (that is, the Eurozone finance ministers), the Foreign Affairs Council, the EFC (and its predecessor, the Monetary Committee), and even the European Council. It is a long-standing practice in Coreper to recognize a doyen – sometimes a function of tenure, and often a function of issue-specific knowledge. A doyen seems just as likely to come from Denmark or Belgium as France or Germany. Belgium's former EU Permanent Representative, Philippe de Schoutheete, exemplifies this point as he was widely recognized in Brussels as the doyen of Coreper II for nearly a decade (1987–1997). The important implication is that a 'community of practice' approach does not ignore issues of power but embeds them in a social and institutional context that much of the existing Council research has a tendency to overlook.

Third, there is a socialization process for newcomers to learn the ropes, which the practice turn helps us to understand. Jeffrey Checkel (2007, 4) defines socialization as 'a process of inducting actors into the norms and rules of a given community' and places an empirical focus on how to measure 'sustained compliance' in the internalization of these rules and norms. In the EU context, a rich internalization logic can be attributed to what Ian Johnston calls 'social influence', which is 'a class of micro-processes that elicit pro-normative behavior through the distribution of social rewards and punishments' (2008, 79). Possible rewards include 'psychological well-being, status, a sense of belonging, and a sense of well-being derived from conformity with role expectations'; possible punishments include 'shaming, shunning, exclusion and demeaning, or dissonance derived from actions inconsistent with role and identity' (ibid.). The key, as Johnston emphasizes, is that only social groups can create these carrots and sticks, which are tied to an individual's identification with the benefits

of membership in the group. Social influence is a particularly useful concept to assess the meta-value placed on consensus seeking and the collective legitimation process that makes it work. Johnston goes on to point out that when you have an institution that 'is legitimately designed to promote cooperation', it actually 'accentuates the legitimacy and weight of the social backpatting and opprobrium directed at potential defectors' (ibid., 94). This point applies both to novice participants from existing member states when they first 'join the club' and to new member states admitted via enlargement. On the former, there is a wide variability of prior exposure to Brussels' decision making;⁷ however, seasoned veterans emphasize a period of weeks or months to learn the ropes and comprehend the informal normative codes that hinge on intangible factors such as establishing mutual trust.

Novice member-state socialization is a more complex bag altogether, but several basic trends stand out. Firstly, contrary to initial expectations about how the heterogeneity of members from the East would impact the Council's club-like venues, we find strong supporting evidence of the cohort of newcomers consciously acclimating to the consensus culture (Hertz, 2010; Leuffen, 2010; Mattila, 2009). Empirically, the voting record shows no increase in contested votes or voting block patterns easily linked to new/old, East/West, rich/poor logrolling dynamics. There is evidence of nominally higher transaction costs for negotiation around a larger table and a slight decrease in the speed of reaching decisions but the EU has never been noteworthy for the rapid pace of its legislative machinery (Hertz, 2010). In addition, the Council has inbuilt mechanisms, which promote pro-norm socialization, such as the so-called active observer period, which invites national representatives to attend Council meetings at various levels, beginning one year prior to formal accession. Interviews with Eastern newcomers during this initial active observer period yielded interesting findings. Some participants stressed the group displayed 'extra patience' for newcomers, while others talked about the observer status as a kind of 'probationary period'. A Baltic state representative singled out the group's attention to solicit his view during a restricted session when they were discussing EU relations with Russia. The implication of his point was that despite being a newcomer, the group respected his country's deep knowledge of frontier relations with its Russian neighbor, which reflects a lesson of 'teaching' how influence and voice can be issue specific.

Fourth, one's 'sense of place' is guided by a range of norms that act to prescribe and proscribe appropriate behavior and, more generally, create a high mutual confidence in trusting one's colleague to do the right thing in a consensus-seeking mode. Norms help to cement and lubricate a social environment, and, as the former section argued, high levels of trust may well be a key precondition. Norms also work to bracket the limits of mutual acceptability in the types of pleas or demands, such as the distinctive discourse of making

derogation requests through a justification of special circumstances and subjecting such claims to a group 'peer review' type of process (Heisenberg, 2007, 2008; Lewis, 2005). Social environments that have high levels of generalizable trust have been shown to reduce fears of defection or exploitation and can lead to a 'prosocial value orientation' that entails a 'more socially oriented type of rationality' (Boone et al., 2010, 800). Conversely, it has been shown that in the absence of trust, procedural norms of consensus seeking are not internalized by negotiators but lead to rhetorical entrapment and suboptimal policy outcomes (Morin and Gold, 2010). Again, mutual trust is not only a key scope condition for durable consensus seeking, it is a 'normative core' in how the Council's social environments operate. Trust is a form of social capital that needs regular use to be replenished and maintained (Crozier, 1991; Hardin, 2002; Putnam, 1993, 167–176). However, as Pouilot (2008, 278–279) argues, trust can also follow the 'logic of practicality', which is different from instrumental calculations and norm internalization. In his words, 'the reasons why an agent trusts another are not readily verbalizable; they derive from tacit experience and an embodied history of social relations' (ibid.). It is also suggestive that EU 'crisis' events can trigger psychological discomfort to the point where member-state representatives will self-consciously work to reactivate social norms and the bonds of thick trust after bargaining breakdowns. I document one such pattern among EU foreign policy actors following the run-up to the 2003 Iraq war and, in particular, after a caustic public letter campaign by pro-coalition members who broke ranks with an EU common agreement to display support with the United States (Lewis, 2011). However, a much more historically significant example of what I have in mind is the critical juncture of the empty chair crisis and the 'real' outcome at the everyday level. As Davignon (1996, 18) recounts, 'the months of the crisis were to lead to a curious reinforcement of the trust between the various players involved in finding the solution'.

Finally, the international practices agenda helps to correct what Pouilot (2008, 262) calls the 'representational bias' found in norm research where 'norm-based actions stem from a process of reflexive cognition based either on instrumental calculations, reasoned persuasions, or the psychology of compliance'. Namely, we can utilize a 'community of practice' view to comprehend the largely taken-for-granted quality of consensus-seeking behavior in Council venues. In other words, habitualized, pro-norm behavior to drive consensus-based bargains may well presuppose a 'community of practice' that includes a shared store of practical knowledge that is instinctive and self-evident to the point of becoming 'second nature'. The key insight is that pro-norm consensus seeking is sustained through not only conscious deliberative choice but also tracks with a 'logic of habit' (Hopf, 2002, 12) based on the practical knowledge of what is to be done as 'self-evident' and 'commonsensical' (Pouilot, 2010).⁸ Pouilot's (2008) research alerts us to the possibility that consensus seeking may

not only function on a rational, reflexive level but may become internalized as 'practical knowledge' that is the result of tacit, inarticulate 'know-how'. The social context for EU negotiation is such that consensus seeking may not be primarily instrumental in motivation or norm based, but may rest more deeply on a store of experience and background knowledge. The task in a 'practice turn' is to find ways of accessing and understanding this background knowledge that gives consensus seeking a durably institutionalized, even taken-for-granted, character. In Pouilot's assessment, this 'must be interpreted from contexts and practices as well as through agents' dispositions and subjective meanings. Even so, gaining knowledge about background knowledge is often like asking fish to describe the water in which they swim' (Pouilot, 2008, 284).

From a data collection standpoint, studying the Council as a 'community of practice' warrants, and even requires, an appreciation of qualitative and ethnographic methods. For example, semi-structured interview techniques are needed to comprehend participants' views on consensus practices. When do newcomers grasp the 'last resort' of formal voting? What trial-and-error sequences are most typical when it comes to signaling a consensus-seeking attitude for negotiation? An often-revealing pattern is to study violations and deviant cases. Some interviews with preparatory agents include unprompted reflections on what happens when someone 'pushes' for a vote and the group discomfort at not everyone being on board. Through interviews, one can reconstruct the 'performance' of consensus seeking, such as the way an isolated delegation will evince disbelief if a vote (or even an indicative vote) is called for. One participant holding the rotating presidency chair called for an indicative vote twice when Germany was isolated; the second time, the German delegate 'recoiled' as if to say 'what is going on here?' Through interviews one can also glean the signaling cues that are practiced, which are especially salient during the group legitimization of derogation claims, or to distance oneself from difficult (or conflicting) instructions, or when national reserves are sometimes quietly dropped without further mention. Another suggestive illustration of consensus practices is seen in the early socialization experience of Sweden, who first came to the Council with a 'UN attitude' of reading out instructions and making demands without offering justification. In their first year of membership, they alone accounted for nearly half of all Council 'no' votes and were routinely sidelined in actual deliberations. Interviews with members of the Swedish delegation reveal how the status markers of being sidelined 'taught' the national capital to rethink their approach, which was followed by a much lower incidence of contested voting (Lewis, 2008). One's 'sense of place' is also influenced by the group's capacity to exaggerate opprobrium through instances of what some call 'faked outrage'. This practice can be used by 'Janus-faced' negotiators to change instructions or rethink a position. Sometimes the group collectively 'plots' how a delegation should report back home on an issue,

which is especially relevant in end-game negotiations over national reserves and derogation claims.

In addition, interview data can be bolstered with the written textual records that reflect Council consensus practices. There is an intriguing, if selective, use of the so-called silent procedure, where the group spotlights an intransigent position that prevents a collective agreement.⁹ The procedure holds that if a delegation has a special problem they must speak up by a certain date and time or else live with the 'consensus' agreement in place. Another important technique is the practice of reading formal statements into the official minutes of Council meetings after a law is adopted. Formal statements serve the function of expressing political disagreement with a piece of legislation but, crucially, they do not 'count' as an act of contestation. Recent research confirms that the use of formal statements has increased since Eastern enlargement, and this is interpreted as a new reliance on an existing procedure that can manage a bigger, more heterogeneous club while still maintaining consensus-seeking habits (Hagemann, 1998). Thinking about the Council's consensus culture as a logic of practicality that rests on a store of background knowledge is a promising avenue for further research. To the extent that consensus seeking is habitually engrained in the Council's social fabric, it also reminds us of the need for qualitative and interpretive methodologies to access and understand how this culture reproduces itself over time.¹⁰

Conclusion

This chapter has argued that the richly debated dependent variable in Council studies, that is, the durable consensus-based disposition of the EU legislative process, is shaped by two important intervening variables: (i) discretionary autonomy for national negotiators at preparatory level and (ii) shared knowledge about the merits of consensus, which act as a 'community of practice' and instill a 'habitus' of consensus seeking. The constitutive politics of the design to create iron-clad treaty guarantees for Coreper as the EU's senior preparatory body include the operational aim of generating a 'thick trust' network of committed agents to obtain specific kinds of policy outcomes, namely a penchant for consensus-based collective decisions. The most distinct feature of this is the horizontal, moderating viewpoint they bring to representing national positions across sectoral policy areas and at high levels of issue intensity through regular weekly meetings. To make this perspective work requires a slippery form of delegated discretion from the member-state principals anchored in trust and trustworthy reputations. When viewing the historical durability of the Council's consensus culture and the social norms that 'Janus-faced' negotiators internalize to do their job, a very particular image of member-state principals' efficiency calculations comes into focus. Namely, member states delegate looser forms of representation to national officials under the calculated logic that it

promotes a better (read: more cooperative) collective decision-making environment. In this view, an 'efficient institution', according to Ian Johnston, could be seen as 'the design and process most likely to produce the most efficient environments for socializing actors in alternative definitions of interest' (2008, 196). In other words, understanding the habits of consensus requires us to remain alert to the potential independent causal effects that international institutional contexts themselves can generate. The next, and harder, task for researchers is explaining how such institutional environments produce and reproduce an identifiable 'community of practice', which in the case of the EU's intergovernmental Council system rests on the background knowledge and practical sense that a consensus-driven legislative process produces superior long-term collective results.

Notes

1. The two-volume survey of national coordination systems edited by Hussein Kassim et al. (2000, 2001) is among the important exceptions to this point. See also Panke (2010) and Wright (1996).
2. I borrow the term 'normative core' from Johnston (2008, 30) who argues, 'institutions often have corporate identities, traits, missions, normative cores, and official discourses at odds with realpolitik axioms'.
3. The concept of 'habitus' comes from Pierre Bourdieu's theory of practice. My own understanding and use of the term below is heavily indebted to Pouilot (2010, 31–39; 2008).
4. For a different interpretation stressing a more instrumental, choice-theoretic logic, see Dür and Mateo (2010).
5. The Political and Security Committee is specialized group of ambassador-level officials seconded to the permreps who meet weekly to discuss ESDP matters, work by consensus, and embody 'a strong collective desire to achieve results' (Howorth, 2011, 112).
6. See Daniel Naurin (2007) for research on a 'network capital index' to measure insider perceptions of which member states are seen as more influential and trustworthy. The design sampled more than 330 respondents over a three-year period, with results showing considerable nuance in rankings that do not easily match up with size, formal voting power, or length of membership.
7. For more on this important point, see Beyers (2005).
8. The difference, as Hopf explains, in norm compliance follows the form of 'in circumstance X, you should do Y', while habits follow the form of 'in circumstance X, action Y follows' (Hopf cited in Pouilot, 2010, 21).
9. See Aus (2008) for a detailed example.
10. For an argument why qualitative methods are important in explaining Council dynamics, see Heisenberg (2008).

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Part V

EU's Court Administration

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17

The Court of Justice of the European Union and the European Administrative Space

Herwig C. H. Hofmann

Introduction

This chapter looks at the effects of the exercise of judicial review on the development of the European administrative space and, more specifically, at the conditions of implementation of EU policies by administrative action in the EU. The chapter outlines some long-term trends and effects of holding administrative action to account by means of judicial review, and the courts' possibilities of influencing the development of public law in the EU.¹ It thereby looks not only at the 'big picture' of the major phases of transformation of the system of implementing EU law by means of administrative activities, it also asks what the effects of these transformations have been on the possibilities of exercising judicial review, and what future developments may be necessary to remedy some of the remaining or newly emerging problematic aspects of the system. With regard to past developments, this chapter uses a descriptive approach historically contextualizing the observed features. Where the discussion of possible consequences is concerned, it compares the existing status quo with some requirements arising from general principles of the EU as developed in no small part by the case law of the Court of Justice of the European Union (CJEU)² itself.

This chapter is therefore not concerned with the CJEU's own administration as an institution of the EU. The CJEU's own administration exists essentially in the form of registrars' offices in charge of administering the incoming cases, the communications with the parties involved including the receipt, notification, and retention of all procedural documents, and the translation service. This administrative activity of the court thus ensures the exercise of the judiciary function, which in turn has been a powerful tool for shaping the conditions of the exercise of power in the European administrative system. The latter function of the courts is the focus of this chapter.

Two major transformations of administration in the EU and the role of the courts

During the past 60 years of its evolution, the European Union (EU) has developed and transformed itself many times with respect to the nature and breadth of the tasks it performs as well as the range of actors who perform them. Despite this, the various Treaty amendments of the past decades have left the forms of judicial review largely unchanged. Only the Treaty of Lisbon introduced a limited amendment for the action for annulment in Article 263 TFEU. Irrespective of the relative stability of the structure and organization of judicial review in the EU, the conditions for exercising judicial review have profoundly changed. Not only has there been an increase in the forms of administrative action at EU level but also the 'Europeanization' of the member states' political and legal systems has intensified. This has led to a larger number of policy areas being affected and to the creation of a greater diversity of actors and the forms of procedural interaction between them. At the same time, the last 60 years have also been marked by a profound change in the understanding of the necessary coherence of a legal system, as the role of fundamental rights and principles as guiding concepts for all policy areas has grown.

The CJEU has itself over time established criteria for the legality of action of administrations, as well as for the interpretation of written EU law, by the development of the general principles of EU law. Such general principles include procedural rights such as, *inter alia*, the right to an effective judicial remedy or the right to good or sound administration, as well as specific substantive rights such as the right to property, to academic freedom, and others. They also include criteria for the exercise of powers such as the principle of proportionality. Within the legal system, fundamental rights are also regarded as general principles of EU law.³ General principles of EU law serve multiple purposes such as providing a guide to the interpretation of Union law, including Treaty provisions, and constituting grounds for review of any kind of Union acts created by the institutions, bodies, offices, and agencies of the Union. Thus, depending on their nature, the general principles of law can either be used as criteria for reviewing the legality of acts, or directly to ensure the protection of individuals' rights in the face of administrative action at various levels.

The general principles of law – whether comprehensively addressed in Treaty provisions or predominantly arising from the case law of the CJEU – are also key to the constitutional law of the Union in that they contribute to the purpose of enhancing the coherent interpretation and application of Union law, including its implementation by member states. In fact, the general principles of law are concepts which have to be complied with throughout the European administrative system, not only in the case of implementation of EU law in

the strict, limited sense of the transposition of EU legal acts,⁴ but also when member states derogate from it⁵ – that is, in all cases which ‘fall within the scope of Community law’⁶ – and when member states use their legal systems to enforce obligations arising under EU law.⁷ Thus, the general principles of EU law as developed by the CJEU have had a considerable influence also on private party actions, whenever the scope of EU law is touched by the facts of the case.

Given the case-by-case nature of judicial review, not surprisingly the set of general principles of law recognized today was not developed as a comprehensive and consistent set of principles. In fact, the development is ongoing. The full canon of the general principles of EU law as we know them today, when seen from a historic point of view of legal integration, started to be recognized in the first cases in matters judging the European Coal and Steel Community. The largely procedural rights recognized in this phase include the protection of legitimate expectations, the prohibition of retroactivity, and the notion of proportionality as a criterion for review.⁸ An enlarged set of principles was then recognized in the wake of the first enlargement of the Community in the form of the defense rights of individuals against Commission action. A further wave of developments started in the 1990s and the subsequent ‘Nordic’ enlargement, with an increased awareness of the need for transparency, access to documents, and other rights of individuals vis-à-vis the administrative system. Finally, since the turn of the century, a stronger fundamental rights bias, and with it a strengthening of notions of proportionality, has occurred which has cumulated in the creation and incorporation of the Charter of Fundamental Rights into EU primary law.

The recognition of the general principles of EU law by the CJEU, however, took place against a background of profound changes in EU law and policies. The past decades have been marked by an increase in policy areas subject to Europeanization and a continuous development of forms of implementation. In the wake of these developments, the legal and political system has become more complex and more directly relevant to citizens’ lives. Furthermore, the dynamic development of European integration has in reality profoundly changed the effects of judicial accountability on the European administrative system. This change goes hand in hand with the transformation of the notion of the state in the process of integration.

In simplified terms, the system of administration in Europe began its development on the basis of a system within ‘closed’ states with national administrations as state-specific structures reflecting different identities and historic traditions of organization (Hofmann, 2008, 662–676). It has developed into what is today an ever more integrated system of EU and national administration cooperating with the goal of implementing EU law. The path from relative independence to a high level of integration can be described in the

following terms: with the development by the CJEU of the ‘constitutional’ principles of the direct effect and supremacy of EU law, the notion of implementation of EU law became an obligation of each administration and court – not only of the national legislature transposing international law into national law. This changed the approach of the administrative system in that it required the member states’ legal systems to ‘open’ themselves to implementing EU policies formulated through EU law. To a certain degree, this began to erode the importance of the distinction of the ‘inner sphere’ of a state – organized by national law – and its ‘outer sphere’ – organized by public international law.

A second phase of the development toward a European administrative system was more disruptive to both the traditional borders among national administrations of individual member states and those between national and EU administrations. The requirements of a true single market as a legal space without internal frontiers were spelled out by the CJEU, calling for an increasing response of administrative cooperation and a mutual recognition of the administrative and legislative decisions of other member states (Weiler, 1991).⁹ In terms of the administrative system, this led to an opening of the administrative systems of member states to allow ‘foreign’ administrative decisions to affect within their own jurisdictional territory.

A third phase quickly followed. This was designed as a reaction by the legislature to the demands of the judiciary on mutual recognition within the single market. Since in many policy areas mutual recognition and assistance did not prove sufficient to create a single legal space and single market, the response in terms of administrative organization and structures was twofold: firstly, through an intensified procedural cooperation by the executive branch of powers from the member states and the EU; and secondly, through the creation of organizational forums for cooperation in comitology committees, European agencies, and many networks of actors created formally or informally through obligations of procedural cooperation. In the growing debate on subsidiarity, there was also little appetite to build large-scale administrative capacities for the implementation of EU law at EU level. In view of the then relatively small administrative capacities of the EU in relation to its duties (Kassim, 2003, 151), the solution was to link the decentral administrations in network structures. This third phase of development can be described as the move to an ‘integrated administration’ (Hofmann and Türk, 2007). The integration of administrations took place in a policy-by-policy development by means of procedural cooperation of varying intensity.

As a consequence of these developments, in many policy areas the development of the integration of EU and national administrative proceedings has led to ‘composite proceedings’. These are administrative procedures which – although finally terminated by a decision at either European or national level – are undertaken with input from various jurisdictions (Cananea, 2004; Cassese,

2004; Chiti, 2004; Schmidt-Assmann, 1996; Sydow, 2001). Importantly, this development has in an increasing number of policy areas led to a growing gap between, on the one hand, the jurisdiction taking a decision and, on the other hand, the jurisdiction investigating the conditions and facts leading to such a decision. Composite procedures exist, for example, in the area of planning – in the fields of environmental law, emissions trading, transport and energy, and many others. Further examples of such multi-jurisdictional decision-making procedures exist in areas with common alert systems on the basis of which an executive body of one member state may act to implement a warning on another. These alert systems are established, for example, in areas of regulation of the single market regarding food safety or medicines. Alert systems also exist in the field of visa and immigration matters, for example in the context of the Schengen Information System (SIS). In cases where the administrations of various jurisdictions contribute to a final act adopted either by an EU institution or body or by a member state, input into a final decision may result from various jurisdictions each applying their national law (Nehl, 2011, 648). Under these conditions, the identification of responsibility for parts of a final act among actors from several jurisdictions is emerging as a challenge. This also has implications for the conditions of judicial review and its effectiveness when legal provisions from multiple jurisdictions have been applied to create one single administrative outcome (Hofmann, 2009; Hofmann and Tidghi, 2014).

The state of judicial accountability of administrative action

In a nutshell, today's EU-specific possibilities of holding administrations judicially to account have developed with the expansion of the role of the general principles of EU law, which ideally should allow for a review of the compliance of administrations implementing EU policies across levels. However, with the increasingly integrated administrations often engaged in composite procedures, the exercise of judicial review has in reality become significantly more difficult. The reason is that the system of judicial review of administrative action in the EU is established in a traditional two-level approach. The separation of the levels is much more distinct than the sophistication of procedural integration seen at the level of administration cooperation. The decisive factor is not that courts are organized either as national courts or as courts of the CJEU. This organizational separation is also a feature of administrative actors being organized at EU level as either institutions of the EU or EU agencies. The difference is that courts, unlike administrations, are procedurally much less integrated than administrations. This obscures the possibilities of allocating responsibility and finding adequate remedies for judicial review in procedures of composite nature.

Judicial supervision of the actions of the integrated executives in the EU is generally undertaken by member-state courts. The CJEU with its General Court

and Court of Justice is generally called upon directly only for actions for annulment of acts of EU institutions, bodies, and agencies (Art. 263 TFEU), or in claims for damages for their alleged wrongdoing (Art. 340 TFEU). As the highest court of the legal system, the CJEU enjoys the monopoly of interpretation of EU law and has the sole right to annul acts of EU institutions.

Member-state courts can require the Court of Justice to give a preliminary reference on questions of interpretation of EU law or validity of acts of the institutions (Art. 267 TFEU). The success of this process lies in the cooperation of courts at different levels (Maduro, 2003, 512). The procedure of preliminary reference assured that the relations between the courts were non-hierarchical insofar as member-state law could not demand the exhaustion of national remedies prior to such a request. The result is a system in which the national judge has also in effect become a Union judge, and where the supremacy of European law does not imply the inferiority of national courts. It should be noted that one characteristic of the preliminary reference procedure is that the CJEU makes findings only regarding the Union law aspects of cases. The final decision of the case rests with the national judge. Problems with this form of cooperation, from the viewpoint of the highly integrated EU executives, arise from the fact that the cooperation structures provided through Article 267 TFEU operate in only one direction: they only allow for 'vertical' cooperation initiated by national courts. Other dimensions characteristic of a genuine network, such as vertical cooperation initiated by the CJEU or horizontal cooperation among member-state courts, are not provided for. The latter may be especially useful in the context of judicial review of the increasing number of measures created in composite procedures in the areas of implementation of policies and executive rule making.

Direct access to the CJEU is limited to cases of actions for annulment of acts of Union institutions, bodies, offices, and agencies (Art. 263 TFEU). However, in reviewing these cases, the CJEU has no possibility of reviewing the input into a decision by national authorities, even when the latter act under EU law. In cases where member-state actors implement Union law, national courts are in charge of reviewing the legality of a national decision. National courts can ask the CJEU for an authoritative interpretation of EU law or request a review of the legality of an EU act in view of higher Union law, including the general principles of EU law, through the preliminary reference procedure under Article 267 TFEU. However, they have no such tool to request a review of the legality of input from other member states into their decision coming.

A review of decisions taken by the court of the jurisdiction which adopted the final measure may not be able to do justice to the requirements of effective judicial review. The reason is that preparatory acts from other jurisdictions are generally not subject to independent judicial review. The right to an effective remedy is a general principle of EU law which has also been explicitly

recognized in Article 47 CFR. It requires that ‘everyone whose rights and freedoms are guaranteed by the Law of the Union’ be given the possibility of obtaining a ‘remedy to set aside national measures which are in conflict therewith’ (Gerven, 2000, 509).¹⁰ Thus, in these areas there is a potential mismatch between, on the one hand, the procedural integration of decentrally organized administrations and, on the other hand, a clear separation of judicial competencies. Where such gaps may arise between dispersed decision-making powers and judicial review, they can be detrimental to the application of the right to an effective judicial remedy.¹¹

Given that the EU is a legal system with multiple levels, the CJEU has held that in the absence of judicial remedies at Union level, it is for the member states to establish a sufficiently complete ‘system of legal remedies and procedures which ensure respect for the right to effective judicial protection’ of Union law.¹² Accordingly, case law by the CJEU held that member states were obliged to ensure that their courts provide ‘direct and immediate protection’ of rights arising from the Union legal order.¹³ Over time this has evolved to the general principle requiring that rights arising from EU law be ‘effectively protected in each case’.¹⁴ Thus, when it comes to member-state action, rights under European law necessarily imply the existence of a corresponding remedy. The ‘form and extent’ of such a remedy, as well as the procedural rules to make it operational, are, however, in principle within national competence (Galetta, 2010), except for matters where the Treaties have explicitly granted jurisdiction to EU level. Thus, national courts are required to ‘guarantee real and effective judicial protection’.¹⁵ Anything which ‘might prevent, even temporarily, Community rules from having full force and effect’ is therefore incompatible with Union law.¹⁶ In view of these obligations, national courts often face the difficulty that the substance of administrative cooperation in composite procedures is in particular the joint gathering and subsequent sharing of information. Reliance on an ex post review of a final act is at risk of becoming increasingly insufficient to ensure effective legal protection. This makes judicial accountability all the more difficult as no forms of horizontal preliminary references exist for the judges of one member state to request an authoritative interpretation of the law of another legal system.

This problem is only theoretically addressed by the requirement under the case law of the CJEU that member states and their courts are under the obligation to create additional remedies to those already existent under national procedural rules, if such were necessary to ensure the relation between right and remedy under EU law. Examples are *UPA*,¹⁷ regarding the protection of individuals against regulations which for their effect do not require any further implementing measures; *Borelli*,¹⁸ regarding the protection of individuals in composite procedures with input from Union and member-state administrations into a final administrative decision; and *Factortame*,¹⁹ regarding the

establishment of a system of interim relief to effectively protect a right under EU law. Factually, given the complexity of composite information-driven cooperation between administrations, national courts will often not be capable of addressing the substance of a case.

This has important consequences regarding accountability within the system as a whole. Integrated executives function through the notion of strong procedural cooperation within various forms of networks. Thus, there is an almost inevitable disparity between the organizational forms available for institutional action in administrative implementation and the mechanisms of judicial accountability external to the administration itself. Traditionally organized multilevel supervisory structures thus face difficulties in penetrating the details of differently organized executive instrumentalities. They are challenged in locating responsibility for procedural and substantive errors made and inadequate functional performance within the context of administrative networks, and in finding adequate remedies and correctives for these. They also display particular difficulty in coping with the fact that the core of executive cooperation within composite procedures is the joint gathering and subsequent sharing of information.

Where to go from here?

The arguments of this chapter are based on a multidimensional understanding of EU administrative law. The obligation to ensure the proper implementation of EU law and policies as a function is shared by EU and member-state administrations. These administrations, although organizationally fragmented in that in most policy areas they are either EU bodies or bodies of the member states, must cooperate through integrated procedures. As a consequence, especially in policy areas in which information networks have been created, it is becoming increasingly difficult to allocate responsibility for policy decisions to one level or another. It could be said that decision making is in many cases 'national, transnational, and supranational, all at the same time' (Bignami, 2004).

In the absence of strong and effective procedures for judicial cooperation to exercise the effective supervision of integrated administrations, it would appear that there is a need for a comprehensive, critical, and systematic reconsideration of the structures developing in the context of the implementation of EU law. In other words, it needs to be recognized that significant transformations of the legal and political environment for the implementation of EU law have substantially affected the possibilities of exercising judicial control. The key problem appears to be that many administrative procedures have become 'composite', drawing on input from different levels and actors. Under these conditions, holding administrative bodies to account for their action is hampered by the fact that responsibility for the various steps of an administrative

procedure lies with bodies in different jurisdictions each applying their specific law, and courts from other jurisdictions lack not only familiarity with these laws but also the competence to judge upon them. This fact in turn has implications for transparency and for allocating responsibility for safeguarding the procedural and substantial rights of individuals affected.

The question therefore arises: what can the judiciary and legislatures at European and national levels do in response to these challenges (Hofmann et al., 2011, 4–19). I would submit that if the outline of the problems in exercising judicial accountability in the EU presented in this chapter is correct, it would allow for two potential avenues of solution. The first would be to develop forms of judicial cooperation among national judges (a horizontal relationship) and between national courts and the CJEU (as a two-way vertical relationship as opposed to the current set-up of Article 267 TFEU, which allows for only one-way preliminary references). Part of the problem to date has been that the system of judicial review remains oriented toward the model of a two-level system following a logic of the separation of powers between EU and national levels. Consequently, national courts may not review the acts of EU institutions,²⁰ and similarly the CJEU may not review national acts.²¹ It may now be time to consider expanding the possible references by courts, allowing member-states courts to obtain a preliminary ruling from courts of other member states to review the input of other member-state administrations into a procedure, the final act of which was taken by a national administration. Expanding the judicial network would then allow for a more effective supervision of administrative cooperation in multiple-step procedures and may therefore also increase the legal certainty in the system. One approach to more comprehensive systems of reference could be to develop the preliminary reference procedure to allow the CJEU to also refer questions to national courts as to the application of national law in composite procedures.

A second line of thought would be to develop approaches to reduce the diversity of legal systems applicable in single legal procedures or, if that should not prove to be possible, to reduce the negative side effects of a reduced possibility of judicial oversight. One approach to developing such a solution would be the adoption of a general Law of Administrative Procedure for the EU. The Treaty of Lisbon has developed a legal basis in Article 298 TFEU for such an act covering implementing activities by institutions, bodies, offices, and agencies of the EU. This legal basis can be used in combination with other provisions of the Treaty with the same legislative procedure, such as Article 114 TFEU, and would also allow for the extension of such provisions to member-state activities when implementing EU law designed for the internal market. The scope of application of such legislation would then be capable of covering all relevant levels and could lead to a significant reduction of the laws applicable to procedures. This may carry the additional advantage of enhancing the protection of

individual rights of both natural and legal persons dealing directly with the EU administrations, as well as those dealing with national administrations when implementing EU law, since these rights would be set out in one piece of legislation, with sector-specific law providing for more far-reaching protection if required. The guiding interpretation of such law by the CJEU could immediately be used by courts throughout the EU and could lead to joint standards of good administration in the implementation of EU law. Next to these benefits, a general law on EU administrative procedures could also have the side effect of the possibility of simplifying policy-specific legislation, in that the basic rules of procedure can be applied by reference to the general administrative procedures act (Mir, 2011; Ziller, 2011a, 2011b). The positive effects for the legal system may include a certain degree of consolidation of the general principles of law applicable to administrative procedures in implementing EU law, by making them more visible and more readily applicable by administrations implementing EU law. A model for such law has been developed by the Research Network on EU Administrative Law (ReNEUAL).²²

Notes

1. This takes place in the context of Article 19(1) TEU which states that the CJEU 'shall ensure that in the interpretation and application of the Treaties the law is observed. Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.'
2. Previous to the entry into force of the Treaty of Lisbon, the CJEU was known as the European Court of Justice (ECJ). The CJEU has two main subunits, one being the Court of Justice (CJ) and the other the General Court (GC, pre-Lisbon called the Court of First Instance, CFI).
3. Article 6(3) TEU.
4. See Case 5/88 *Wachauf v Bundesamt für Ernährung und Forstwirtschaft* [1989] ECR 2609.
5. Case C-260/89 *ERT v DEP* [1991] ECR I-2925.
6. Case C-260/89 *ERT v DEP* [1991] ECR I-2925, para. 42. See also Case C-263/97 *First City Trading* [1998] ECR I-5537.
7. Case C-617/10 *Åklagaren v Hans Åkerberg Fransson* [2013] ECR I-nyr.
8. For example, Joined Cases 7/56 and 3-7/57 *Algera and Others v Common Assembly* [1957/58] ECR English Special Edition 39.
9. This 'horizontal' opening of member states' legal systems is most closely associated with the case of *Cassis de Dijon*, which required member states to mutually accept and enforce each other's regulatory decisions even in cases where the EU in the concrete context had not passed any harmonized legislation which would have required implementation by member states' administrations. See Case 120/78 *Rewe Central AG (Cassis de Dijon)* [1979] ECR 649, paras 8, 14.
10. Case C-213/89 *Factortame* [1990] ECR I-2433, paras. 18–21.
11. The Court of Justice has repeatedly found this right to be a fundamental right of individuals resulting from the common constitutional traditions of the member states and recognized Articles 6 and 13 of the ECHR. The fundamental rights arising from this are thus also protected as general principles of EU law under Article 6

- (3) TEU. See, for example, Case 222/84 *Johnston* [1986] ECR 1651, paras 18 and 19; Case 222/86 *Heylens and Others* [1987] ECR 4097, para 14; Case C-424/99 *Commission v Austria* [2001] ECR I-9285, para 45; Case C-50/00 P *Unión de Pequeños Agricultores v Council* [2002] ECR I-6677, para 39; Case C-467/01 *Eribrand* [2003] ECR I-6471, para 61; Case C-432/05 *Unibet* [2007] ECR I-2271, para 37; Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat* [2008] ECR I-6351, para 335; Case 12/08 *Mono Car Styling* [2009] ECR I-6653, para 47; Joined Cases C-317/08 to C-320/08 *Alassini* [2010] ECR I-2213, para 61.
12. Case C-50/00 P *Unión de Pequeños Agricultores v Council* [2002] ECR I-6677, paras 40, 41; Case C97/91 *Oleificio Borelli* [1992] ECR I-6313, para 15.
 13. Case 13/68 *Salgoil* [1968] ECR 453 at page 463.
 14. Case 179/84 *Bozzetti* [1985] ECR 2301, para 17; Case 222/84 *Johnston* [1986] ECR 1651, para 18. Understood in that sense, Article 47 CFR requires a broad interpretation of Article 51(1) CFR. However, the right to an effective judicial remedy is also, next to its recognition under Article 47 CFR, recognized as a general principle of EU law (Art. 6 (3) TEU), the application of which to member states is limited by case law and is not subject to Article 51 CFR.
 15. Case 14/83 *Van Colson* [1984] ECR 1891, para 23.
 16. Case C-213/89 *Factortame* [1990] ECR I-2433, paras. 19, 20.
 17. Case C-50/00 P *Unión de Pequeños Agricultores v Council* [2002] ECR I-6677.
 18. Case C97/91 *Oleificio Borelli* [1992] ECR I-6313.
 19. Case C-213/89 *Factortame* [1990] ECR I-2433.
 20. Case 314/85 *Foto-Frost v Hauptzollamt Lübeck-Ost* [1987] ECR 4225, para. 20.
 21. Case C-97/91 *Oleificio Borelli v Commission* [1992] ECR I-6313, paras 9–13; Case C-269/99, *Carl Krühne & Co. KG and Others v. Jürto Konservenfabrik GmbH & Co. KG.* [2001] ECR I-9517 para. 58; Case T-18/07 R *Hans Kronberger v. European Parliament* [2008] ECR II-77, paras 39–40; Case C-64/05P *Sweden v. Commission* [2007] ECR I-11389, para. 93; Case C-393/07 *Italy and Donnici v. European Parliament* [2009] ECR I-3679, para. 44; Case T-76/02 *Mara Messina v. Commission*, [2003] nyr, para. 7; Joined Cases C-512/07 P(R) *Occhetto and European Parliament v Donnici* and C-15/08 P(R) *Parliament v Donnici* [2009] ECR I-1; Case C-317/04 *Parliament v Council*, [2006] ECR I-4721, para. 164; Case T-22/97 *Kesko v Commission* [1999] ECR II-3775, paras 82–4.
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18

The European Court of Auditors and Its Relationship with National Independent Audit Institutions: The Evolving Audit Function in the EU Multilevel System

Hartmut Aden

Introduction

This chapter analyzes, from a transdisciplinary administrative science, public policy, and legal perspective, the role that the European Court of Auditors (ECA) and the national external audit institutions play in the emerging EU administrative system. The analysis is structured around three research questions: (i) What is the specific role that the ECA plays in the EU political and administrative system? (ii) Is the emerging EU administrative system transforming the preexisting audit institutions in their function as independent oversight bodies for public administrations, and what is the impact of the EU multilevel administrative system on the established processes of administrative control and accountability? (iii) How far is the supranationalization of the audit function replacing independence with interdependence? The chapter starts from the hypothesis that for the audit work carried out by the ECA and by national external audit institutions, the distinction between member-state level and EU level has diminished to the point where multilevel actors create coordinated forms of administrative capacities that are to a certain degree able to act independently from national governments (see Aden, 2006; Hofmann and Türk, 2006; Trondal and Peters, 2013) and also from the European Commission.

The ECA as a belated European institution

Located in Luxemburg, the ECA was only established in 1977. Until then, the European Economic Community (EEC) did not have an independent audit institution, but only an *Audit Board* (*Commission de Contrôle*) (see, for example,

Commission de Contrôle, 1971). Only in 1993, with the Treaty of Maastricht, did the ECA become a full EU institution (see Laffan, 1999 on the establishment of the ECA). The ECA is now one of the seven EU institutions listed in Article 13 of the Treaty on European Union (TEU), with more detailed provisions in Articles 285–287 of the Treaty on the Functioning of the EU (TFEU).

Establishing an independent audit institution can be seen as a step of European integration toward a more complete statelike polity comprehending all functional institutions that modern states have. The institutionalization of an independent audit body also reflects that European integration was and still is to an important degree legitimized by spending programs in favor of farmers, infrastructure, and social projects, which led to risks concerning the effectiveness of payments – and to numerous cases of fraud (see, for example, House of Lords, 2006).

The role that the ECA plays in the emerging EU administrative system is characterized particularly by multilevel governance. The agricultural and structural funds – the major parts of the EU budget – are administered under *shared management* (see European Commission, 2013a). The member states collect the applications for funding before sending them to the European Commission. The Commission checks the applications and addresses the payments to the central member-state administrations that coordinate the applications. These central member-state administrations then make payments either directly to the beneficiaries or to decentralized administrations. According to the relevant EU regulations, member states therefore have to establish specific management and control structures. If cases of error or fraud occur, the responsibility lies at least partly at national level (see Aden, 2012). Thus, for the ECA, it would not be sufficient to monitor the decision making and audit work carried out by the relevant units at the European Commission. A major part of the ECA's audit work takes place in the member states – and for some programs beyond the EU. Therefore, many of the ECA's audits concern funding programs that also fall under the audit authority of the supreme national or regional audit institutions. This leads to a need for enhanced coordination between the ECA and the audit institutions in the member states, which are formally strictly independent from each other (ECA, 2012a, 23–27; German Audit Institutions, 2013, 76 *et passim*; Harlow, 2002, 123–128; Mähring, 2006; Sánchez Barrueco, 2008, 205–221).

Courts of auditors between administrative management, monitoring, and judging

Similar to a number of member states, the EU has opted for *Court* as a central term in the ECA's official name. Courts of auditors can be classified as institutions in between the judiciary and public administration. Their role is not purely administrative but in some ways is close to judicial forms of governance.

The ECA's tasks and decision-making processes are in some respects similar to judicial forms of governance. As the judiciary, the ECA predominantly looks into dossiers from the recent past, for example into payments that have been made to beneficiaries, or into the implementation of EU programs. Another similarity is the independence that ECA members enjoy (Articles 285 and 286 (3) TFEU). As judges, they are not allowed to seek or take instructions for their decision making from governments or other bodies. In this respect, the ECA was shaped after the model of courts of auditors as they exist in a number of member states.

However, there are also significant differences between judicial decision making and the way in which the ECA works. While judicial courts have the power to issue judgments that are binding for the parties of the trial, the power of the ECA is limited to publishing statements and recommendations (Art. 287 TFEU). The normative criterion is also different. While the judiciary mostly makes binary coded decisions between *lawful* and *unlawful* (Luhmann, 1995, 165–194), the efficiency and effectiveness of public programs is the predominant criterion for recommendations made by external audit institutions such as the ECA and national courts of auditors. Taking into account these differences, courts of auditors can be located in the administrative system rather than in the judiciary.

Like most national administrative systems, the EU has opted for a combination of internal and external audit institutions. The European Commission has established the *Internal Audit Service* (IAS) as a Directorate-General (DG) with around 100 staff carrying out audits in other DGs and autonomous EU bodies. Additionally, the other DGs have established in total 39 *Internal Audit Capabilities* (IACs) with around 200 staff in total for their respective programs (see Thäsler, 2012, 63–94 on the legal role attributed to internal auditing in the various funding programs). In contrast, members of external audit institutions such as the ECA enjoy greater independence, which puts them in a better position to criticize politics and public administrations. Therefore, in a way, the Court of Auditors' mission is also political. When the ECA carries out audit projects on EU funding programs, the reports and recommendations may deliver arguments and legitimacy in the form of technical expertise to political actors who wish to continue or stop a funding program or to stop undesired projects such as motorways or railway lines.

The ECA members and staff

The ECA is a collegiate body with one national from each member state appointed for a renewable term of six years (Articles 285 and 286 (2) TFEU). If there is a vacancy, the member state makes a proposal that the Council adopts after having consulted the European Parliament (Art. 286 (2) TFEU).

Similar to the selection of judges for the European Court of Justice (ECJ), the ECA therefore still reflects the principles of federal representation and consensual nomination.

At the ECA, each member joins one of five chambers (formerly called *audit groups*) each with a specific area of responsibility, such as *Preservation and management of natural resources* (chamber I) or *Structural policies, transport and energy* (chamber II). Transversal issues have been designated to the CEAD Chamber responsible for *Coordination, evaluation, assurance and development* (organization in 2014; Laffan, 1999, 257 on the ECA's internal organization in the 1990s).

In 2012, the ECA had an authorized staff allocation of 887 permanent or temporary agents. In all, 573 (2011, 564) agents (65 percent) were attributed to audit tasks, working either for one of the chambers or in the members' private offices (123). This means that 35 percent of the staff was assigned to the administration of the ECA: 143 in translation (2011, 148), 139 in administrative support (2011, 148), and 32 assisting the ECA presidency (2011, 27) (ECA 2012a, 37 and 2013, 44–45). As with other EU administrations, the percentage of administrative staff is high due to translation personnel.

The ECA recruits permanent staff through open competitions organized by the European Personnel Selection Office (EPSO). Temporary agents are selected by the ECA itself, mostly from those with work experience in EU or national administrations. Some supreme audit institutions from the member states delegate liaison officers to the ECA, who work as temporary staff for one of the chambers.

Auditing practice and methodology: How the ECA works

The legal framework established by the EU Treaties (Art. 287 TFEU) only generally outlines the ECA's tasks, leaving the ECA members to decide how to carry out their mission. Therefore, the ECA has developed a specific methodology for auditing the management of funding programs by EU administrations and member states. The ECA's daily work is characterized by two different forms of audits: the *DAS audits* and the *performance audits*.

Every year, the Court has to provide to the European Parliament and to the Council a *Statement of Assurance* (French: *Déclaration d'Assurance, DAS*) on the reliability of the EU accounts and on the legality and regularity of the underlying transactions (Art. 287 (1) TFEU). Clearly, the total number of payments is very high, and therefore the Court has to concentrate the audits on a random sample of payments. The ECA has developed a specific DAS methodology, based on international audit standards and past experience but also taking into account resource constraints limiting the number of payments that the Court's staff can look into on the spot (ECA 2008a, 6 *et passim*). For each payment

program that is to be audited, a sample is established by statistical methods. The agents working for the audit chambers will then travel to the relevant EU or member-state administration in order to look at the accounts for the sample payments. This type of auditing is rather formal. The auditors are checking if the accounting is correct and if the payment is in line with the relevant legal provisions. Thus, the question as to whether the payment has effectively contributed to attaining the objectives defined by the funding programs does not play a role.

The DAS audits result in calculating error rates that the Court publishes every November in its annual report on the preceding financial year (for example, ECA 2012b). Due to the limited resources for auditing single payments, the ECA only calculates the EU-wide error rates for the programs and administrations selected for on-the-spot checks. As the samples do not cover all member states, the methodology does not allow comparisons among the member states' performance in the areas of shared management. In a similar way, every year the ECA audits a sample of the EU revenues that are collected by the member states' customs administrations ('traditional own resources', consisting of Common Customs Tariff duties; ECA, 2012b, 52–56).

Until now, the ECA has never issued a DAS without reservations. In recent years, reservations were mostly related to shared management and errors that occurred at a decentralized level (for example, ECA, 2012b, 12). However, this does not mean that a major part of EU funds has been wasted:

The overwhelming majority of errors arise from misapplication or misunderstanding of the often complex rules of EU expenditure schemes. If the Court has reason to suspect that fraudulent activity has taken place, it reports this to OLAF, the Union's anti-fraud office, which is responsible for carrying out any resulting investigations. In fact, the Court reports around four cases per year to OLAF, based on its audit work.

(ECA, 2012b, 39)

The fact that the ECA's DAS audits concentrate on the formal correctness of EU payments and revenues has provoked debate on the performance of the DAS methodology and on the extent to which bureaucratic efforts are justified in order to reduce errors (see, for example, House of Lords, 2006; von Wedel, 2008). In 2004, the ECA stated:

Any control system is a trade-off between the cost of operating the defined intensity of checks on the one hand, and the benefit these procedures bring on the other. In the Community context the benefit involves reducing the risk that funds are wasted and containing the risk of error to a tolerable level. It is likely that the level of tolerable error or irregularity would vary between

different budgetary areas, depending on both the cost of controls as well as the inherent risk of transactions containing errors or irregularities.

(ECA, 2004, 10)

This statement led to an intense debate in the EU institutions and relevant member-state administrations on the error rate tolerable for transactions covered by the DAS audits. The tolerable error rate has now been fixed at two percent of the audited transactions (European Commission, 2008).

With regard to the effectiveness of EU funding, the second type of audit is much more interesting. In *performance audits* (in an international comparative perspective: Barzelay, 1997), the audit chambers are looking into the effectiveness of specific funding programs and the efficiency of their management. This kind of auditing is methodologically similar to evaluation studies carried out by researchers or external consultants. As for the DAS audits, the ECA limits the performance audits to a sample of cases, that is, to a number of projects that have been funded. However, the auditors then have a closer look at the selected projects including on-site visits. Performance audits also look at the outcome of the funded projects and therefore go far beyond auditing the conformity with the formal requirements of the relevant legal provisions for the funding program. The ECA routinely publishes the results of performance audits as special reports on topics such as the *Cost-effectiveness of cohesion policy investments in energy efficiency* (ECA, 2012c) or *Do the European Integration Fund and European Refugee Fund contribute effectively to the integration of third-country nationals?* (ECA, 2012d). These reports do not only find an echo in the media, but they also play a role for future policy making if the Commission, the Council, or the Parliament adopts the ECA's position on shortcomings in the relevant EU programs and their implementation.

The ECA's role and power in the EU system: Influence through cooperation with the European Parliaments' Budgetary Control Committee

The ECA's role in the EU's current political and administrative system is largely dominated by its function in the annual budgetary discharge procedure (Aden, 2012, 149–151). The Court's specific power in the current EU system derives from close cooperation with the European Parliament's *Committee on Budgetary Control* (CONT = *Comité de Contrôle Budgetaire*, CoCoBu). For the CONT Committee, the ECA's annual reports and the answers given by the Commission are the main source of information for the discharge procedure.

The CONT Committee is particularly worried about the fact that the *Déclaration d'Assurance* has never been issued without reservations since it was introduced by the Treaty of Maastricht. The Committee and the Parliament's

plenary therefore exert political pressure upon the Commission and the member states to improve the quality of financial management, especially for the funding programs under shared management. In May 2012, in the discharge decision for 2010, the Parliament complained: ‘Member States’ lack of serious interest in the discharge procedure could be due to the Commission’s insufficient efforts in identifying publicly, clearly, unequivocally and in a substantiated way which Member States, regions and programs are underperforming in managing Union funds’ (European Parliament, 2012, 19).

Almost ritually, the European Commission every year has to invent new measures for reducing the error rates identified by the DAS audits and for improving the performance of financial management, under the threat that the EP may refuse the discharge. However, this has led to the critique that bureaucracy and control costs for member states and for the final beneficiaries have steadily risen.

The ECA does not have the power to force the Commission or member states to take new measures in order to improve performance. According to Article 287 (4) TFEU, it ‘assists the European Parliament and the Council in exercising their powers of control over the implementation of the budget’. In practice, it delivers arguments to the Parliament that then play a major role in the discharge procedure.

As the ECA audits programs for which the Commission and member states are jointly responsible, the mutual relationship is not always friendly, especially with the Commission (Laffan, 1999, 256–261 on the development of the ECA’s interinstitutional relations). However, there is some degree of overlapping consensus among all EU institutions that the EU should spend its money efficiently and effectively. The *inter-institutional agreement [...] on budgetary discipline and sound financial management* that the Parliament, the Council, and the Commission concluded in 2006 reflects this overlap (European Parliament/Council/Commission, 2006; Barzelay et al., 2011; von Alemann, 2006).

Conflicts can also occur with member states on the extent of the ECA’s audit powers. In a case brought to the European Court of Justice (ECJ) by the European Commission as an infringement proceeding, the German government objected to an audit mission planned by the ECA in 2006 to audit the correct collection of Value Added Tax (VAT) by German tax administrations. The VAT revenues contribute a certain percentage to the EU budget (*VAT own resources*). The ECJ confirmed the arguments brought forward by the Commission and the ECA (judgment of 15 November 2011, Case C-539/09, *European Commission v. Germany*). The specific case led to an alliance between the Commission and the ECA against a member state. The ECA praised the judgment as ‘valuable and encouraging as it clarifies and corroborates the audit power of the institution vis-à-vis the Member States’ (ECA, 2012a, 28).

Neither the ECA nor the audit institutions in member states are responsible for criminal investigation. For the prevention of fraud and investigation into cases suspected to be a criminal offense, in the 1980s the Commission established the *Unité de Coordination de la Lutte Anti-Fraude (UCLAF)*, which in 1999 became the *Office de Lutte Anti-Fraude (OLAF)*. However, the ECA closely follows OLAF's activities and issued two special reports on this topic, criticizing shortcomings in OLAF's performance (ECA, 2005, 2011; Inghelram, 2000, 134–136 on the ECA's role in the fight against fraud). The Treaty of Lisbon has created the possibility of establishing a *European Prosecutor's Office* to combat crimes affecting the financial interests of the Union (Art. 86 (1) TFEU). If this option becomes reality (the proposal: European Commission, 2013b), the distribution of power and responsibility between the ECA, OLAF, and the prosecutor's office will have to be redefined in practice.

Non-hierarchical coordination and cooperation between the ECA and the member states' audit institutions

The most important EU spending programs – the agricultural and structural funds – are administered under *shared management*. The European Commission does not make payments directly to the beneficiaries, but to the member states' governments, which then distribute the money to the beneficiaries in their countries. This has not only led to a complicated administrative setting but also to fields in which the ECA shares audit authority with the national supreme audit institutions (SAIs), which vary considerably with regard to their power, tasks, organization, and audit methodology. In some cases, subnational audit institutions are also involved. The shared responsibility combined with the strict independence of the audit institutions in relation to each other and to other institutions was the reason for establishing specific governance structures for their non-hierarchical multilevel cooperation.

According to the TFEU, the ECA has to carry out audits in the member states

in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

(Art. 287 (3) TFEU; Thäsler, 2012, 136–153 on the legal meaning of these provisions)

Specific forms of governance have been developed for this non-hierarchical cooperation, which goes far beyond informing each other about relevant audit

activities. Already in 1960, the heads of the SAIs of the six original EEC member states created the *Contact Committee* as an informal institution. Since then, the SAIs of all new member states have joined the committee. When the ECA was established in 1977, it also became a member. Over time, the scope of activities has been extended to regular meetings of the SAIs' EU liaison officers and to working groups on specific issues such as structural funds and value added tax (Castells, 2005, 139–147; ECA, 2012a, 23–25; Gall and Schmitz, 2002, 342–343; German Audit Institutions, 2008, 42 and 2013, 75; Thäsler, 2012, 170–174).

The specific forms of informal and non-hierarchical governance that have been developed for the cooperation of the independent audit institutions have led to a number of problems. Cooperation in this setting is non-binding and depends upon voluntary commitment. Decision making tends to be slow. A broad consensus among the SAIs of all member states is difficult to reach. Common activities are therefore often based on the voluntary participation of a limited number of SAIs. These specific patterns become even more complex for member states with a federal structure including independent regional audit institutions (German Audit Institutions, 2008, 2013).

The SAI's EU-related activities vary considerably. Interestingly, SAIs from some net contributor countries are particularly active in carrying out EU-related audits, and they report widely on them (for example, Algemene Rekenkamer, 2007, 2012; German Audit Institutions, 2008, 2013; HM Treasury and National Audit Office, 2008; NAO, 2009; Rigsrevisionen, 2006, 2008, 2012). These activities show that the SAIs have created administrative capacities to coordinate auditing in the EU multilevel system, even if their independence and the variety of their audit strategies and traditions have not been fundamentally challenged.

In recent years, the pressure exerted by the European Parliament and the European Commission upon the SAIs and member states' governments to take more responsibility for the correctness of payments under shared management has been a major topic. In the discharge decision for the 2003 budget, the European Parliament stated in 2005 'that only sufficiently comprehensive ex-ante disclosure in a formal Disclosure Statement and an annual ex-post Declaration of Assurance regarding the legality and regularity of the underlying transactions from each Member State's highest political and managing authority (Finance Minister), as suggested several times by the Commission's Internal Audit Service, will enable the Commission to fulfil its obligations [...] for a correct execution of the EU budget. The Parliament also recommended a 'confirmation of the description by a national audit institution or another external auditor' (European Parliament, 2005, 10–11). Some member states' governments and SAIs reacted to this pressure with voluntary declarations and audit statements (Algemene Rekenkamer, 2007; Algemene Rekenkamer, 2012, 39–41 for an overview; HM Treasury and National Audit, Office 2008; Rigsrevisionen,

2006). These initiatives raise new questions about the distribution of tasks and power between the ECA and the member states' SAIs. The ECA's enthusiasm for these initiatives is therefore rather limited (see ECA, 2007).

The Euro crisis has created new challenges for the external audit institutions and their cooperation in the EU multilevel system. The ECA and national SAIs criticized the European Council's plans to establish institutions with far-reaching powers, especially the *European Stability Mechanism* (ESM), without a permanent external audit. The European Parliament expressed its concern over the signature of the ESM Treaty by the member states. The Parliament underlined 'its resolution of 23 March 2012, in which it warns against establishing the permanent European Stability Mechanism (ESM) outside the Union's institutional framework as this decision entails problems for the control mechanism of the institutions of the Union'. The Parliament also shared the concerns of some SAIs that the treaty lacks sufficient provisions for ensuring effective external audit (European Parliament, 2012, 33). In reaction to this critique, a *Board of Auditors* was installed for the ESM, including delegates from the ECA and SAIs (ECA, 2012a, 22; German Audit Institutions, 2013, 32–33). In this way, the independent audit institutions were forced to coordinate their strategies in the EU multilevel system in order to defend the role of independent auditing.

Conclusion and outlook

This chapter has shown that the variety of independent audit institutions in the member states has so far not been profoundly transformed by the emerging EU administrative system. Establishing the ECA in 1977 and making it a full EU institution with the Treaty of Maastricht was a clear decision in favor of creating administrative accountability by independent audit institutions, following a model that had previously existed in a number of member states. The independence of these institutions makes it more difficult for them than for hierarchical administrations to streamline themselves when it comes to the coordination of EU issues. However, the long-lasting debates on error rates, the problems of shared management, and the growing bureaucratic burdens for national administrations involved in the management of EU funds have contributed to increasing the importance attributed to EU issues by many SAIs.

The ECA's role in the EU political and administrative system is largely dependent upon its institutional position characterized by specific and sometimes ambiguous relationships with the European Parliament, the European Commission, and the member states' audit institutions. The ECA's position is largely related to ongoing debates on the impact of error rates that the Court calculates each year for the *Déclaration d'Assurance* and for the budgetary discharge procedure. The pressure exerted upon the member states' SAIs by the European

Parliament to take more responsibility in the EU multilevel system by auditing the correct spending of EU funds under shared management by their countries' administrations may endanger the privileged relationship between the ECA and the European Parliament. The fact that the ECA ordered an international external peer review on its work in 2008 (ECA, 2008b) may therefore be interpreted as an expression of an enhanced need for legitimacy.

The current discussions regarding giving more power to the EU to coordinate and monitor the member states' economic, and even budget, policy may strengthen the ECA's and the SAIs' position in the future. However, for the further development of the EU's multilevel political and administrative systems, the role of independent audit institutions is closely related to the importance attributed to accountability when institutions are designed. Accountability is an important issue not only for EU revenues and funding programs but also for multilevel projects such as the European Stability Mechanism that create new risks for public finance in the member states and for democratic accountability in the EU that go far beyond the 'classical' risks such as errors, corruption, or fraud.

Other factors that influence the future role of the ECA and the national audit institution are related to the financing of the EU. Currently the EU can neither introduce and collect taxes, nor opt for deficit spending by incurring debts. The EU budget policy is therefore limited to the fine-tuning of the distribution of funds among the different programs and agencies (Ackrill and Kay, 2006; Aden, 2012; Council of the EU, 2007; Wilms, 2007). However, if the EU gets more power in the future to organize its own finances and to collect specific EU taxes (see Alves and Alfonso, 2009 on the relevant debates), this may also change the role that external audit institutions play.

Thus far, the supranationalization of the audit function has not replaced independence with interdependence, but rather has led to specific patterns of coordination in order to handle interdependence while maintaining the independence of the external audit institutions involved. The attempts to avoid the same payments or beneficiaries being subsequently audited by several external or internal audit institutions (*single audit approach*, Caldeira, 2005; ECA, 2004) are an example of a trend toward more and better coordination between the independent audit institutions and the administrative actors involved in the multilevel management of EU funds. Federal states such as Germany show that external auditing can work in a multilevel polity, even in the long run, without hierarchical subordination. In the EU, it does not seem probable that the current multilevel structure of independent external audit institutions will be replaced by a hierarchical subordination of national SAIs under the ECA. Intensified coordination is more likely to occur than increased hierarchy. This will remain an interesting issue for further empirical research.

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Part VI

EU's Subordinated Administration

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19

The EU's Subordinated Agency Administration and the Rise of Executive Power at European Level

Morten Egeberg, Maria Martens, and Jarle Trondal

Introduction¹

Establishing separate executive bodies of a confederation or of a nascent federation of states (outside a council of ministers) seems in many respects to be the 'hard case' of institution building. The reason for this may be that it creates a capacity for action and execution of policies and not just for talk and formal decision making and that the action of separate executive bodies may be perceived as particularly threatening by constituent governments less eager to transfer power upward. It seems to have been easier to form (parliamentary) assemblies and courts of justice.

It is not only in the history of European-level cooperation that executive bodies have been the 'hard case' but also in the way other regions of the world have organized their common activities. If we take a brief look at how federal states were forged, the same pattern is discernible: in the United States, the Congress and the Court were both well established in Washington before a federal executive attained adequate capacity to act on a broader scale (Skowronek, 1982). Such an administrative capacity did not emerge automatically as a response to functional needs, but had to be extorted from preestablished institutional structures, in particular from the constituent states. In Germany, in 1871, the body of the constituent states ('Bundesrat') was thought to be both the second legislative chamber *and* the federal government (Gunlicks, 2003, 341). A new and separate executive center at federal level emerged only gradually during the following years.

With regard to European-level cooperation, international governmental organizations (IGOs) had been in place for about a hundred years before a separate executive body in the form of the High Authority of the European Coal and Steel Community was born. At this time, international courts of justice were already known from The Hague system, and (parliamentary) assemblies had

been constituted within the United Nations, NATO, and the Council of Europe. In its early history, the successor of the High Authority, the Commission, faced challenges of an almost existential character, for example during the 'empty chair' crisis in 1965 (Loth, 2007). This crisis could be seen as a reaction of member states (notably France) to prospects of a strengthening of the executive powers of the Commission. Although the history of EU-level agencies has not been as dramatic as the history of the Commission, similar tensions may nevertheless come to the fore since such 'agencification' in many cases means transferring action capacity from the constituent states to a new center at EU level (Curtin and Egeberg, 2008; Trondal and Jeppesen, 2008).

There are two quite general research questions that can be raised in relation to the building of institutions such as these: (i) Under what circumstances will an institution that is thought to challenge the existing power structure be established? (ii) If established, under what conditions will such institutions be able to actually transform politics and policies? This chapter takes an explorative approach to this topic. Subsequent to a section on data and method, the chapter unpacks the key organizational characteristics and resources of EU-level agencies. The chapter next suggests an institutional approach to explain agency formation. This approach is presented as complementary to existing functionalist approaches, the logic of contingent events, and the logic of fashionable ideas. Given the nature of the phenomenon (as outlined above), we assume that EU-level agencies tend to come about through power struggles and compromises conditioned by existing institutional orders, rather than 'popping up' more or less automatically as a pure codification of functional needs. If this assumption is correct, we would expect to find EU-level agencies strongly embedded within existing institutional structures.

Recent findings show that EU-level agencies that are endowed with formal decision-making power seem to be heavily controlled by national governments through various formal procedures (Christensen and Nielsen, 2010). This chapter presents a small-N elite survey, which illustrates that the picture may be more complicated when it comes to actual behavior: EU-level agencies in general appear to involve themselves in much more than information gathering; they seem to take an active part not only as far as the formulation of implementation guidelines is concerned but also regarding national regulatory agencies' handling of *individual cases*. Such task expansion among EU-level agencies is in line with a study by Barnett and Finnemore (2004), which shows that secretariats within IGOs are also capable of significant task expansion. We further find that national governments are only one of several stakeholders in and around EU-level agencies. This observation is consistent with work carried out by Busuioac (2009), Groenleer (2009), and Martens (2010), which shows that the Commission has more actual control over agencies than can be inferred from formal provisions.

However, first of all we explore what we think underlies the politics of agencification at EU level – namely, the fact that how we organize implementation processes may affect the actual application of EU legislation. Thus, the existence of EU-level agencies may have the potential to increase implementation uniformity across member states, or, to put it differently, to reduce the room for national adaptation of EU policies. In addition, such bodies provide more administrative capacity on a routine basis for feeding supranational concerns into the decision process, including at the policy formulation stage. Interestingly, the huge and growing number of studies on the implementation of EU policies has so far focused on various national factors, such as administrative culture and capacity, veto players, and political party constellations as independent variables. More attention has also been devoted to law transposition than to law application (for reviews of the literature, see Sverdrup, 2007; Treib, 2008). Thus, the questions as to whether administrative capacity at EU level, or the way in which implementation structures are organized across levels of governance, actually does matter seem to have been neglected.

Implementation structures and policy implications

In a multilevel system, the implementation of common policies adopted at central level may be organized in different ways, each way creating more or less leeway for lower-level adaptation. An arrangement in which the implementation of common policies takes place *indirectly* through lower-level governments is probably the form that allows the most varied law application across territories. This kind of ‘administrative sovereignty’ enjoyed by the lower level was at the outset the intended form of the Federal Republic of Germany as well as of the EU (Gunlicks, 2003; Hofmann and Türk, 2006). Studies do indeed underpin that the implementation of EU policies has, to a considerable degree, been affected by national politics and administrative traditions and capabilities (Sverdrup, 2007; Treib, 2008).

If administrative structures at the lower level are run by the central level rather than by the lower level itself, input from political bodies (parliaments, ministries, and so on) at the lower level are not inserted into the implementation process, at least not on a regular basis. Thus, the scope for lower-level policy adaptation according to ‘local’ needs is severely circumscribed when implementation is *direct*. However, administrative structures at the lower level owned by the central level may be of two kinds: either they may be set up according to a ‘prefect model’, meaning that administrative structures within a lower-level territory are hierarchically coordinated at this level, or they may be composed of specialized, sectoral agencies with no or few horizontal linkages among them at the lower level. As could be expected, the first variant (‘territorial specialization’) seems to be more sensitive to broader ‘local’ concerns

than the second variant ('sectoral specialization') (Egeberg, 2003), though not as sensitive as 'indirect administration'.

The reason why some variation in implementation practices across territories may be observed even when the central level runs (mutually disconnected) sectoral agencies at the lower level is that bureaucracies, like other organizations, usually make adjustments to the environments within which they exist (Wilson, 1989). The arrangement that is most conducive to the uniform application of common legislation across the whole territory assigns law application to bodies at central level. This is particularly so if these central bodies are themselves also specialized according to sector or function. However, if they are organized by territory, meaning that their internal structure reflects the territorial composition of the system, this may increase their ability to see the need for some 'local' policy adaptation at lower level (Egeberg, 2003).

In addition to the various relatively 'pure' forms of implementation structure outlined above, we may in actuality find various hybrid or in-between arrangements. For example, in the EU, where the central level does not possess its own agencies at national level, one could interpret efforts by the EU to harmonize structural elements of certain national administrations (for example, in communication and transport) as a means to achieve more uniform implementation practices across member states.

Also, and probably far more importantly, the emergence of 'partnerships' between the Commission and national regulatory agencies, partly circumventing ministerial departments, may be interpreted in the same vein. Thus, national agencies may operate in a 'double-hatted' manner, serving both as parts of national administrations *and* as parts of EU administration (Egeberg, 2006; Egeberg and Trondal, 2009). In Germany, where the federal government, like the Commission, in principle has to rely on lower-level governments for the implementation of common policies, a parallel development of 'double-hatted' Land agencies, serving Land ministries as well as the federal government, has been observed (Gunlicks, 2003). As in the EU, agencies organized at arm's length from ministerial departments at the lower level are probably a prerequisite for such a development to take place.

Finally, a third hybrid form, which is the main topic of this chapter, is the establishment of EU-level agencies that may find themselves firmly embedded in networks of national agencies; seemingly a political compromise between direct implementation (from central level) and indirect implementation (via national administrations). In Table 19.1, we have systematized the policy implications of various implementation structures.

Data and method

This study benefits from three sources of data. Firstly, to assess the organizational structure and capacities of EU-level agencies, a 'survey' of the websites

Table 19.1 Expected policy implications of various implementation structures

Implementation structures	Scope for 'local' adaptation of policy content across lower-level territories					
	Broad			Narrow		
	1	2	3	4	5	6
Indirect implementation	X					
Indirect/direct implementation ('double-hatted' agencies)		X				
Direct implementation ('prefect model')			X			
Direct implementation (sectoral agencies at lower level)				X		
Direct implementation (central bodies specialized by territory)					X	
Direct implementation (central bodies specialized otherwise)						X

of 35 EU-level agencies (including executive agencies) was conducted. This survey included all EU agencies at the time, including executive agencies. The survey was completed in 2008 and includes information such as when the agencies were created, their geographical location, their types of tasks, whether they have formal decision-making powers, their budget and staff sizes, their recruitment procedures, and the size and composition of their management boards. Secondly, we used existing literature that aims to explain the formation of EU-level agencies. Thirdly, the organizational overview of EU-level agencies provided by this 'survey' is supplemented with questionnaire data that unpack some aspects of the actual relationship between EU-level agencies and national agencies.

This second survey was conducted among Directors-General of Norwegian national agencies, who were asked to report on their experiences with EU-level agencies. The goal of this survey was to analyze how EU-level agencies actually work and how these agencies relate to and redirect the activities of domestic agencies. Each informant was asked about the content of his or her agency's relationship with EU-level agencies, as well as about the corresponding relationships with the Commission and EU-related networks of 'sister agencies' in other countries. Questions were also posed about the role of EU-level agencies' management boards, and about power relations within agency networks. The survey was administered as a postal questionnaire in 2008. The population of national agency leaders totaled 48 while 40 answered the questionnaire, giving us a response rate of 83 percent. The high response rate may be partly due to the fact that the Ministry of Government Administration

administered the survey as part of the preparatory work of a ministerial study group. The questions analyzed in this chapter are, however, all formulated by the authors. In order to avoid strategic answering, the respondents were kept anonymous.

Even small-N surveys merit attention because research on EU-level agencies rarely offers statistical data concerning their actual involvement in national administrative processes. However, one caveat is necessary with respect to our questionnaire study: since Norway is not a member of the EU, Norwegian agency leaders cannot be claimed to be representative of the whole population of national agency leaders within the EU. Non-membership means that Norwegian politicians and officials do not take part in formal decision-making processes within EU institutions. However, due to being a partner of the European Economic Area (EEA) and Schengen agreements, Norway is obliged to implement most internal market and border control legislation stemming from the EU. Norwegian officials are allowed to participate in a vast number of management boards of EU-level agencies, although without voting rights. One advantage of using respondents from formally non-member states is that it may result in less biased and more independent and unconstrained observations. After all, these respondents are not formally responsible for votes taken at the board meetings.

Studies covering how several policy fields work in an EU multilevel system of governance show that the role of the Norwegian administration is not in practice significantly different from that of EU member-state administrations (Egeberg, 2006; Martens, 2008). This is far from surprising, given that most EU legislation is implemented in Norway: it follows that the Norwegian executive bodies in charge of implementation have to relate to EU-level bodies in much the same way as member-state administrations. Thus, Norwegian national agency directors should be quite relevant informants in this respect. However, the observations from this small-N survey should be considered suggestive because of the survey's limited size and country bias.

Building executive power through EU-level agencies

'Agencification' is a well-known phenomenon within Europe's national executives (Christensen and Læg Reid, 2006; Pollitt et al., 2004; Wettenhall, 2005). The 'agency fever' at EU level has been accelerating more recently (Dehousse, 2008; Kelemen, 2002). Since the early 1990s, more than 40 EU agencies have been created. No single model exists for organizing these agencies; they are typified by their variety (Groenleer, 2009). However, some common generic features are clearly present with respect to their management – their degree of *de jure* and *de facto* autonomy, their accumulated administrative capacity, and their role in the implementation of EU legislation.

The accumulated administrative capacities of EU-level agencies may be assessed by considering their number and size. At least three waves of agency formation at EU level can be distinguished – the initial one in 1975, the second one from 1990 to 1999, and the third from 2000 to present. Several of the currently existing agencies are granted some degree of formal decision-making power, while the remaining agencies have tasks such as information gathering, technical support, and administration (Groenleer, 2009). Most EU-level agencies have restricted *de jure* powers, particularly with regard to making decisions. The European Aviation Safety Agency (EASA) is a key example where great expectations were partly dashed. When planned and established, the EASA was expected to acquire major rulemaking powers. The result, however, suggests that the EASA has received far fewer *de jure* powers in this regard (Schout, 2008).

Institutional birth sometimes happens to the detriment of existing institutions. One question of relevance here is whether the agencification within the EU has curbed the growth of the Commission administration. The institutional crisis following the fall of the Santer Commission in 1999 propelled assumptions that the future growth of separate executive powers in the EU was most likely to happen outside the Commission – most notably among EU-level agencies. Agencies were presented as an institutional solution that would lessen the Commission’s workload by taking over some of its technical and administrative tasks, allowing the Commission to focus on its ‘core tasks’.

However, Figures 19.1 and 19.2 seem to indicate that the mushrooming of EU-level agencies over time has occurred in parallel with the expansion of the

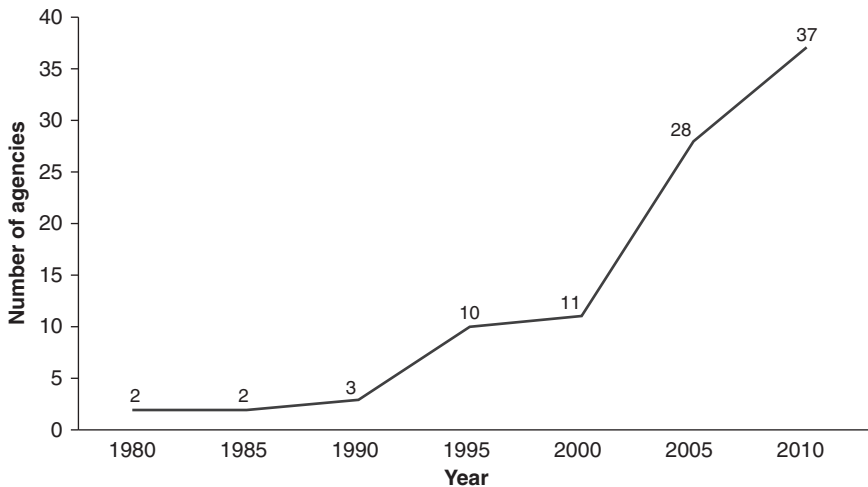


Figure 19.1 Number of EU-level agencies, divided by five-year intervals

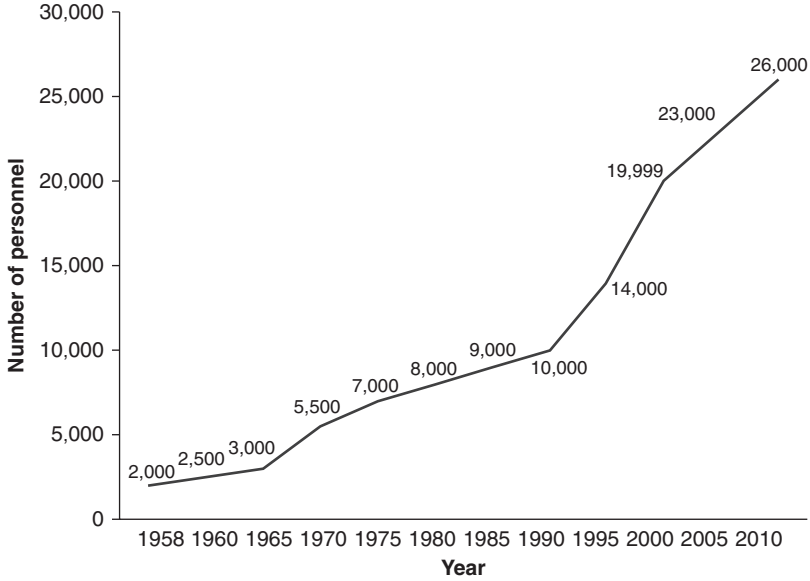


Figure 19.2 Number of Commission services personnel, divided by five-year intervals

Commission services. Although the figures in these tables are not completely comparable, the most recent boom of separate ‘executive’ bodies at EU level (outside the Commission and the Council) does not seem to have halted the Commission’s expansion.

Figure 19.2 visualizes the increase of personnel in the Commission services from its inception to present. Whereas the Commission started out in 1957 as a relatively small club of highly dedicated, often temporary, officials, today it houses around 23,000 officials, mostly employed in permanent positions. The largest increase in staff has happened post-1990, partly due to the increased workload caused by the ‘communitarization’ of evermore policy areas and partly due to the enlargements in 1994 and 2004. The large Commission staff also reflects the continuous legislative activity of the Prodi and Barroso Commissions from 2000 to 2007 (Kurpas et al., 2008, 3). Thus, the Commission in general seems to not do ‘less’. However, the Commission seems to put greater ‘focus on the implementation of what is already in place’ (Kurpas et al., 2008, 20). The need for implementation bodies at EU level and at national level is thus ever more crucial. In summary, both the Commission and EU-level agencies have acquired increased administrative capacity in recent years, partly due to a general strengthening of supranational executive powers, but also due to subsequent enlargements.

Figures 19.1 and 19.2 also demonstrate that the post-2000 era has witnessed a parallel growth of Commission staff and EU-level agencies. Today, the

Table 19.2 Distribution of EU-level agencies, by size (percent – absolute numbers in parentheses)*

Less than 50 officials	Between 50 and 100 officials	More than 100 officials	Total
23 (7)	30 (9)	47 (14)	100 (30)

* Information on staff size was not available from three agencies

Commission officially states that EU-level agencies have become an ‘important part of the EU’s institutional machinery’ (European Commission, 2008, 2). Our survey of the websites of all current 35 EU-level agencies shows that these agencies at present have approximately 4,700 staff. This number includes both A-level officials – who are of particular relevance when assessing executive powers – and assistants of various kinds. The typical agency official is employed in a temporary or quasi-temporary position. However, these figures cover large variations. While the European Police College (CEPOL) has a staff size of 25 officials, the Office for the Harmonization of the Internal Market (OHIM) has over 650 employees. Table 19.2 makes a simple distinction between small, medium, and large EU-level agencies, measured by their number of staff. As shown, most EU-level agencies tend to be relatively large or medium sized rather than small.

EU-level agencies are typically assigned a management board whose main function is to decide on the agency’s budget and work program, and which generally has a role in the appointment and dismissal of its executive director. There is no such thing as a typical management board in EU-level agencies. These boards are typified by their diversity with respect to size and composition (Busuioc, 2010; Groenleer, 2009). Most agencies have a management board consisting of 20–50 representatives. These figures, however, hide variation with respect to the size of the management boards. Whereas the European Centre for the Development of Vocational Training (CEDEFOP) has 91 members on its board, the Education, Audiovisual and Culture Agency (EACEA) has five members on its board.

Management boards are typically composed of a large majority of member-state representatives and a small minority of Commission representatives. The increased power of the European Parliament (EP) has in the past accompanied an aspiration to influence agency design and to be represented on the management boards (Kelemen, 2002, 105). However, the EP is represented on only a small portion of the boards; and it is now commonly understood that in view of the potentially conflicting tasks of management and supervision, the EP no longer has representatives on the boards of new agencies. Moreover, with a view to open up boards to interests other than those of EU institutions, industry and interest organizations have also been allotted seats on the management boards

of EU-level agencies – both as members and as observers. They now participate on about half of the boards.

Thus, we have seen that a significant number of agencies with considerable staff resources have in fact been established over the last couple of decades. We also know that these agencies are specialized according to function rather than territory (Trondal and Jeppesen, 2008) – something which is expected to increase their potential for contributing to implementation uniformity (cf. Table 19.1). So far, however, only rather limited formal decision-making power has been conferred upon the new bodies. Thus, many are assigned simply information-gathering tasks. Furthermore, they have become formally embedded in highly intergovernmental structures: as far as the composition of the management boards is concerned, they display many commonalities with Council working parties or comitology committees.

The ambiguous organizational structure characterizing EU-level agencies means that we have to study how they work in practice in order to learn how they actually function. For example, from the literature we know that bureaucratic task expansion may take place in settings such as this (for example, Barnett and Finnemore, 2004). Furthermore, even if the management boards are composed very much like Council or comitology groups, we have to take into consideration that agencies are not primarily secretariats for the boards (as the Council Secretariat is for Council groups).

Finally, although member states dominate the boards, this does not necessarily mean that ministries control what happens in the boards. It could very well be that member-state representation on the boards of EU-level agencies is taken care of by their national counterparts rather than ministries. We know that national agencies in general enjoy a certain amount of discretion vis-à-vis their respective ministerial departments and that they may practice a kind of dual loyalty or 'double-hattedness' in relation to their parent ministry and to EU-level bodies (Egeberg, 2006; Egeberg and Trondal, 2009). Before we explore how EU-level agencies work in practice, however, the next section surveys the existing literature to try to explain how and why EU-level agencies are established.

Explaining agency formation

A functional account

In order to make sense of 'agencification', scholars have traditionally analyzed the development of EU-level agencies along functional lines, emphasizing their ability to resolve various collective action problems (for an overview, see Groenleer, 2006, 2009). The principal-agent model is often the analytical expression of this functional logic, together with the notion of transaction costs (Tallberg, 2003, 25). The benefits of agencies 'lie in the reduction of political

transaction costs, by providing solutions to collective-action problems that prevent efficient political exchange' (ibid: 26).

In a special issue of the *Journal of European Public Policy* (1997), Dehousse, Kreher, Majone, and Shapiro discuss the establishment and functioning of EU-level agencies along these lines. They see the development of agencies in the EU as a response to conflicting pressures following the creation of the internal market (Hellebø, 2004) and, in particular, as a response to shortcomings in the existing regulatory approach of the Commission (Dehousse, 1997, 246–247). Agencies could relieve the Commission of specific administrative tasks, which would leave the Commission greater room to concentrate on giving political direction. They point out that EU-level agencies lack the independence and powers of other regulatory bodies, and are 'weaker' than agencies in the United States (Majone, 1997, 262; Shapiro, 1997, 276–282). Nevertheless, the establishment of (more) EU-level agencies is seen as an important step toward further European integration and the creation of the internal market.

This is also in line with Vos (2000) and Yataganas (2001), who see particularly the first wave of agency formation at EU level as an answer to three problems: (i) to cope with new tasks of a technical and/or scientific nature; (ii) to finalize the internal market project; and (iii) to ensure credibility and transparency. This view has also been reflected in the Commission's own documents. In various position papers, the Commission has presented itself as the principal that must evaluate the possibility of delegating a share of its powers to autonomous bodies, which will assist in completing its tasks and operating the internal market (Dehousse, 2008, 792). This strategy of delegation by the Commission as a means to focus on its core tasks is particularly outlined in the March 2001 White Paper (European Commission, 2001), where independent agencies are seen as a means to improve administrative efficiency, easing the workload of the Commission and enhancing the transparency and legitimacy of the EU. In summary, the pattern shown in Figure 19.1 above may be quite consistent with a functional explanation: the growth of EU-level agencies can be interpreted as ways of coping with the challenges following on from the realization of the internal market.

Contingent events

Contingent events may help to explain institutional change and the timing of organizational birth (March and Olsen, 1989; Pierson, 2004). According to Curtin (2005), decisions to create several EU-level agencies have been motivated by needs to respond to particular circumstances of the moment and, in some cases, the occurrence of crisis. The European Food Safety Authority (EFSA) is one case in point as it was established after the dioxin incident in Belgium and the BSE affair in Britain. BSE prompted serious criticism of the ways in which food regulation was organized within the EU (Flinders, 2004; Kelemen, 2002;

Skjerven, 2005; Vos, 2000). As the mad cow crisis intensified in the mid-1990s, the EP used its recently won powers to assert itself as an influential player in the design of EFSA (Kelemen, 2002, 105). According to Skjerven (2005, 97), it was able to do this because, unlike the member states and the Commission, the EP was not associated with the mismanagement of the policy field.

The establishment of the European Maritime Safety Agency (EMSA) is another case in point. EMSA was created following a series of high-profile maritime disasters, such as the sinking of the *Erika* and *Prestige* tankers. The accidents were followed by extensive blame shifting among the parties involved and a general call for a uniform and effective regulatory framework within the European maritime sector (Skjerven, 2005, 73). As part of the *Erika* legislative packages, the Commission proposed the creation of a European Maritime Safety Agency, the establishment of which was accelerated following the sinking of the *Prestige* tanker in 2002.

Fashionable ideas

The creation of agencies organized at arm's length from political executives can also be seen as a trend in public policy and as a fashionable idea within the realm of public management (Christensen and Lægreid, 2006). Meyer and Rowan (1977, 73; see also DiMaggio and Powell, 1991) emphasize the importance of cultural rules within wider institutional environments, which take the form of 'rationalized myths'. They are myths because they are widely held beliefs whose effects 'inhere, not in the fact that individuals believe them, but in the fact that they "know" everyone else does, and thus that for all practical purposes the myths are true' (ibid, 75). Delegating tasks to 'independent' agencies was increasingly popular in domestic politics across EU member states in the late 1980s and was therefore likely to appeal to many national governments in a EU-setting' (Kelemen and Tarrant, 2007, 31).

When the second wave of EU-level agencies occurred during the 1990s (cf. Figure 19.1), the agency idea and New Public Management (NPM) rhetoric were widespread across Europe and were also referred to in Commission documents on EU-level agencies (Kelemen, 2002; Skjerven, 2005). The fact that EU-level agencies popped up within a fairly short period of time in the 1990s and post-2000 – and not during the 1960s or 1970s – may also illustrate the strength of fashionable ideas at the time about legitimate and efficient governance (Groenleer, 2009).

An institutional account

An institutional perspective as applied here ascribes an autonomous role to institutions and organizational factors that goes beyond functional needs and 'environmental determinism' (Olsen, 2007). Institutions exist within a larger

institutional setting and order – as is indeed the case with EU-level agencies – and innovations and change occur in the interface between different orders of institutions and the interactions that exist between them (Gornitzka, 2008b; Orren and Skowronek, 2004). Political institutions create elements of robustness (Olsen 2008, 193), and concepts such as ‘historical inefficiency’ and ‘path dependence’ suggest that the match between environments and new institutional structures is not automatic and precise (Olsen, 1997). New governing arrangements, such as EU-level agencies, do not arise reflexively or automatically in response to new conditions. Instead, they must be extorted from and mediated by the preestablished framework of institutions that empower and constrain political actors in different ways (Skowronek, 1982). Thus, the multiple institutions in the EU may serve as an important source of both resilience and opportunities in the genesis of agencies; and rather than assuming relative efficiency as an explanation, this institutional perspective highlights the need ‘to go back and look’ (Pierson, 2004, 47).

In line with this approach, a few studies have explored the ‘stickiness’ of existing European administrative structures in the creation of EU-level agencies. Krapohl (2004) shows that several EU-level agencies have evolved from existing EU committees and have taken over most of their structures, while Martens (2012) highlights that the organizational structures and standard operating procedures of ECHA have to a large extent been copied from EMEA and the Commission framework through a ‘cut and paste’ process. Similarly, Busuioac (2010) finds that agencies’ accountability procedures, and particularly their financial accountability procedures, often clone parallel procedures originally developed for the Commission. Other scholars have emphasized the particular dynamics of the EU system that ensue among and within EU institutions seeking to gain or maintain political power and institutional role and position (see, for example, Borrás et al., 2007; Dehousse, 2008; Groenleer, 2009; Kelemen, 2002). Here, agency creation is seen as partly determined by those who seek to change the existing structures and the changes they are able to make and partly by the arrangements that are ‘carried over from the past and situated in an altered setting’ (Orren and Skowronek, 2004, 12) by the defenders of the status quo.

Kelemen (2002) shows that the Commission had a considerable stake in preserving and expanding the use of its own administrative structures, but the EP and the Council placed limits on increases in the Commission’s budget and made this approach difficult. In line with this view, Dehousse (2008, 796) writes that from the Commission’s perspective, agencies are often only a second-best alternative, ‘which it will accept only if convinced that an extension of its own powers is not likely to be approved by the Council’. However, the Council has left its marks upon agency creation in restricting their tasks and agendas, securing intergovernmental management procedures, and integrating

national regulatory authorities in the committee frameworks (see Christensen and Nielsen, 2010; Dehousse, 2008; Gehring and Krapohl, 2007; Groenleer, 2009; Kelemen, 2002; Martens 2012).

As noted earlier, the EP played a limited role in the first wave of agency creation, as the legislative procedures used restricted it to mere consultation. However, studies show that since the mid-1990s the increasing power and recognition of the EP in the EU system led to significant changes, and the Parliament has gradually asserted a greater role in agency design (Busuioc, 2010; Groenleer, 2009; Kelemen, 2002). Kelemen (2002, 108) shows that both the Commission's original proposal on EFSA and the final regulation that emerged from the legislative process reflected the increased legitimacy and formal power of the EP.

In summary, the observations referred to in this section go beyond functional explanations and indicate that the creation of EU-level agencies does not start from 'a blank slate' (Pierson, 2004, 151). EU-level agencies tend to come about through power struggles and compromises conditioned by existing institutional orders rather than 'popping up' more or less automatically as a pure codification of functional needs or legitimate rules in the environment. EU-level agencies are strongly embedded within a larger institutional setting, and this setting may serve as an important source of resilience and opportunities both in their making and in their functioning. In the next section, we take a closer look at the latter.

The role of EU-level agencies

This section reports on experiences from domestic agency leaders concerning the role of EU-level agencies, particularly concerning their role in the implementation of EU legislation and programs but also regarding their involvement in the formulation of new EU laws and programs. This section systematically compares the role of EU-level agencies in these respects with the role of the Commission and 'sister agencies' in other countries. Firstly, our survey data reveal that most national agencies have relationships with the Commission and 'sister agencies' in other countries. EU-level agencies do not have the same centrality, although almost half of the national agencies do indeed engage in relationships with them.

Next, Table 19.3 shows the content of the relationships between national agencies on the one hand and EU-level agencies, the Commission, and networks of 'sister agencies' on the other hand.

Table 19.3 reveals several trends. Firstly, almost all national agency leaders confirm that information exchange, for example on 'good practice', is part of all three relationships. Secondly, the content of the relationship with EU-level agencies is not that different from the content of the other two relationships:

Table 19.3 Percentage of national agency leaders who report that their agency's relationship with EU-level agencies, the Commission, and 'sister agencies' involves the following:*

	EU-level agencies	Commission	Networks of 'sister agencies'
Formulating/discussing guidelines, standards, etc. when implementing EU laws/programs	77	93	89
Formulating/discussing individual cases when implementing EU laws/programs	69	71	82
Formulating new EU laws/programs	50	82	67
Information exchange, 'best practice'	94	97	100
Mean N	17	38	28

* Percentage reporting 'Yes'

a clear majority reports that in all three relationships questions concerning the application of EU laws and programs are dealt with. Thus, the involvement of EU-level agencies seems to point beyond information gathering and exchange. Surprisingly, in all three connections, implementation activities are not 'only' about formulating guidelines but also about how *individual cases* should be dealt with. Thirdly, Table 19.3 indicates that EU-level agencies become engaged most strongly at the implementation stage of the policy process. It is only in relation to the Commission that an overwhelming majority confirms that there is activity also at the initial stages of the policy process.

Regarding power relations within transnational agency networks, Table 19.4 shows how important our respondents find various network participants to be. Overwhelming majorities report that agencies from 'old' member countries and

Table 19.4 Actors deemed to have large* influence within EU-related networks of national agencies (percent of respondents confirming 'large influence')

Actors	
Agencies from 'old' member states (EU 15)	87
European Commission	81
EU-level agencies	58
Agencies from 'new' member states (EU 12)	32
Mean N	23

* Values 1 and 2 combined on a 5-point scale

the Commission carry great influence. A considerable proportion also assigns weight to EU-level agencies. The findings are fairly compatible with those on actors' influence within management boards. In addition, the data show that agencies from 'old' and 'new' member states are evaluated rather differently in power terms.

Conclusions

Establishing separate executive bodies of a confederation or of a nascent federation of states (outside the council of ministers) seems in many respect to be the 'hard case' of institution building, probably because it creates real action capacity at the (new) center. Considered as elements of an implementation structure of a quasi-federal polity, the formation of EU-level agencies concerns increasing the potential for the uniform application of EU legislation and programs across member states, or, to put it differently, to circumscribe the room for national adaptation of EU policies. In addition, such institution building is about strengthening the amount of supranational input into the policy process, including at the initial stages.

This chapter first of all provided a broad portrayal of the population of EU-level agencies and its development over time. Contrary to at least one plausible expectation, we showed that the considerable growth of EU-level agencies, in terms of both number and personnel, has not happened to the detriment of the Commission, which has also simultaneously increased its staff significantly. Thus, at the outset, it seems as if executive power at EU level has been considerably strengthened during the last couple of decades. Looking at the formal structure of EU-level agencies, however, we observed that they have in many ways been 'reined in': they have typically been assigned information and technical tasks more than formal decision-making power, and they find themselves firmly embedded in structures dominated by member states, as reflected in the composition of management boards and agency networks. We also saw great variety in how EU-level agencies are established, organized, and managed. However, this chapter has suggested that EU-level agencies share some generic organizational features and roles in multilevel implementation structures.

Secondly, this chapter proposed an institutional approach to come to grips with the advent, development, and characteristics of EU-level agencies. Functionalism and contingent events seem to supplement an institutional approach. Agency creation may be linked not only to functional needs generated by the internal market and Union enlargement but also to NPM-legitimized organization models that may be implanted regardless of specific needs. In some cases, crises and accidents have clearly acted as catalysts for agency birth. This chapter adds to these theoretical approaches by arguing that agencies' lack of formal power and their restricted agendas, as well as their

exposure to member-state control, point in the direction of institutionalist explanations emphasizing how new and challenging organizations have to be extorted from preestablished power structures. Thus, the growth of EU-level agencies results in hybrid and ambiguous structures, which are then relatively 'open' regarding future behavioral consequences.

Thirdly, in order to illuminate how EU-level agencies actually work, the chapter offered a small-N elite survey. One important observation is that while most national agencies relate to the Commission and 'sister agencies' in other countries, slightly fewer than half deal with agencies at EU level. Regarding the content of the relationships, however, the various relationships do not differ much: in general, national agencies' relationship with EU-level agencies is not restricted to information exchange. We have seen that EU-level agencies become involved in the application of EU laws and programs, not 'only' regarding the formulation of implementation guidelines but also concerning the handling of individual cases. Thus, like the Commission, it seems as if EU-level agencies contribute to the evolving 'double-hattedness' (or, in fact, 'multi-hattedness') of national agencies (Egeberg and Trondal, 2009). Moreover, we found that the relationship with EU-level agencies is slightly more implementation oriented than the other two relationships which also seem to revolve more around policy formulation.

Finally, it seems quite clear that national agencies have to share their control over EU-level agencies with the Commission, which may have strengthened its position within agency networks over the years (Busuioc, 2009, 2010; Gornitzka, 2008a; Groenleer, 2009; Groenleer et al., 2010; Martens, 2010; Schout, 2008; Thatcher and Coen, 2008). However, the observations from this small-N survey should be considered illustrative because of its limited size and country bias and should be seen as a call for further comparative studies of the management of EU-level agencies and the relationship between management boards and member-state governments.

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20

Exploring the EU Commission–Agency Relationship: Partnership or Parenthood?

Nina Merethe Vestlund

Introduction

Contributors to the literature on European agencies seem to agree that agencies have become part and parcel of the EU system, but the role and status of these agencies remain unsettled.¹ Much of the debate in the literature concerns the extent to which EU agencies can operate autonomously and who their main superior body is. Recent studies indicate that the European Commission (Commission) is a main interlocutor and partner in the agencies' lives. The Commission has, more or less reluctantly (Curtin and Dehousse, 2012), been central in the creation of most agencies. Over the years, it has proposed Community strategies arguing for stronger Commission control (Commission, 2001) and more autonomous agencies (Commission, 2005; Trondal and Jeppesen, 2008, 420). In 2012, the Commission proposed measures that can be interpreted as an attempt to standardize, clarify, and strengthen the role of the Commission vis-à-vis agencies (Commission, 2012).² However, few studies have explicitly examined and conceptualized the relationship between the Commission and the European agencies or identified factors that condition such a relationship.

Why is it important to study this relationship? Theoretically, the topic taps into the question of implications of 'agencification' at European level for decision behavior, that is, the balance of politico-administrative and scientific/technical considerations in decision-making processes. Although the status of EU agencies is unsettled with regard to a 'superior' body, the idea of 'building executive power' (Egeberg et al., 2012) by establishing separate and specialized agencies is based on a desire to isolate certain decisions from political considerations and on an assumption that it is possible to do so (Christensen and Læg Reid, 2006, 30). This resembles the motivation for creating agencies at European level (Busuioc, 2013, 4). Separate and specialized organizations may contribute to a clearer demarcation of responsibilities and distribution of

functions (Christensen and Lægreid, 2006, 4). Such divisions can, however, be more difficult in practice than in theory, and the actual relationship may not necessarily reflect formal provisions (Busuioc, 2013; Christensen and Lægreid, 2006; Groenleer, 2009; Martens, 2010; Yesilkagit, 2004). Given that in practice the Commission is close to the agencies, it should be established whether such a close relationship implies that political considerations dominate decision processes and annul the effect of creating agencies in the first place. The Commission's dominance in such a relationship would resemble parenthood, whereas more equal positions would resemble a partnership.

Furthermore, 'there is an immediate question with regard to how they [agencies] relate to the core of the Commission powers and tasks and thus the institutional balance overall' (Curtin and Dehousse, 2012, 197). A close, dependent relationship could indicate that a transformation and centralization of the European executive system is taking place, in the sense that it may contribute to the Commission's capacity and independence vis-à-vis national governments (Egeberg, 2006; Egeberg and Trondal, 2011; Trondal, 2010; Wille, 2013). At the same time, it may indicate a 'normalization' of the Commission in the sense that although it started out in the 1950s as a technocratic international body, it is increasingly evolving into an executive body, with organizational and behavioral patterns typical of national level (Curtin and Egeberg, 2008).

The chapter explores the relationship between the Commission and the European Medicines Agency (EMA). The two organizations are structurally connected by both being central parts of the EU pharmaceutical policy administrative system, administering policy across organizational boundaries. The primary aim is to investigate what characterizes the relationship in terms of distance – how close they are – and of impact – whether there is a mutual or a unidirectional influence. A second aim is to identify factors that condition distance and impact the relationship. In order to do so, I study the interaction between the two organizations on a day-to-day basis: the level and nature of contact, coordination, and conflict. The chapter is organized as follows. Firstly, I take a closer look at how one can understand the department–agency relationships and outline some expectations regarding the Commission–EMA relationship. Next, a short description of method and data collection is given, and then the case study is presented. Finally, findings and implications are discussed in a concluding section. The study shows that the policy stage, politicization, and organizational capacity in both organizations contribute to a close relationship, where the Commission is more in a position to impact on EMA's operation than vice versa. It is argued that despite strong Commission control of agency activities through informal hierarchical structures, this does not annul the effect of creating an agency in the pharmaceutical area.

Understanding department–agency relationships

The EU administrative system is composed of different organizational components. In such a system, an interinstitutional relationship can be understood as ‘structural connectedness’ between the components (March, 1999, 135; Olsen, 2007, 95). This is also the case for European agencies and their surroundings – they are structurally connected to the other institutions that make up the EU institutional architecture. Arguably, however, what the ‘structural connectedness’ constitutes is rather ambiguous, for example whether it can be understood as horizontal or vertical. Agencies are rarely ‘orphans’, or free in an absolute sense (Christensen and Lægreid, 2007, 7). At national level, they are often explicitly linked to a ministry. Findings from studies of relationships between ministries and agencies at national level have recently been summarized in a review article (Egeberg, 2012). Clearly, external vertical specialization and the division of labor across hierarchical levels reduce the possibilities for political control. Officials in agencies exercise discretion relatively isolated from political processes at ministry level and have relatively little contact with the political leadership of the ministry and with ministries other than their ‘own’ (and parliament). At the same time, the distance in the relationship also reduces the agency’s possibility of impacting on the ministry. In addition, agency officials prioritize differently to officials at departmental level; they emphasize expert and user/clientele concerns before political interests, whereas officials in the superior body emphasize political concerns before expert and user concerns. However, structural capacities at both levels may impact on the relationship. The superior body’s ability to exert political influence depends on its organizational capacity, while agency autonomy is positively correlated with agency size.

At European level, however, it is unclear who the main superior body of agencies is. On the one hand, agencification at European level is in many cases about transferring action capacity from the constituent states to a new center (Curtin and Egeberg, 2008; Egeberg et al., 2012, 20; Trondal and Jeppesen, 2008). Some authors have concluded that the agencies are subject to substantial intergovernmental control, with the Council/member states overseeing EU agencies through representation on management boards and networks of national agencies (Christensen and Nielsen, 2010; Kelemen, 2002; Kelemen and Tarrant, 2011). On the other hand, institutional links to other Community institutions are also established when a European agency is created. In the absence of a clearly defined superior body, it has been suggested to be a multiple principal relationship (Dehousse, 2008).

At the same time, research indicates that the Commission plays an important role vis-à-vis EU agencies. For example, the Commission is important in European issue-specific networks, where European agencies make up the hub

(Busuioc, 2009, 2013; Gornitzka, 2008; Groenleer et al., 2010; Martens, 2010; Schout, 2008). Well prepared and informed, the Commission has also been shown to play an important role on EU agency boards (Busuioc, 2013; Busuioc et al., 2012; Groenleer, 2009). Moreover, findings indicate that EU agency officials find themselves closer to the Commission than the Council and national ministries and that the Commission is perceived as influential and important in the daily lives of the agencies. The Commission is important in policy implementation, but even more so in policy formulation, indicating that the policy stage matters. In addition, the politicization of tasks or issues can increase the impact of political actors (Egeberg and Trondal, 2011). Ongaro et al. (2011, 408) find extensive arrangements in place for EU institutions to scrutinize and control EU agencies, but that the extent to which these are utilized can be low in the face of good agency performance. Taken together, this has raised questions as to whether the agencies increasingly relate to particular ‘parent’ DGs and whether the Commission may have more actual control over agencies than can be inferred from their formal provisions (Egeberg and Trondal, 2011; Egeberg et al., 2012; Groenleer, 2009).

An important premise in this chapter is that organizations structure the decision behavior that takes place within and between organizations (Egeberg, 2012). Organizing through specialization and decentralization is expected to create organizational boundaries that reduce interorganizational coordination and influence (Gulick, 1937). The above-mentioned review identifies some factors that have consequences for the distance and impact in department–agency relationships. In the case of the Commission and EMA, as a starting point one would expect that specialization would create organizational boundaries that contribute to distance in the relationship, and that the possibilities for mutual influence are rather low. One would expect EMA to act relatively isolated from the political leadership and processes of the Commission and for the two organizations to have little contact and different priorities. At the same time, the Commission is expected to be more important to the agency than the Council and national ministries. Distance and impact are expected to depend on the extent to which the Commission has the organizational capacity to follow up on EMA’s activities and also on the extent to which EMA has the capacity to act on its own. Moreover, the Commission is expected to dominate policy formulation processes, but less so in policy implementation. Furthermore, it is expected that the relationship would become closer when issues are politicized. Finally, good agency performance may contribute to distance by reducing Commission scrutiny and control.

Data and method

Three sources of data have been important to this study. Firstly, the study builds on 16 interviews. Interviews with five Commission officials, four EMA

officials, one management board member, and one EMA committee member give a picture of the relationship between DG SANCO and EMA as they themselves perceive it. In addition, the interviews include five stakeholder organizations that observe the relationship from the outside. All interviewees were promised full anonymity. Secondly, official EMA and Commission documents are important sources of priorities and objectives. For example, EMA's founding regulation will give an impression of the formal relationship, while work programs, annual reports, and roadmaps reflect its interpretations of priorities, tasks, and objectives. Commission white papers, roadmaps, and other official documents reveal its overall strategies toward agencies. Thirdly, secondary literature, including evaluation reports of EMA and of European agencies, has served as an important data source.

Exploring the interinstitutional relationship

The organization of the EU pharmaceutical policy area

EU pharmaceutical policy formulation and implementation mainly involves the Commission, EMA, and the network of member states' competent authorities (NCAs). The Commission is in charge of policy formulation, but draws on the expertise of EMA and NCAs. The same actors cooperate on risk regulation on the implementation side. EMA and NCAs are in charge of technical-scientific risk assessment, whereas the Commission adopts the final decision (following a comitology procedure).

In exploring the Commission–agency relationships, there is no organizational chart that can be consulted. According to the Commission,³ the role of the Commission vis-à-vis the agencies is mainly governed by the agencies' constituent acts. In addition, agencies must follow the Commission's budgetary and financing provisions as well as adopt the staff regulations of Officials of the European Communities. This is also the case with EMA, although EMA is self-financed by more than 80 percent through fees. EMA's founding regulation (Regulation (EC) No. 726/2004 of the European Parliament and of the Council) stipulates the composition of the agency and the formal division of tasks and responsibilities, but does not explicitly establish a hierarchical 'command line' between the Commission and EMA. The Commission can consult the agency on a number of scientific issues; request information and attend meetings; approve committee procedures and propose appointments and/or the removal of the Executive Director; and initiate evaluations of the agency. In addition, annual reports and work plans are forwarded to the Commission (although little is said about what happens afterward).

EMA's main function is to issue scientific opinions on applications for marketing authorizations (premarketing risk assessment) and to coordinate pharmacovigilance (postmarketing surveillance of products). The agency is

composed of a secretariat, a management board comprising member states' representatives, and seven committees made up of experts from the NCAs. The committees have 'exclusive responsibility for preparing the agency's opinions' (EC726/2004). The secretariat is situated in London and headed by the Executive Director. The system consists of three procedures for issuing marketing authorizations. In the decentralized procedure, companies can apply for simultaneous authorization in more than one EU country. In a mutual recognition procedure, companies that have a medicine authorized in one EU member state can apply for this authorization to be recognized in other EU countries. In the centralized procedure, EMA receives and validates applications from pharmaceutical companies, coordinates the NCA's assessment work and the scientific committees, and submits the opinions to the Commission. For each product application, EMA appoints a team that works closely with the NCA evaluators. The centralized procedure is mandatory for some research-based products (such as biotechnological products) and voluntary for others. Once the Commission receives the scientific opinion, it is transformed into a draft decision on marketing authorization and approved by the member states in the comitology procedure (#2). The Commission then issues a final decision. If the decision is not in accordance with the opinion of the agency, the Commission has to annex a detailed explanation of the reasons for the difference (Art. 10, Regulation (EC) No. 726/20). The Commission can also suspend the procedure and send the opinion back to the agency if the member states' written observations raise important questions.

The development of the European medicines regulatory system has been characterized by path dependency: the system as it is today has been built gradually and has become increasingly centralized since it was triggered by the thalidomide scandal in the 1960s (Groenleer 2009; Krapohl 2008). From the start, there were two main goals: safeguarding public health and the free movement of pharmaceutical products (Abraham and Lewis, 2000, 83). In the beginning, the system was mostly focused on premarketing measures, while pharmacovigilance came later. The first directive (65/65/EEC) established the general authorization requirement for new pharmaceuticals (Krapohl, 2008, 70). Secondly, a community procedure for mutual recognition of authorizations and an expert committee, the Committee for Proprietary Medicinal Products (CPMP), was established. The committee comprised representatives from the member states' regulatory agencies, and gave scientific advice on the safety, efficacy, and quality of products to facilitate mutual recognition in case of disagreements among member states (Krapohl, 2008, 72).

The 1980s saw two important developments. In 1987, the Commission was given competence to change requirements regarding the substantive criteria for safety, efficacy, and quality. Simultaneously, a comitology procedure was established: the Standing Committee on Medicinal Products for Human Use was

composed of representatives of member states' governments (ministries) that would oversee the Commission's actions with regard to the substantive authorization criteria (Krapohl, 2008, 72). However, an enduring obstacle to a single market was the member states' reluctance to recognize each other's authorizations. In particular, considerations on the desired balance in the cost-benefit analysis differed widely among the member states. This analysis is at the core of the product evaluations: the more therapeutic effects pharmaceuticals have, the more they carry the risk of adverse side effects (Krapohl, 2008, 74). Due to the shortcomings of the system, in the early 1990s the Commission (DG Enterprise) proposed further centralizing of the system by establishing the agency and a centralized procedure with binding outcomes. The regulatory framework was adopted in 1993 and came in force in January 1995. According to Abraham and Lewis (2000), this constituted a transition from a weak to a strong regulatory regime (Abraham and Lewis, 2000, 113). The system was further centralized in 2004 by an expansion of the centralized procedure's application area, following an evaluation of the system which showed that the centralized procedure could become more effective and that mutual recognition was still not functioning optimally (CMS Cameron McKenna and Anderson Consulting, 2000, 11). A new evaluation in 2010 reported that the system was considered legitimate and effective by stakeholders (Ernst and Young, 2010, 10–11). In addition, the EMA secretariat was reported to strongly contribute to the effectiveness of the system by providing experts with administrative and regulatory assistance, as well as increasingly scientific assistance in some fields. The 2010 evaluation also noted the strong organizational growth EMA had gone through in terms of increased number of committees (seven) and staff (700). Although the secretariat's formal role is rather anonymous, the secretariat has grown into a comprehensive organization in its own right. By comparison, DG SANCO has approximately 960 employees.

Over time the agency has become renowned for dominating the decision-making procedure and is often referred to as a quasi-regulatory agency despite its formal advisory role (Permanand and Mossialos, 2005, 698). EMA's impact on the Commission has been interpreted as fairly extensive, given its status as an expert organization and the fact that the Commission never has any objections to its scientific opinions. As Gehring (2012) notes, 'in practice the EMA dominates the authorization procedure, while political authority is almost negligible' (Gehring, 2012, 113). EMA has thus built up the reputation of strong *de facto* decision-making powers (Gehring and Krapohl, 2007; Groenleer, 2009; Krapohl, 2008). Its relationship with the Commission has been described as balanced by mutual dependence, as it is in neither the Commission's nor EMA's interest to risk the legitimacy of the system (Dehousse, 2008; Groenleer, 2009).

In recent years, the agency and the system have become increasingly subject to negative public attention. EMA has been criticized for serving the industry

while disregarding consumer and patient interests, for too close connections to the industry (both committee experts and secretariat employees), and for having an inadequate framework to deal with conflicts of interest (European Court of Auditors, 2012). The European Parliament also postponed its discharge of EMA's budget for 2009 and 2010 due to issues related to the management of procurement, transparency, and conflicts of interest (EMA Management Board, 2011a, 7; EMA Management Board, 2011b, 2; EMA Management Board, 2012a, 6; EMA Management Board, 2012b, 2; European Parliament, 2011; European Court of Auditors, 2013). The Mediator case, where a drug was available in France and caused great harm despite previous reports of adverse side effects already in 1998, also contributed to negative attention. Simultaneously, however, the agency has taken measures to deal with these challenges; for example, it has revised its agency transparency policy and conflict of interest guidelines and has reorganized the organizational structure of the secretariat (Court of Auditors, 2012; EMA Management Board, 2011b). The recently established Patients' and Consumers' Working Party (PCWP) has proven successful in improving relations with patent and consumer groups (#12, #13, #14, #15, #16).

In 2010, the pharmaceutical policy field in the Commission was moved from DG Enterprise and Industry to DG Health and Consumers (DG SANCO). As a consequence, EMA was 'added to DG SANCO's responsibilities' (DG SANCO, 2010, 3), a DG that until then had been one of EMA's greatest critics (#3, #4, #11). In the beginning, the relationship was characterized by tension, but started to improve after EMA's new Executive Director Guido Rasi was appointed in 2011 (#3, #11). In 2012, DG SANCO reorganized its unit in charge of pharmaceutical policy into two units, in order to improve its organizational capacity.

A tight informal hierarchy

EMA interviewees report that among the Community institutions, the Commission is EMA's most important contact (#6, #7). Officials both in the Commission and in EMA perceive DG SANCO as the agency's natural main interlocutor in the Commission.⁴ The intention is that all contact between the agency and the Commission should go via the two units in charge of pharmaceutical policy in DG SANCO, but mainly EMA's primary contact in the Commission, which is Unit D5 'Medicinal products – authorizations, European Medicines Agency'. This includes contact between EMA and other DGs as well as contact between EMA and other units in DG SANCO. This implies that there is little contact between EMA and other DGs (although there are some exceptions) and suggests that sector affiliation determines 'parent DGs'.

On the agency side, it is mainly the EMA secretariat that is in contact with the Commission. One EMA employee describes the degree of contact with DG SANCO as '[d]aily, all the time. At all the levels of the organization; in fact people will interact with them directly from the operational units.' At higher levels, EMA's Executive Director has annual meetings with the Commissioner, Director-General, and Directors in DG SANCO. At lower levels, there is a high frequency of informal contact supplementing the official contact channels between officials in the pharmaceutical units and in the EMA secretariat through meetings, teleconferences, e-mails, and phone calls. The Commission has two representatives (DG SANCO and DG Enterprise) on EMA's management board, where DG SANCO plays an active role; and a representative from DG SANCO is present at all EMA Committee meetings, where they are reported to be mostly observing (#1, #10, #11). However, it cannot be compared in scope to the interaction with the secretariat: the Board meets three to four times every year, and the committees meet once a month.

Coordination between the pharmaceutical units and the EMA secretariat is viewed as important by officials in both organizations: to EMA it is important that DG SANCO is continuously updated on agency activities, whereas to DG SANCO coordination is important in order to monitor and supervise the agency's activities. In order to be efficient, EMA depends on DG SANCO to approve its opinions, and thus it has become increasingly important for the agency to be attentive to DG SANCO's perspectives. This means paying careful attention to DG SANCO's signals with regard to information and clarifications.

We really have to make sure that what we give to the Commission meets all their requirements so that it will reach the patient. In that sense, in that exercise, they [DG SANCO] are indeed very important. (#6)

The frequency of coordination changes in the policy stage. When it comes to policy formulation, DG SANCO may ask EMA's advice when there is a specific need for technical expertise in developing legislation; and DG SANCO believes that EMA makes a valuable contribution in this connection (#1, #3). DG SANCO also makes use of the agency's competence by consulting it on technical issues in special cases, such as the recent horsemeat issue, but also at all stages of the process of preparing new or revising existing legislation as well as negotiating about it in the Commission and discussing it at the Council or the EP (#6, #7).

However, there is clearly more coordination when it comes to the implementation phase, where the level of coordination varies in relation to the task being implemented. There is little coordination regarding pharmacovigilance tasks, where the agency acts fairly independently. This seems to be the only area that EMA works relatively isolated from DG SANCO. Coordination is especially

important in the centralized procedure – at all stages from when the EMA secretariat receives and validates applications, up until the scientific opinion is handed over to the Commission. Coordination is crucial when it comes to potentially controversial issues arising during the procedure. Regular meetings are held prior to the meetings in the scientific committees, in order to ensure that DG SANCO is fully updated on difficult discussions and on how the agency is progressing. Also, once the scientific opinions are transferred to DG SANCO, they are often sent (by letter) back to the committees accompanied by a request for better argumentation and justification for the scientific opinions. The overall aim is to be proactive. Interaction follows formal procedures, but there are also different informal routines. The EMA secretariat involves DG SANCO as much as possible during the procedure in order to make sure that ‘the end result is something that is not a challenge or is going to cause any issues’ (#7).

The level and nature of contact and coordination has increased in recent years, in particular following the transfer of the pharmaceutical area from DG Enterprise to DG SANCO (Vestlund, forthcoming). DG SANCO puts more resources into supervising and overseeing agency activities than DG Enterprise did (#1). The reorganization into two pharmaceutical units has also increased DG SANCO’s steering capacity (#4). Together this indicates that the Commission’s organizational structure has significance for the character of the relationship. Furthermore, the level and nature of conflict have also changed in the same period. The two organizations have conflicting perspectives on how to interpret the legislative framework, and DG SANCO seems to be less attentive to EMA’s views in this regard. The founding regulation serves as starting point for most of the interviewees when they are asked to describe the relationship between EMA and the Commission, but they display differing interpretations regarding the respective roles the two organizations should play in the system. The formal division of labor and responsibility is perceived as clear, but it is acknowledged that the roles are not always clear-cut and that role interpretations may differ in both the Commission and EMA.

It very clearly says what the tasks of the agency are with regard to the Commission, and that’s how the agency was built up effectively. I think that underpins most of the relationship – ‘this is what we have to do, this is what they have to do, and how can we make it work together’.

(#6, EMA official)

Automatically you talk about tasks. There are two distinct roles here. It is clear that the Commission is responsible for the legal aspects of the work, the policies, the common approaches; they deal with other agencies as well. We are more an implementing, technical scientific agency that gives technical scientific input to the Commission that they can take into account for

their decisions. Yet in a way, we are an independent European agency, we are not an agency of the Commission, we are an agency of the European Union. Most of our task is indeed giving advice to the European Commission, but I think our relationship in general is like it is our partner DG in the Commission.

(#7, EMA official)

Well, the official term is that we are the partner DG [...] We used to use the French term *DG de tutelle*, but agencies don't like it. In the inter-institutional group's report I have noticed that they use the term DG partner, which is probably a more politically correct term.

(#3, DG SANCO official)

The fact that DG SANCO closely monitors and supervises the agency's activities is in itself a source of tension. DG SANCO justifies the comprehensive involvement in the agency's activities by the fact that they are ultimately legally responsible for the decisions that are made, and that they would have to defend the decisions in court cases (#1, #2, #3, #4). DG SANCO underlines that they focus on the legal dimension of the scientific opinions and scrutinize in order to ensure consistency and robustness in marketing authorizations. The agency is an independent agency and its scientific opinions should be based on the work of independent experts. They acknowledge, however, that things are never black and white, and that the lines between risk management and risk assessment are sometimes blurred (#1, #2, #3).

Officials in DG SANCO signal that EMA could avoid scrutiny by being more legally consistent in its work. The output of the committees is not always consistent, which is particularly the case with the work of the Committee on Human Medicinal Products (CHMP) and the Pharmacovigilance Risk Assessment Committee (PRAC) (#1, #10). Also, in light of the large amount of resources EMA receives, it is to some degree seen as underperforming: it does not focus sufficiently on core tasks but undertakes actions in areas where it is not delegated competence, such as creating new working groups or taking new initiatives in international affairs. Over the years EMA has become active in international cooperation: it has bilateral relations, for example with the American Food and Drug Administration and the Japanese Pharmaceutical and Medical Devices Agency, and participates in various international forums (EMA, 2010, 7; EMA, 2011, 11; Ernst and Young, 2010, 13). From DG SANCO's point of view, EMA has exceeded its mandate and authority in international relations. According to the founding regulation, the agency 'shall act upon request of the Commission' in international affairs. DG SANCO does make use of EMA's expertise, such as in trade negotiations, but perceives EMA's role mainly as a support to DG SANCO in this field (#1).

There is also an element of competition between the two organizations with regard to representing the EU internationally. In the view of DG SANCO, EMA has to some extent been taking on the role as the 'EU regulator', whereas that is formally the Commission's competence. EMA has also the time and resources to go to conferences and so on, whereas DG SANCO has less capacity to do so. Since it is DG SANCO that negotiates the budget in the Commission on behalf of the agency, it perceives the agency as undermining its own position by not sticking to its core tasks (#1, #3). The agency, however, views the supervision as interference with its work that is outside the mandate of DG SANCO (#10, #11).

From EMA's viewpoint, this use of resources is a natural consequence of the responsibilities that have been added by the Commission over the years, such as increased demands on efficiency and transparency, a new and wider span of tasks, and the growth in the number of committees (#6, #7, #8, #11). Furthermore, there is conflict regarding which concerns are important and which considerations should form the basis for decisions. On the one hand, DG SANCO and EMA share many concerns: they are generally both strongly committed to public health, to medicines reaching patients and consumers, and to quality and consistency in the output of the scientific work. On the other hand, the two organizations differ in their views on how these concerns are best promoted, and DG SANCO has increasingly challenged the opinions of the agency (#4). The Orphacol case serves as a good example of this. DG SANCO disagreed in this case on the validation of an application for marketing authorization and refused (twice) to issue marketing authorization. This was despite the twice unanimously adopted decision by the scientific committee and its support by the comitology committee (#3). In addition, DG SANCO and EMA differ in their views on the risk-benefit analysis that constitutes the basis for positive or negative opinions on marketing authorizations. Basically, the EMA committee experts base their opinions on the principle that if the benefit outweighs the risk, the product can be granted marketing authorization (although it also depends on patient groups, and so on). DG SANCO, however, requires not just that the benefit outweigh the risks, but that it does so to a great extent. This means that DG SANCO practices a stricter risk-benefit analysis than the scientific experts do in their evaluations (#10, #11). However, according to the interviews, EMA has not yet made any changes to the scientific opinions following comments from the Commission, but rather has tried to specify the foundations on which it has reached its conclusions.

Finally, DG SANCO issues guidelines for the appointment of experts. Recently, these guidelines were made stricter regarding the background of EMA experts, demanding five years' quarantine for experts that have worked in the pharmaceutical industry. The strict guidelines came as a response to public concerns raised as to the independence of EMA's experts and assertions of too close cooperation with the pharmaceutical industry. For EMA, this has

complicated the process of getting experts, since the best experts often possess their expertise as a result of experience from working within the industry and from developing medicines (#6, #7, #8, #11).

Concluding discussion

The establishment of the agency in the pharmaceutical field in many ways resembles vertical specialization in the sense that tasks initially administered by the Commission became increasingly specialized and decentralized until the establishment of the agency with a permanent secretariat and a management board. In light of established knowledge on department–agency relationships, showing that external vertical specialization tends to reduce interaction and possibilities for mutual impact, the two organizations are perhaps surprisingly close. Despite the absence of a clearly formulated formal hierarchical structure, the relationship between the Commission and EMA is now arguably characterized by an informal hierarchy, with the Commission influencing the agency's activities more than vice versa. Whereas EMA perceives the relationship as a 'partnership', the perceptions expressed by DG SANCO are more in line with 'parenthood', in the sense that it sees it as its responsibility to supervise and monitor the agency. The findings thus support previous studies showing that the Commission is close to agencies and that agencies relate to certain 'parent' DGs in the Commission. Although the agency questions the legitimacy of this 'parenthood', the *de facto* decision-making power that EMA is renowned for seems currently to be under pressure.

However, the findings show that interinstitutional distance and influence vary according to several factors: the policy stage, the implementation task and politicization, and the organizational structure of EMA and the Commission. As expected, the relationship is much closer in the policy implementation stage than the policy formulation stage. In the formulation stage, the Commission makes use of EMA's expertise when needed. In the implementation stage, the relationship is closer with regard to premarketing tasks than postmarketing tasks. Also, as expected, the relationship becomes closer when issues are politicized. Furthermore, DG SANCO's reorganization of its pharmaceutical unit into two units strengthened its capacity to follow up the agency. The informal hierarchy has also mainly developed after the move of the pharmaceutical portfolio from DG Enterprise to DG SANCO. These findings indicate that the Commission's organizational structure impacts on the relationship. DG SANCO may conduct a stronger steering of EU agencies belonging to its portfolio than DG Enterprise, but this can also indicate a general Commission trend of strengthening agency steering and relations. This would not be surprising in light of the new approach to agencies introduced in 2012 (Commission, 2012).

Additionally, how close the relationship is and how influential DG SANCO is varies according to the agency's organizational structure. Whereas the EMA

secretariat is very open to influence from DG SANCO and prepared to adjust its activities accordingly, the scientific committees are less attentive to Commission views. DG SANCO and EMA differ in their considerations as to what should be the foundations for decisions. Although DG SANCO scrutinizes EMA opinions to a greater extent than previously, scientific-technical decision making in the committees still seems to be safeguarded from political interference. The position of the secretariat between DG SANCO and the scientific committees seems to be significant in this sense. However, one implication is that in the longer term, the impact of the Commission on the EMA secretariat can threaten the scientific-technical decision making if the trend of assigning more scientific tasks to the secretariat continues.

Commission–agency relationships may take different forms, depending on the agency and the DG involved. All in all, the case study shows how the Commission indeed can be close to and impact on the operation of an agency without necessarily annulling the effect of ‘agencification’ at European level. The case study thus supports the hypotheses of normalization and executive center formation at European level.

Notes

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2. The background was a call by the Commission for a ‘common understanding between the EU institutions of the purpose and role of agencies’ in 2008 (Commission, 2008, 2), and the subsequent interinstitutional working group’s conclusions and the common approach presented in 2012 (Parliament, Council and Commission, 2012).
3. Analytical Fiche No. 31 (2010). Part of a number of ‘detailed analytical papers’ published in relation to the interinstitutional working group’s ‘2012 overhaul’. Available at <http://europa.eu/agencies/regulatory_agencies_bodies/>.
4. See also for instance DG SANCO’s management plan 2013 (DG SANCO 2013: 50): ‘DG SANCO will achieve further coordination and coherence in the supervision of the four Regulatory Agencies for which it is the Commission’s interlocutor’. See also DG SANCO’s annual activity reports for 2010 (DG SANCO 2010) and 2011 (DG SANCO 2011).

Interviews

- #1 Official, DG SANCO
- #2 Official, DG SANCO
- #3 Official, DG SANCO

- #4 Official, DG SANCO
- #5 Official, DG SANCO
- #6 Official, EMA
- #7 Official, EMA
- #8 Official, EMA
- #9 Official, EMA
- #10 CHMP member
- #11 Management board member
- #12 Policy officer, EFPIA
- #13 Policy officer, EPHA
- #14 Policy officer, EPF
- #15 Policy officer, AESGP
- #16 Policy officer, BEUC

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Part VII

Vertical and Horizontal Administrative Interaction

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21

Horizontal Capacity Pooling: Direct, Decentralized, Joint Policy Execution

Eva G. Heidbreder

Introduction: New trends in multilevel administration

A long-standing problem of policy making in multilevel systems is the structural gap between higher-level policy formulation and its lower-level implementation. Inside the European Union (EU), the problem is well known and has been subject to extensive research on compliance and the EU's executive order. Although the Commission is responsible for the implementation of most European Community policies, it lacks the means for effective policy execution. The authorities of the member states, often at regional or local level, execute policies; and they act under the general principle of national administrative autonomy when implementing EU law. This creates a dilemma that is difficult to resolve: policy execution is controlled and ensured by the Commission, which lacks the material, personnel, and legal means to steer the bodies that actually carry out the execution, because these bodies remain formally integrated in their independent state hierarchies.

Thus, the EU suffers from a structural mismatch between legal and organizational administrative integration. As the regulatory polity, it is legally highly integrated, while the administrative system rests on split authorities, dispersed network coordination, and the formal independence of different bodies. This mismatch is particularly evident in certain fields that fall under the general principle of mutual recognition that obliges national authorities of one state to apply the matching legislation of a partner member state (Schmidt, 2009). Any failure to execute correctly creates negative externalities for the whole single market. 'Failed, incorrect, or limited implementation from a Member State will potentially lead to a failed, incorrect, or limited implementation in all Member States' (Lafarge, 2010, 608). This interdependency highlights the relevance of effective administrative coordination that necessitates administrative capacities at national, regional, and local levels within the member states.

The argument put forward here is that the Commission currently promotes a model of administrative cooperation, which has so far gained little attention.

The logic of this coordination mode is purely horizontal and thus differs in essence from traditional solutions to implementation inefficiencies at lower levels, namely the conferral of capacities or control powers to higher levels of the system (that is, from local or regional level to national or European level). The new coordination mode is characterized as direct (without intermediaries), decentralized (wherever the competent authority is located), and joint (compound procedures between competent authorities) policy execution.

What sets this approach apart from other modes of multilevel administration? Firstly, the increasing emphasis on horizontal rather than vertical coordination is linked to a revised policy agenda that shifts attention from legal rule setting to actual administrative policy enforcement. The relevance of horizontal linkages in policy execution is well established (for example, Neyer and Wolf, 2004). Horizontal cooperation has, however, been primarily conceptualized as a quasi-intergovernmental mechanism in contrast to top-down harmonization (see Benz in this volume). Beyond this notion, one can observe a more programmatic promotion of horizontal cooperation within a strong supranational frame as a genuine solution to common concerns. The intended link between a powerful EU agenda and new, shared policy instruments is vital for observable changes. Secondly, there are indeed new solutions for previously unresolvable problems. This concerns above all electronic instruments that offer tools to overcome language barriers and, more arguably, to help to build mutual trust between competent authorities that are embedded into different national jurisdictions. Thirdly, the new tools have so far stood the practical test. Based on their success in selected pilot areas, the Commission sees a very high potential in the e-governance-supported horizontal coordination and is rapidly expanding the tools and coordination mode to multiple policies. The leadership of the Commission's Directorate-General (DG) Markt has been central to this parallel development of a policy agenda, instruments, and successive expansion of horizontal coordination.

This decisive reemphasis on the usage of horizontal solutions is still very recent. The first applications were established in 2008, while the broad policy agenda in which the coordination mode is embedded was launched in 2011. Therefore, this chapter cannot offer a finite evaluation of the changes and innovations presently unfolding. Notwithstanding this, the empirical analysis highlights distinct features that allow the specific coordination logic to be defined. Thus, the chapter offers an empirical description of a coordination trend and the conceptual classification of this administrative logic, which differs from traditional horizontal enforcement in the shadow of Commission compliance control. The next section will outline the policy agenda and political context behind these developments. It follows an illustration of the actual policy instruments that have been installed to realize these goals. Focus is limited to the most prominent tool, the Internal Market Information System

(IMI). The chapter closes with an outlook on the implications for the EU's administrative system at large.

The agenda: Solutions to administrative insufficiencies

Obligations to administrative cooperation among member states have existed for a long time but were not based on any coherent and comprehensive template. Where existent, cooperation clauses were included in policy-specific regulations. However, a more encompassing recognition of administrative cooperation as an end in itself emerged when DG Markt placed increasing attention on the question of effective policy enforcement in its policy agenda. The turning point was the report 'A New Strategy for the Single Market: At the Service of Europe's Economy and Society' drafted by Commissioner Mario Monti (Monti, 2010). The bottom line of this report was that to really complete the single market, focus had to be shifted away from drafting regulations to the effective implementation of existing regulations. This report thus placed the question of 'governance of the single market' on the single-market agenda and triggered a reorientation toward policy enforcement.

The Commission responded to the Monti report with its communication *The Single Market Act: Twelve Levers to Boost Growth and Strengthen Confidence 'Working Together to Create New Growth'* in early 2011 (European Commission, 2011b). This programmatic document spells out the major enforcement obstacles to realizing the full potential of the single market. To tackle these challenges, the 2011 Single Market Act suggests measures under 12 titles that cover policies of key relevance (European Commission, 2011b). In addition, the act was further elaborated in the Single Market Act II (European Commission, 2012d). The rapid and ample regulatory and programmatic follow-up indicates the high relevance of the act as a template for the Commission's approach to steering the single market.

Contentwise, the Single Market Act is in line with Monti's emphasis on rebalancing efforts away from additional legal harmonization to more effective policy execution. Since attention is drawn to the operational side, the improvement of administrative rather than legislative measures lies strongly behind the heading 'Governance of the Single Market'. The relevance attributed to better enforcement is not least reflected in the organizational chart of DG Markt that introduced a new single-standing Directorate (Dir. B: Governance of the Single Market).

In parallel to the Commission's changing demands on member states, the member states themselves started to raise questions about administrative capacities. This was due to the outlook on practical challenges linked to the implementation of the Services Directive (European Parliament and the Council, 2006). The introduction of a free movement of services massively increased

the necessary exchange of information between multiple competent, often regional or local, authorities. Since the member states anticipated that their existing administrative capacities would not be sufficient to handle the additional administrative burdens, they requested more effective assistance from the EU (Interview 3, DG Markt, March 2013). In response, the Services Directive introduced the obligation to administrative coordination among member states, which was to be realized by applying the IMI system. The directive was a key decision for the introduction of the new, horizontal coordination logic, which led some authors to claim that '[i]ts proper title should perhaps be "the Directive on harmonisation and modernisation of public administration"' (Davies, 2007, 239) (Schmidt, 2009, 860).

In summary, the increased political attention on policy enforcement and the recognition that the obligation to administrative cooperation was a necessary condition to manage the free movement of services gave horizontal administrative coordination a more pronounced role on the Commission's agenda. The direction taken in the Single Market Acts was reconfirmed in reports and declarations by the Council and the European Parliament and was further specified in the Commission's Communication 'Better Governance of the Single Market'. This document stresses, on the one hand, the aim to make 'swift progress in key areas with greatest growth potential' and, on the other hand, proposes 'concrete measures to further improve the Single Market "governance cycle", i.e., the way Single Market rules are designed, implemented, applied and enforced' (European Commission, 2012a, 3). The explicit inclusion in DG Markt's agenda was complemented by concrete measures and specific steering tools (European Commission, 2012b, 8–11). Along the 'single market governance cycle', specialized steering tools are defined, which we will turn to now to capture the actual changes implied by the enforcement-focused governance agenda. While horizontal coordination has always been relevant to EU policy execution, the Single Market Act marks a shift to a more comprehensive approach that focuses on administrative tools.

The instruments: Direct, decentralized, joint administration

The emphasis of policy enforcement under the heading 'governance of the single market' is essential for the creation of new policy tools because it renders horizontal coordination a policy goal in its own right. The measures the Commission developed are geared toward two administrative tasks for (sub)national authorities: the interchange and cooperation between competent authorities are to be improved and the service delivery for citizens is to be improved, which means subnational authorities have to build up the resources to offer information and assistance to citizens.

The specific instruments and programs for each step of the policy cycle are summarized in the 'governance check-up' for the year 2011 (European Commission 2011c, 8, see Table 21.1), which various units in DG Markt use as a key reference document (Interviews DG Markt, March/April 2013). For each stage, different target groups are addressed: transposition by and compliance of state authorities (Scoreboard), information and assistance for citizens and business offered by EU and national platforms (YourEurope, Enterprise Europe Network, PSC, SOLVIT), and tools for networked early problem resolution (SOLVIT, Pilot) and improved cooperation among public administrations (IMI). Part and parcel of these tools is the application of electronic gateways, which allow the administrative capacities of different member states to be pooled, rather than conferring substantive competences to supranational level. On the one hand, electronic communication serves to offer low-level conflict resolution among national administrations (SOLVIT) and/or between administrations and the Commission (EU Pilot), and, on the other hand, it serves to deliver better services to citizens (information and enabling tools).¹

Together, the full cycle's objective is to offer efficient EU policy services to citizens. The only tool exclusively targeting public administrations is IMI, while SOLVIT supports the back-office communication in cases of conflict or coordination failure in the delivery of services to citizens. IMI is a virtual network for sharing information between the decentralized competent authorities involved in a particular transnational administrative procedure. It is an easy-access electronic platform through which registered authorities can directly reach their counterparts in other member states. Member states are obliged to develop national capacities to participate in IMI, but have far-reaching discretion on how to organize their national IMI implementation. Moreover, the Commission does not have access to the data exchanged, but only monitors the number of requests and responses processed through the system. According to the Commission, compared to other tools, 'one of the advantages of IMI is that it is so flexible. You as administration do not have to try and fit and squeeze your administration into the constraints of the system but the system can easily be adapted to whatever structure there is' (Interview 1, DG Markt, March 2013).

The technical facility was introduced in 2008 and gained tangible relevance in connection with the Services Directive. The application was first pilot tested in the Recognition of Professional Qualifications (Council of the European Union 2004, together with two earlier Directives, Directive 89/48/EEC and Directive 92/51/EEC), an area closely connected with the free movement of services. The cross-country recognition had been a problem ever since the introduction of the first directive. Part of the challenge is that competent authorities that register professional qualifications are often located at regional or local level, varying greatly across member states. Therefore,

Table 21.1 Policy tools according to stage in governance cycle

Policy stage	Policy tool	Policy goal	Target group
Monitor	Internal Market Scoreboard (<i>statistics</i>)	Correct, timely transposition EU Internal Market law by Member States (<i>since June 2013 only online</i>)	Member-state legislators/governments
Inform	YourEurope (<i>website</i>)	Single gateway to offer citizens' information and access to rights under EU law	Citizens
	YouEurope Advise (<i>e-gov. portal</i>)	Advise for citizens' concerns by member state legal experts in contact with Commission	Citizens
	Enterprise Europe Network	Advise for Business	Business
Enable	Points of Single Contact (PSC) (<i>e-gov. portal</i>)	Simplification/speeding up of administrative procedures to enable citizens to use their rights	Citizens
	SOLVIT centers* (<i>one-stop administrative service</i>)	Access point for citizens (national)	Citizens and business
Connect	Internal Market Information System (IMI) (e-gov. network)	Administrative cooperation across borders	Member state public administrations (competent authorities only)
Solve	SOLVIT (<i>e-gov. network</i>)	Problem solving between member states when misapplication of Internal Market law by public authorities	Member (+ certain EEA) states' public administrations
	EU Pilot (<i>e-communication tool</i>)	Problem solving in application of EU law/conformity of national and EU law (before infringement procedure)	Commission services and member-state authorities
	Internal Market Scoreboard	Reporting system on 13 governance tools (<i>since June 2013 only online</i>)	Member-state authorities
Evaluate	Regular meetings of coordinators for tools (IMI, SOLVIT, Scoreboard) Specific, for example EUGO network PSC*	Feedback from all stages	Participating officials, responsible coordinators on national level
Adopt		Development of new rules, adaptation, simplification	Commission services

Source: Based mainly on (European Commission 2011c, for a comparison Heidbreder 2013),* added to list by author

the big advantage of the IMI system for us [in the recognition of professional qualifications] is that one can put regional authorities into contact with each other in order to avoid having to go up the whole ladder to Berlin or to Paris where you would find one person who rings up another capital city. Instead they can communicate directly.

(Interview 2, DG Markt, March 2013)

A major technical innovation was the introduction of an automatic translation service that operates through preset questions. A number of enduring 'gaps in administrative practice and EC law that complicate the successful application of mutual recognition' (Blitz, 1999, 328) are thus tackled: information is directly exchanged by decentralized authorities, language barriers are circumvented, and direct contacts increase mutual trust between jurisdictions.

Following the successful completion of the pilot phase applying IMI to the Professional Qualifications Directive, the IMI Regulation created a single-standing legal base for the use of IMI. This also leveled the ground for its extension from the original areas (services, professional qualifications, posted workers) to patients' rights, cross-border Euro cash flows, and SOLVIT (European Parliament and Council, 2012). The further extension of IMI is explicitly foreseen and reaches out into justice and home affairs and other areas (for a list of operational/envisaged electronic tools, see European Commission 2011a, 11). In addition, the regulation offers the possibility for states to use the instrument internally and thus opens the door for the territorial and substantive legal expansion of IMI. Essential for this horizontal coordination is that information remains with the member-state authorities. The Commission can only monitor the overall number of requests exchanged through IMI and has no access to the actual data.

Across services, the Commission rates the overall performance of IMI very positively. Since its introduction in 2008, in the professional qualifications field the number of requests has risen to almost 900 in the last quarter of 2012. Against expectations, the number of requests on services remains low (approximately 110 in the last quarter of 2012), while IMI has very quickly grown to about 250 requests in the area of posted workers, where it was introduced in 2011 (European Commission, 2012e, 12–13). The number of registered authorities varies between seven in Luxemburg and nine in Iceland to 948 in Spain and 2,145 in Germany (European Commission, 2012e, 4). Although these numbers may not appear impressively high, the Commission attaches high expectations to the tool, especially since new areas were added in the IMI Regulation. The reasons for the positive outlook are threefold: firstly, the system technically works, which has led some member states to also consider using IMI for their national coordination. Secondly, the necessary coordination structures have been set up in all member states, and a complex network is incrementally

building up, backed up by regular meetings and training. Thirdly, the IMI Regulation resolves some legal issues, especially on data protection, which makes the expansion of IMI attractive for further policies.

In the words of a high Commission official, the instrument has passed a relevant threshold:

There is always a tipping point that leads to success. So if you have got all these disparate public administrations and ways and methodologies of working all over Europe, and you give them a tool that actually works, then that becomes a kind of a trigger for the next level. [...] And what we have discovered is [...] even though public administrative methods are totally different all over Europe, and even though we speak different languages, if you put in a system that is simple and easy to use and if you can get over the language barrier, people can see the benefit of it. And they might say 'it is different to the way we work here but actually we could work with that just as easily'. And it is streamlining a lot of places, you know, maybe that were neglected.

(Interview 3, DG Markt, March 2013)

In summary, the tools that have been developed to improve EU policy delivery go beyond improved compliance control. Along the model of a policy cycle, the innovative elements cover various electronically implemented communication, information, and conflict resolution tools. Key to the approach is that competent authorities are directly linked to facilitate joint policy execution without centralizing competences. Even though at EU level the member states are merely obliged to cooperate, instruments such as IMI are 'linked to national public administration modernization. If you want to establish this kind of network, you also need that all administrations are kind of flexible somehow' (Interview 11, DG Markt, April 2013).

Theorizing the results: Beyond convergence and centralization

To theorize the empirical picture, I will confront the coordination model with two standard views on the EU's multilevel administration. The main driver pushing for increased administrative cooperation is the need to accommodate the legal obligations of regulatory integration short of a corresponding genuine EU administration. Although the Treaty of Lisbon (2009) for the first time states an official 'supporting competence' in administrative matters for the EU (Article 6 and Article 197 TFEU), it does not create substantive EU competences for national administrations. Involvement by EU institutions remains limited to policies for which EU-level intervention is explicitly delegated. Overall, dispersed rules on administrative matters have been neither consolidated

nor generalized across policy fields, except for some general administrative principles established by the Court of Justice of the EU. Thus, the EU's administrative system operates on a scattered assemblage of issue-specific executive rules that is neither comprehensively unified nor systematically organized and a small number of underlying principles that have developed from administrative practice by decree and Court intervention (Heidbreder, 2011). The literature has brought forth two dominant theoretical viewpoints to analyze the underlying integration dynamics of the multilevel administration.

Theoretical takes on the multilevel administration: Convergence and center formation

The two main perspectives on the EU's multilevel administration are well captured by the respective main hypotheses on administrative governance. Firstly, the convergence hypothesis is based on a Europeanization logic. The expected causal mechanism is that the requisites for executing the same supranational policies will create adaption pressures inside national administrations. In consequence, national administrations will eventually develop similar administrative structures and practices and will therefore incrementally converge (Olsen, 2003). However, the convergence process is not automatic but may be counteracted by vested interests held by national veto players (Knill and Lehmkuhl, 2002). Moreover, administrative traditions and institutional preconditions have a strong impact on whether and how Europeanization shapes domestic administrations (Knill, 2001). Although Europeanization is theorized to have a substantial impact on participating bureaucracies, it does not necessarily lead to homogeneity between the systems (Page, 2003). Persistent divergence, the competing null hypothesis, is arguably by and large a more precise empirical description than overreaching convergence (Goetz, 2001). However, despite the fact that deep-rooted differences endure, over time some convergence is expected to evolve from vertical, regulatory integration, for which more fine-grained analyses have also provided evidence (Kassim, 2003). Horizontal exchanges are not the main focus of Europeanization but are partially captured by a variant of these incremental adaptations, namely the continued intense cooperation among national officials and the incremental fusion among national units that will result in a form of merger into a new administrative system (Wessels, 1998).

A different evolutionary dynamic of the European administrative system is put forward by the centralization hypothesis (see Trondal and Peters in this volume). From this angle, EU integration is conceptualized as a larger polity formation process in which the Commission emerges as the core executive (Coombes, 1970) and central administration. The underlying causal mechanism derives from the theoretical assumption that EU integration equals a larger process of center formation, which implies at least a minimum of bureaucracy

centralization (Bartolini, 2005). Empirical research tracing bureaucratic center formation depicts the evolution of a Brussels-centered administrative order with the European Commission at the hub (Trondal, 2010). As with the Europeanization perspective, the state formation dynamics also capture a predominantly vertical integration: both approaches aim to explain the shift of competences and capacities across levels of governance. From the centralization angle, horizontal administrative cooperation is mainly depicted in the creation of new coordinating institutions that manage and pool domestic resources. The substantive increase of European Community and executive agencies in the EU gives ample evidence for this specific form of centralization of autonomous capacities. Accordingly, the agencification of capacities both at EU level and within member states and the institutionalization of various committees can be read as a centralization effect of administrative coordination (Egeberg and Trondal, 2011).

Theoretical limitations: Accommodating direct, decentralized, joint policy execution

How well can the Europeanization and center-formation theories capture direct, decentralized, joint policy execution? Horizontal capacity pooling was above described as institutionalized, compulsory, direct networking between competent authorities that is facilitated by supranational technical coordination tools. This definition encapsulates a coordination style and integration mode that is distinct from both incremental domestic convergence and supranational center formation. In fact, it even contradicts convergence and centralization logics in central points.

Firstly, in contrast to Europeanization, the dependent variable is not the degree to which 'Europe hits home' and changes domestic administrations (Börzel and Risse, 2000) but rather the joint organization of policy execution in an institutionalized and technically interconnected network. Although member states remain fully autonomous in how they organize their cooperation structures and rules (that is, all institutional issues), changes in administrative behavior occur. Since the end users of tools such as IMI are competent authorities, actors at desk officer level have to be enabled to interact directly with their counterparts. Such a joint execution hollows out autonomous national coordination and control hierarchies. Whereas the underpinning logic of Europeanization still mirrors the conceptual divide between different administrative levels and analyzes their mutual effects on each other, the move to joint decentralized execution as European Public Service dissolves the conceptual division across levels. Notably, the Commission steers this process not through institutional or regulatory change but through the facilitation of joint procedures. In parallel, discrepancies between legal and administrative integration are no longer conceptually resolved by a convergence of law and structures.

On the contrary, the lack of harmonization is tackled by creating information and cooperation networks that can accommodate the administrative impact of applying mutual recognition between separate jurisdictions. In essence, because of persisting non-convergence toward a Europeanization model, obligations to administrative cooperation, early conflict resolution, and trust building become inevitable.

Secondly, the horizontal pooling of capacities clashes directly with the centralization hypothesis. Under horizontal coordination, administrative capacities (and costs) remain national and are not conferred to the Commission or EU-level agencies. It is actually decisive for the pooling of national resources and direct, joint, policy execution that no competences for national administrations are conferred to EU level. In fact, IMI was set up without granting the Commission access to the information exchanged. The data remain – legally and practically – in the hands of the exchanging competent authorities. Key to the coordination strategy is exactly the opposite logic of centralization: the institutionalization of decentralized coordination, in which the Commission acts as a technical facilitator but is not an administrative or political actor in its own right in the electronic exchange network.

In essence, the instruments promoted reflect a comprehensive set of tools to realize a concept of networked and pragmatic solutions to problems of multi-level policy execution. It departs from a legalistic approach that built on the clear attribution of authority and mechanisms of harmonization or centralization to overcome implementation challenges in the single market. Even though the tools of the ‘governance cycle’ may eventually lead to more convergence, this outcome is not the actively promoted objective. The enforcement-oriented agenda has strengthened an administrative mode that overcomes the challenges of multilevel administrative acts by empowering decentralized authorities to establish networked and routinely interlinked working practices while sustaining national autonomy on institutional and structural decisions. This mode challenges both the convergence and the centralization hypotheses of administrative integration.

Conclusion: The scope and implications of reinforced horizontal cooperation

The present analysis outlined the structure, logic, and potential of horizontal administrative coordination in the EU. Confronting the logic of this approach with previous ones draws a picture of a new model of multilevel administration. The approach speaks therefore directly to the distinct notions of multilevel administration developed in other chapters of this volume (see Trondal and Peters; Benz; Grande and McCowan in this volume). The model of direct, decentralized, joint policy execution is marked by these key characteristics:

- Political focus: policy enforcement practice (instead of regulation)
- A steering approach: facilitating a horizontal joint execution (instead of mere transposition/compliance control in single states)
- Administrative capacities: pooled across member states (instead of conferred to EU level)
- Coordination tools: electronic networking of executing authorities (instead of centralization or harmonization of resources)

The relevance of this approach as a distinct, additional mode of multilevel administration lies in the fact that it offers hands-on solutions to implementation failures that could not be sufficiently resolved before. The application of the coordination mode to the recognition of professional qualifications illustrates the practical function logic. Only the introduction of IMI and the automatic translation service enabled regional and local authorities to actually meet mutual recognition demands. The cooperation and informal communication and advice tools are in line with the conception of a single EU public administration that embraces and affects all levels (for example, Hofmann, 2008). The elaboration and expansion of IMI to all kinds of policy problems illustrates the underlying integration dynamic. Thus, the potential scope of coordination tools such as IMI is considered ‘very relevant for the Single Market, second for the citizens, and third to push the digitalization of administrations massively, massively’ (Interview DG Markt, March 2013).

A caveat of this chapter is that it cannot yet offer cross-time evaluations of changes since the developments are still too recent. In consequence, the data referred to focus almost exclusively on the Commission’s perspective and one policy tool (for a policy comparison, see Heidebreder, 2013). However, the administrative model emerges clearly from this analysis and encourages further research on the dynamics and implications of the changes entailed. The most relevant questions turn around the administrative structures and normative assessments of direct, decentralized, joint policy execution. The technocratic decentralized networking implies a depoliticization of procedures, which is not at all neutral in its effects. On the one hand, administrators interact more technically through systems in which they provide standardized information. On the other hand, the traditional chains of communication through ministerial and diplomatic channels are virtually bypassed. Tangible issues include data protection, administrative control, and procedural responsibility. The changed administrative behavior, the shift of attention from a legalistic to a practical enforcement-oriented approach, and the innovative provision of new technical network solutions raise a host of research questions, relevant not only for the EU but also for multilevel administrations of governance beyond the state more generally.

Note

1. Other, not further discussed, tools listed in Table 21.1 support the horizontal coordination among authorities and the cross-country service delivery for citizens. For the latter, member states are obliged to set up citizen contact points in each member state (PSC). For the former, the SOLVIT network connects national administrations to improve single-market-related services for citizens. Pilot has advanced to the dominant means of communication between the Commission and member states for early conflict resolution, which has contributed substantially to reducing the number of infringement procedures by clarifying misapplications informally (Interview 11, DG Markt, April 2013).

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EU Administration and Interaction with International Organizations

Bob Reinalda

Introduction

Does a European Union (EU) administration responsible for interactions with international organizations (IOs) exist? It does; but most people will find it difficult to indicate its precise location. Even if they point to the European Commission's Directorate-General for External Relations (since 2010 the European External Action Service), it will be hard for them to identify the numerous interactions with a large variety of IOs. There are various reasons for this specific invisibility. Firstly, foreign policy, whether related to 'low' politics (for example, trade) or 'high' politics (for example, security), is a matter for nation states, which decidedly are aware of their national interests. Even if states cooperate in specific areas (for example, coal and steel), common foreign policies will meet with resistance, as they may reduce the national room for maneuver. Thus, it is no surprise that it took a long time before the EU had established its (still limited) foreign policies. Paradoxically, a regional group of states with internal policies needs external policies too, and EU member states only went ahead with common foreign policies after a lot of arguing and the acceptance of gradual expansion. This process resulted from ongoing evolution in practice and incremental decision making. Secondly, IOs exist and function, but for outsiders it is difficult to perceive what is going on, even if IOs are transparent about their work. Relations among IOs are even harder to recognize, and are also underresearched, although more attention is being paid to interorganizational relations (Biermann, 2011) and interregionalism (Van der Vleuten and Ribeiro Hoffmann, 2013). Complexity plays an additional role in the EU case because of the variety of institutions, the mixed character of the organization (both intergovernmental and supranational), and the ongoing consolidation of numerous treaties. Thirdly, the slow pace of interactions among IOs further enhances invisibility. It takes time (a matter of years) to establish relations and to build up agreement and interactions among them. Nonetheless, interactions between the EU and other IOs were already an issue

at the very beginning of European integration and have evolved ever since, through both the Commission and the Council.

This chapter focuses on the institutional arrangements and mechanisms in the EU's external administration, particularly with regard to IOs. It follows ideas about the development of new institutional constellations and configurations with the possibility of independent administrative capacities, internal integration, and co-optation among agencies and among IOs (see Chapter 5 by Trondal and Peters). Two main sections discuss the creation of the Commission's (supranational) external machinery and the creation of the Council's much weaker intergovernmental machinery, which took over the former's administrative capacity in 2010.

Explaining the coexistence of two external machineries

How to explain the coexistence of two external machineries in the case of the EU? The room for maneuver of the supranational Commission can best be understood through institutional approaches. States create institutions to perform functions from which they benefit, and the principal-agent theory explains that principals (states) delegate powers to agents in order to lower the transaction costs of policy making, while also aiming to control the agent. In the case of the European Economic Community (EEC), the Treaty of Rome's Article 113 empowered its Commission to serve as sole EEC negotiator in the area of external trade, with the Article 113 Committee (discussed below) serving as an oversight mechanism (Pollack, 2006). While global markets set imperatives, trade policy is one way in which the EEC's external 'presence' is manifested, with the Commission as its identifiable and also dynamic actor. Historical institutionalism adds to this by its understanding that institutions create path dependencies. While in the context of early European integration the creation of supranational institutions with identifiable competences and powers was rooted in the particular historical context of postwar reconstruction and looming bipolarity, these context-bound decisions determined the path of subsequent European integration, with bodies such as the Commission acquiring distinctive and ongoing agendas (Rosamund, 2000, 117) and showing entrepreneurship by exploiting differences between member states and looking for support from other actors, such as IOs. However, it should be kept in mind that with regard to policy making, the Commission has always competed for leadership with other actors, particularly with the rotating presidency of the Council of Ministers (Tallberg, 2006). Both its external 'actorness' (the Commission being perceived as important by external partners, such as other states and IOs) and internal competition (with the Council or Permanent Representatives) are incentives to build up structural prerequisites for action at international level and for internal achievement, such as a set of diplomatic agents and a robust and competent administrative capacity (Rosamund, 2000, 176–177).

In line with realism, a common foreign policy of the European Communities was not to be expected, given the unwillingness of the member states to delegate foreign policy powers. This implied limited policy-making capabilities for the Council of Ministers, its substructures (that is, a weak administrative capacity), and its presidency, with the latter being in essence a national actor and struggling with continuity problems due to its rotating set-up. However, the EEC's presence in the world through its successful common commercial policy compelled the Community (later Communities and Union) to define its relations with the rest of the world, which had built up certain expectations of the Community as a major actor, and to elaborate its foreign policy actorness (Keukeleire and MacNaughton, 2008, 200). Becoming also a foreign policy actor was a matter of intergovernmental incrementalism against the background of shifts in the global security structure (international turmoil, the end of the Cold War). An informal practice of cooperation intensified; a new strategic actor without formal footing in the treaty arose (the European Council); and a set of institutional bargains resulted in formal arrangements, with an expansion of the EU's foreign policy competences after the most important member states had converged their expectations in the Single European Act of 1986 (Moravcsik, 1998). Given its intergovernmental character and its competition with the Commission's external actorness, this foreign policy machinery has sidelined the Commission in its foreign and security policies, and has focused on security IOs. In spite of obvious progress, these intergovernmental dynamics show several flaws. The European Council, politically the locus of power within the EU, defines the EU's foreign policy principles and general guidelines. However, it cannot provide permanent strategic leadership for many foreign policy dossiers, because the heads of government and state remain aware of their national interests and only meet a few times a year. The European Council also competes with the Council, which, as a meeting of foreign ministers, may be at the heart of EU foreign policy making, but in practice 'decides precious little and is struggling to live up to expectations of it as the EU's main foreign policy decision-making forum' (Keukeleire and MacNaughton, 2008, 71). Another flaw is the weak administrative apparatus of the two bodies. It can thus be expected that, with EU foreign policy expanding, its administrative capacity needs to be enhanced. However, given the coexistence of two external machineries, we cannot expect a strong external capacity to develop, but rather one with outcomes based on boundary conflicts and compromises.

The creation of the Commission's external machinery

Even though nation states invest intensively in the design of the IOs they are to establish, the constitutions they agree on do not prescribe everything and the 'agent' may be ahead of the 'principals' by taking the lead when issues are open.

Creating a diplomatic network and a bureaucracy

A few days after the European Coal and Steel Community (ECSC) began its work in August 1952, the issue was raised as to whether its High Authority was allowed to receive foreign representations. It actually did so, and both the United Kingdom and the United States, followed by other non-member states, saw the High Authority accredit their ECSC diplomatic missions. High Authority President Jean Monnet did not regard the United Kingdom's refusal to become an ECSC member as a definitive 'no' and wanted to discuss Britain's so-called Eden Plan of late 1952, which was designed to confer political authority over the ECSC on the Council of Europe (established in 1949), with both the British government and the Council of Europe. Because the ECSC Treaty did not mention an authority to do so, three renowned international jurists were asked to give their opinion. They concluded that, given the ECSC's design, the High Authority should engage in such negotiations. They also proposed a working method for the relationship between the two IOs: autonomy in their own fields and well-prepared common meetings, something which in practice functioned well (Wellenstein, 1979, 8–11).

An invitation to visit Washington DC and discuss politics with the American president and members of Congress in 1953 confirmed the High Authority's external role. In 1954, Monnet hired an American to inform the American public about European developments and to lobby members of Congress, which was followed by the establishment of an ECSC information office in Washington. In 1955, the ECSC set up an ambassador-level delegation as well as an information office in London. The two European Communities established in 1957 – the European Atomic Energy Community (Euratom) and the European Economic Community (EEC) – used the ECSC's external facilities, although Euratom also set up its own office (and also later a liaison office) in Washington, which as a result of McCarthyism was closely observed by the American authorities. In November 1958, the EEC Commission began to establish information offices in countries and at IOs and proposed to the other Communities that they should have common diplomatic and other missions. As a result, the ECSC and Euratom offices in Washington DC merged, and the ECSC liaison office for Latin America in Santiago de Chile, set up in 1956, became a common office.

When the High Authority and the two Commissions merged into a single Commission in 1965 (Merger Treaty), their external role was maintained, although France attempted to curb the Commission and had protested when Commission President Walter Hallstein wanted a new head of the London delegation to represent the three Communities with all the powers given to the High Authority. With regard to foreign representations to the Communities in Brussels, the heads of mission followed the ECSC practice of presenting their

letters of credence to the Commission President, who informed the Council of Ministers. However, when Hallstein proposed a protocol similar to national protocols during the 'empty chair' crisis of 1965, this annoyed France and created a conflict between the Commission and the Council, which in January 1966 resulted in the compromise of presenting letters of credence, without ceremony, to the Presidents of the Commission and the Council. The number of accredited missions was 13 in 1960, 68 in 1965, and 85 in 1972. When the US government accommodated a Commission member, who was to discuss General Agreement on Tariffs and Trade (GATT) affairs with the president, in Blair House, which generally hosted foreign heads of state, the French ambassador in Washington protested vehemently (Bossuat and Legendre, 2007, 344–350).

Internally, a Director-General managed the Directorate-General for External Relations, set up in 1958 by the EEC Commission, which had four directorates: (i) general affairs and relations with IOs, (ii) association with non-member countries, (iii) bilateral relations, and (iv) trade policy (negotiations). Most relevant for policy making, the ECSC began to supply statistics in 1953, with Eurostat becoming a Directorate-General in 1958. In 1967, the Commission diversified its external administration with Directorates-General for External Relations (I), External Trade (XI), and Development Aid (VIII). The Council of Europe's 1949 decision to locate its Parliamentary Assembly in Strasbourg inspired the Luxembourg-based ECSC to locate its Common Assembly (since 1962 the European Parliament) there too. The 1965 Merger Treaty events implied that the Commission and the Council with their staff divisions were grouped together in Brussels, while the Parliament's Secretariat remained in Luxembourg as compensation.

The EEC's internal negotiating game and external compass reading

The boost to the Communities' external relations resulted from the combination of three factors: the common agricultural policy (CAP), an internal negotiating dynamic between the Commission and the Council, and the Commission's forward-looking external vision.

Once the member states had defined the CAP's main features (common prices, market rules, and incentives to increase production) in Stresa in 1958, the EEC Commission elaborated these in such a way that the Council was able to endorse the policy in 1962, which provided a solid support base for European cooperation. The Commission's initiating function (making recommendations or giving opinions on matters resulting from the treaty) was performed in cooperation with the Council, in which ministers could accept or reject the Commission's proposals. This led to a new form of negotiating among the member states, due to the fact that the Council could reject a proposal by a two-thirds majority but could also amend it, albeit only unanimously. The two bodies engaged in a newly developing negotiating game in which the

Commission was able to contribute detailed proposals, but from an early stage had to take account of the political wishes of the member states. This happened as early as when drafting proposals, because the Commission had to consult with the Committee of Permanent Representatives (COREPER). An additional factor was that relations within the Council could be such that voting by qualified majority was impossible. The Commission's initiating function would then continue to play a 'pushing' role, but there would be intergovernmental negotiations in the Council at the same time as negotiations between the Commission and the Council (Reinalda, 2009, 421).

In these years, the Commission elaborated an external trade policy, based on the three principles of mutual trade liberation between developed states (promoted by Vice-President Robert Marjolin), on special trade arrangements favoring developing countries, and on the widening of trade policy into an external economic policy. In 1963, Hallstein was successful in suggesting that trade relations should take account not only of agriculture and industry but also of market trends and international monetary relations. In 1965, Marjolin argued that, related to their trade policies, the Communities had the responsibility to help to stabilize the then-unbalanced international monetary arrangements. Commissioner for External Relations Ralph Dahrendorf confirmed this broad compass reading in 1972 (Bossuat and Legendre, 2007, 350–352).

The EEC and GATT: Article 113

The ECSC and EEC aimed to establish a common market, with the ECSC allowing a harmonization of tariffs and the EEC a common external tariff and a common commercial policy. During the GATT Dillon Round of 1960–1961, the EEC presented its proposed common external tariff, and in May 1961 the GATT accepted this plan to create a customs union. As a consequence, a number of European and other states entered into association agreements with the EEC, which concluded its agreement with African states in Yaunde in 1963. The EEC member states proceeded to abolish custom tariffs, and in 1968 a fully common external tariff was introduced: the EEC had become a customs union.

Developments within the framework of the Organization for European Economic Cooperation (OEEC), set up in 1948 to coordinate US Marshall Aid and promote European integration, explain the materialization of the EEC's common commercial policy mechanism, originally known as Article 113. When the United Kingdom understood that the EEC was going to be established in 1957, it proposed a free trade zone between EEC and non-EEC members of the OEEC. However, its proposal to exclude agricultural products (due to its preferential treatment arrangement with the British Commonwealth) conflicted with the GATT agreement to include 'substantially all the trade'. The Commission argued that the Treaty of Rome, including agricultural products, should prevail

and took the lead by proposing tariff reductions for both OEEC and other GATT members, including special arrangements for agricultural products. It set up a working group, chaired by Trade Policy Commissioner Jean Rey, to enlarge the member states' quota. It also insisted that in any future intergovernmental arrangement, the Community should participate as an institution. Tensions in the working group were high, but Rey succeeded in making the member states agree and also implement their commitments (Bossuat and Legendre, 2007, 354). In spite of the hostile British reaction and the French decision to break off negotiations with the United Kingdom, influenced by President Charles de Gaulle's coming to power in France, the Commission continued with its offer to lower tariffs between EEC and non-EEC members in both OEEC and GATT negotiations. This leadership added to its authority, notwithstanding the creation of the European Free Trade Association by the United Kingdom and six other states in 1960. The planned common external tariff and CAP complicated GATT negotiations, but the Commission found itself supported by GATT Executive Secretary Eric Wyndham White, who felt the negotiations added to the GATT's prestige. The fact of the Commission leading from the front, its flexible attitude toward the United Kingdom, and its representation of the EEC as an institution all enhanced its position within the GATT. Since about 1960, all GATT-contracting partners had accepted that the EEC exercised practically all rights and fulfilled all obligations under GATT law. Even dispute settlement proceedings relating to EEC member states were almost always initiated against the EEC. The Commission had effectively replaced the member states and negotiated for both the Community and its member states (Bourgeois, 2000, 72). Within the EEC, however, the Commission had to remind member states repeatedly that the Commission was the body that conducted GATT negotiations. On some occasions member states may vote individually, but only on the basis of instructions from the Commission. Before stating a common position, the Commission representative in Geneva must seek a 'coordination' of individual member-state positions, which takes place in a building known as 'the bunker' (Dinan, 2000, 79).

The workings of the treaty's formal provisions dealing with trade policies are given in Article 113, with the Commission initiating the process by submitting proposals and making recommendations to the Council, which then authorizes the Commission to open negotiations. The Commission conducts these negotiations in consultation with a special committee, appointed by the Council to assist the Commission in this task, and within the framework of directives (general guidelines) issued by the Council. Finally, the Council decides by means of a qualified majority. The Article 113 mechanism (or 133 in the Treaty of the European Community) has created its own dynamics, in which the Commission has to consult with the Committee during the negotiations. In order to negotiate effectively in the GATT, the Commission needs some autonomy.

It therefore shields its activities from continuous member state scrutiny. However, to ensure that member states will understand the rationale for concessions made, it also needs to expose their representatives to (parts of) the negotiating process. Bart Kerremans (2004) argues that the Commission has developed a flexibility and skill, based on the relative autonomy of the negotiating mandate and on interaction rather than confrontation, during negotiations. That member states exert a large part of their control through authoritative representatives helps, but it remains the Commission which has to link internal Community decision-making processes and external negotiations.

Development aid and UNCTAD

Articles 131–136 of the Treaty of Rome made provisions for development aid for the former colonies and for a European Development Fund, but their implementation proved difficult. When preparing for the 1964 United Nations Conference on Trade and Development (UNCTAD), the Commission agreed that developing countries should have more revenues from exports through a careful handling of commodity agreements. While the GATT considered these agreements to be exceptions to free trade, UNCTAD saw them as contributions to improving the terms of trade for developing countries. However, given their former colonial interests, EEC member states did not agree on a common policy and did not allow the Commission to be the sole representative at the conference. Although they concurred with its proposed preferential tariffs, they did not accept its proposals for global commodity agreements. The United Nations (UN) had invited the EEC to send observers. After the conference the Commission participated as an observer in international meetings on coffee, tin, and cocoa, but again could not align the member states. The third UNCTAD conference in 1972 resulted in disappointment for the Commission. However, through its own North–South strategy, in Lomé (1975), it was more successful with its System for the Stabilization of Export Earnings from Products (STABEX) and a similar one for minerals (SYSMIN) for participating African, Caribbean, and Pacific countries, which were eligible for financial aid if their commodity earnings fell below a certain level. Its Directorate-General for Development Aid, however, was relatively weak, with only 8 percent of the Commission's total staff, and being physically removed from the other Directorates-General, which limited the opportunities for working together (Dumoulin, 2007, 380).

Getting access to the OECD and the UN system

Since IOs want to be informed about each other's activities, they may exchange information and allow each other access, both formally (through observer status, exchange of letters, or an agreement) and informally. In 1958, Hallstein made sure that the Communities and the Council of Europe exchanged annual and other reports. The High Authority and two Commissions had played an

active part in transforming the OEEC into the Organization for Economic Cooperation and Development (OECD) in 1960. A special protocol was signed governing OECD–Community relations. The Communities were not full members, but their status outranked that of observers (characterized as ‘active participants’), with the High Authority and two Commissions (later one Commission) taking part in the OECD work. They coordinated common positions among the member states in the Development Assistance Committee, among others. In 1973–1974, however, the Commission found it difficult to develop a common response to the oil crisis, because of differing national needs and policies. Due to objections by France and the United Kingdom, it was unable to join the new International Energy Agency, established within the OECD framework, as a single unity (Gregory and Stack, 1983, 241). When the OECD discussed the issue of export credits, the question was raised as to whether this was a matter for the member states or the Commission. Based on Article 228, the European Court of Justice was asked for its opinion, and in 1975, it confirmed that export credits were related to commercial policy and were thus a Commission matter. However, on the issue of chemical control policies, the Commission found that it could not achieve an influential position in the OECD. Although related to commercial policy, chemical control was basically a matter of environmental and health policy, which limited its role (Kenis and Schneider, 1987, 454).

The relationship between the Communities and the UN system was a process that gradually grew within the framework of practical, rather than formal, arrangements. The ECSC and the International Labour Organization (ILO), however, had signed a cooperation agreement in August 1953, followed by an EEC–ILO liaison and cooperation agreement in July 1958. Marjolin was invited to attend the International Monetary Fund’s (IMF) annual meeting in New Delhi that year, but not all EEC member states appreciated this. In 1967, the EEC supported the IMF’s creation of Special Drawing Rights and sought to apply some form of collective pressure within the IMF, which was hampered by differences among member states over reform of the international monetary system (Gregory and Stack, 1983, 247). Later, the Commission became an observer at the IMF’s 1999 International Monetary and Financial Committee.

At the invitation of the UN Secretary-General, the Commission participated in the work of the UN Economic and Social Council (ECOSOC) and its Economic Commission for Latin America in 1958, but was not invited in the case of the Economic Commission for Africa (ECA). While discussions took place with the purpose of defining the most suitable formula of official relationship in the mutual interest of both IOs, the Commission saw a change of attitude when it provided more information about the Community’s aim and confirmed its desire to contribute to the harmonious development of world trade, rather than adopt an inward-looking economic policy as many states feared. It attended meetings, exchanged information, cooperated in several UN

studies, and gradually extended and intensified its contact with UN bodies (also the ECA and the Economic Commission for Asia and the Far East) and agencies (for example, ILO and UNESCO), in both New York and Geneva.

In 1959, the United States supported the Commission's wish to represent the EEC at the Food and Agriculture Organization (FAO), which was followed in 1962 by a simple exchange of letters between the Commission President and the FAO Director-General, settling ways and means for liaison and collaboration (in 1991, the EU became a member of FAO, which is exceptional). In 1963, the Commission attended meetings of the UN Economic Commission for Europe but did not seek observer status, as that would have implied a similar status regarding the Council for Mutual Economic Assistance, known as COMECON. It was not until October 1974 that the General Assembly accorded the EEC observer status at the General Assembly. As a result of this, the Commission's Information Bureau at the UN acquired the stronger position of a Delegation. Given the distrust that some EEC member states sometimes showed about having the Commission represent the Community, the Commission's policy was to have double representation at the UN General Assembly from both the Commission and the presidency (represented by the state that holds the rotating presidency). The UN accepted this.

In 1958, the Commission had links with ten IOs, and in 1966 with more than 40. In a parallel development, the Commission President was invited to the third G7 summit in 1977 and has attended all G7 summits since 1981.

Conclusion: The Commission's external administration

Even if not all relations between the EU and other IOs are discussed here (more in Jørgensen, 2012; Oberthür et al., 2012), this overview allows a characterization of the Commission's external administration. Firstly, its growth started immediately, with the High Authority's initiative to establish a *diplomatic network of its own* with other countries and IOs, following classic rules such as heads of mission presenting letters of credence. This initiative comprised both the establishment of representations, information bureaus, and liaison offices and the accreditation of missions.

Secondly, based on entrepreneurship by the Commission, *working relations with IOs* were established, either in formal ways (observer status, exchange of letters, agreement) or practically (achieving access and building up particular arrangements, which eventually often changed into formal arrangements). Even if the treaties mentioned such working relations, they had to be organized from scratch, including within the GATT. If the authority to do so was unclear, the Commission looked for judicial help to clarify its authority (although this was not always helpful, as the OECD experience showed).

Thirdly, a well-equipped *Directorate-General for External Relations* and other Directorates-General supported the Commission. At an early stage it gained

organizational strength by (i) combining the forces of the three Communities, (ii) developing a forward-looking and broad external vision of its own, (iii) systematically obtaining statistical data and international expertise (which added to the Commission's ability to act), and (iv) being willing to be present at international level, preferably representing the Communities as an institution, but also if this was beyond its formal powers.

Fourthly, the Commission used *an internal negotiating game between the Commission and Council/COREPER* for the purpose of finding acceptable internal compromises and gaining good external results. This negotiating game evolved on the basis of the CAP and found an external dimension in the so-called Article 113 mechanism in GATT negotiations, where the Commission needed some autonomy to negotiate with other countries and used its relations with the GATT Executive Director to enhance its position. That the Commission failed to do so within UNCTAD shows that this mechanism is not obvious, but later the Commission established its own instruments (STABEX and SYSMIN) to move forward in the North–South dimension. Finding internally acceptable solutions is also reflected in the double representation (both Commission and presidency) through observer positions.

Fifthly, within IOs and at international conferences or summits, the Commission developed a *representative role* based on coordinating individual member state standpoints and presenting common positions.

The creation of the Council's external machinery

The Council of Ministers' chronicle is quite different, given the difficulties in establishing a common foreign policy. Early plans and institutional designs, such as the European Defence Community and the European Political Community (in 1954), and two so-called Fouchet Plans of 1961 which also proposed a common foreign and defense policy, failed.

Informal EPC (1969)

After De Gaulle's departure and the Hague Summit of 1969, a new European vigor emerged, including an informal 'foreign policy', referred to as EPC: European Political Cooperation (to distinguish it from the Foreign Affairs Council). A loose intergovernmental structure began to emerge, which was to intensify in the years ahead, with twice-yearly EPC meetings of foreign ministers, a Political Committee (the heads of foreign ministries), and an exchange of communications (COREU telexes). The frequency of the meetings increased, a group of 'correspondents' was established to monitor EPC, as was the 'troika' mechanism (meant to ensure continuity), and even an informal secretariat desk (1982). EPC's working method was consultation, with the European Council

(set up in 1974 without formal footing in the Treaty of Rome) starting to define its general orientation.

The determination to coordinate member states' foreign policies more closely against the background of international turmoil (Afghanistan and Iran), expressed in the 1983 Stuttgart Declaration and the wish to give the actual institutional modernization of the Communities a treaty base, resulted in the 1986 Single European Act (SEA). Title III codified existing EPC procedures and created a permanent secretariat, working under the presidency's authority. The Commission, only involved in foreign policy matters affecting all member states (since 1981), became 'fully associated' with EPC proceedings. This 'association', however, did not diminish EPC's intergovernmental character. Two IOs were mentioned explicitly, the Western European Union (WEU) and the North Atlantic Treaty Organization (NATO), as frameworks for cooperation in security matters. In the mid-1970s and early 1980s, EPC was successful in coordinating member states' positions at the Conference on Security and Cooperation in Europe (CSCE).

TEU CFSP (1992)

Against the background of the end of the Cold War (1989), the disintegration of Yugoslavia (Balkan wars), and the completion of the single market (1993), the 1992 Maastricht Treaty on European Union (TEU) amended the original treaties of the Communities and in its Title V created the Common Foreign and Security Policy (CFSP) as a 'second pillar' alongside economy and justice and home affairs. When it entered into force in November 1993, the CFSP 'of the Union and its Member States' replaced EPC. The main foreign policy instruments were 'common positions', defined by the Council, and 'joint actions', decided on by the Council on the basis of general guidelines from the European Council. It also introduced the instructions that member states should coordinate their actions and uphold common positions in IOs and at international conferences, with UN Security Council members 'concerting' and keeping others informed. The member states' and Commission's diplomatic representations should cooperate, with the presidency representing the EU and expressing EU positions in IOs and at international conferences. The WEU and NATO were mentioned again, with the WEU becoming 'an integral part of the development of the EU'.

The main differences between this new foreign policy machinery and the supranational one for economic external relations, rooted in the older treaties, were (i) member states rather than EU institutions as players in the CFSP (but with more governmental commitment in the CFSP than in EPC), (ii) decision making by unanimity rather than by majority vote, and (iii) competition between presidency and Commission with regard to EU representation in IOs. To avoid contradiction in external activities, the Council and the Commission were made responsible for ensuring consistency in accordance with

their respective powers (Common Provisions, Article C). The division of labor between them evolved into the presidency, presiding over the CFSP and representing the EU abroad on CFSP matters, and the Commission, remaining the guardian of the older treaties within the CFSP and representing the EEC (now named the European Community) in areas for which it had treaty competence. Furthermore, alongside the member states, it had the right to submit proposals to the Council.

In 1994, the Council set up its own liaison office with the UN in New York and Geneva as a support structure for its CFSP. The Council and the Commission had their own administrative support systems – the Council's Secretariat its CFSP Directorate, the Commission its Directorates-General for External Relations and for Trade. The CFSP Directorate was slow to take shape in the mid-1990s, with 25 professional staff, half of them seconded from foreign ministries for five-year periods, against some 250 staff in the Commission's Directorates-General.

Enhanced CFSP (1997, 2001)

During the turbulent 1990s, the CFSP machinery did not function as expected. After an intergovernmental conference (1996), the Treaty of Amsterdam's extended Title V (1997) reinforced the CFSP capacity for action through a stronger position for the European Council (defines principles of and general guidelines for the CFSP, including matters with defense implications), the construction of a third instrument ('common strategies', defined by the European Council by consensus and implemented by the Council), and less unanimity in decision making (introduction of the so-called constructive abstention and some qualified majority voting). It also introduced the High Representative for the CFSP (the Secretary-General of the Council), the establishment of a Policy Planning and Early Warning Unit in the Council's Secretariat, which was endowed with a larger and more permanent staff, and a budgetary arrangement for expenditure on CFSP operations. The Secretary-General's administrative tasks were transferred to a Deputy Secretary-General. The High Representative assists the Council through contributing to the formulation, preparation, and implementation of policy decisions and, when acting at the request of the presidency, through conducting political dialogue with third parties, while the Council became responsible for the implementation of common strategies through joint actions and common positions. Both a common defense policy and an integration of the WEU into the EU became options, given the WEU's 1991 decision to assume greater European responsibility for defense matters.

The Treaty of Nice (2001), which entered into force in February 2003, reinforced the CFSP further against the background of the European Security and

Defence Policy (ESDP), which was formulated between 1998 and 2001 following the European Council's commitment to develop the EU's ability to take independent military action, as well as its setting of a defense capability target. It had to take into account NATO sensibilities and a transformation (and eventually termination) of the WEU. However, it provided the CFSP with a military wing, including humanitarian and rescue tasks, peacekeeping, and combat forces in crisis management. The Political and Security Committee (PSC) replaced the Political Committee and became responsible for pushing both the CFSP and the ESDP. In January 2001, the Council set up an EU Military Committee (EUMC), made up of the chiefs of staff of the member states, to provide the PSC with military advice and recommendations on all military matters within the EU, and a Military Staff of the EU (EUMS), embodied as a Directorate-General in the Council's Secretariat, employing a staff of around 100.

The new High Representative and EEAS (2007)

The proposal for a Constitution for Europe (2004) failed, but the Treaty of Lisbon (2007) once again reinforced the CFSP. It merged the pillars (without affecting the decision-making procedures for the CFSP), replaced the European Community with the European Union, and conferred legal personality on the EU, which now could join IOs and conclude international treaties. The ESDP was replaced by the Common Security and Defence Policy (CSDP), which put an end to the WEU's existence. It introduced the new High Representative of the Union for Foreign Affairs and Security Affairs, to be assisted by the European External Action Service (EEAS).

Appointed by the European Council, the new High Representative manages the CFSP and CSDP, contributes to the development of these policies through proposals, and implements decisions adopted by the European Council and the Council. She or he presides over the Foreign Affairs Council and is also one of the Commission's vice-presidents, being responsible within the Commission for 'responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action'. She or he ensures the consistency of the EU's external action (Article 9E) and expresses the EU positions in IOs and at international conferences (Article 13a.2). The now-permanent president of the European Council also plays a part by ensuring, without prejudice to the High Representative's powers, the EU's external representation on issues concerning the CFSP (Article 9B.6). The Council may appoint Special Representatives for particular policy issues.

The EEAS combines all those involved in the CFSP and is composed of officials from the Council and the Commission as well as staff seconded from national diplomatic services. In January 2011, it had 1,643 employees: 411 former Council posts, 1,114 former Commission posts, and 118 new ones. The

European Council President, who has a small secretariat and has attended G7 summits since 2009, has a Sherpa to prepare for the summits, but for his information depends firstly on the Commission and then on the EEAS.

Conclusion: The Council's external administration

The emergence of the EU's CFSP resulted from an unhurriedly evolving practice, with treaty formalization (the CFSP replacing EPC in 1986) and various stages of enhancement: 1992 Maastricht, 1997 Amsterdam, 2001 Nice, and 2007 Lisbon. Unlike the Commission, for a long time *slow growth and relatively small numbers of staff* characterized the Council of Ministers' external administration: it had no secretariat until 1986, and staff numbers of only one tenth of those of the Commission in 1995 and one third in 2010. The introduction of the High Representative and a special unit in the Council's Secretariat (1997) enhanced the administration's structure. The inclusion of some military staff (2001) followed the creation of a security and defense policy that became part of the CFSP.

Most spectacular was the *strengthened external administration of the High Representative*, based on the abolishment of the second pillar in 2007. The Commission saw its competences curtailed, as it lost its right to submit proposals to the Council to the High Representative, while Declaration 14 of the Treaty of Lisbon did not give 'new powers to the Commission to initiate decisions' concerning the CFSP. It is not the Commission but the High Representative who expresses EU positions in IOs and at international conferences. However, most of all, the Commission is no longer in control of its own bureaucracy and diplomatic network, given the merger in 2010 of the external relations bodies of the Council and the Commission into the EEAS, which is controlled by the High Representative.

The Council's evolving external administration contains various *contradictions*. The first is the competition between the Council and the European Council. The latter began to show leadership in practice by defining the general direction of policies. Treaty formalization resulted in stronger European Council positions, with the Council functioning at a subordinate level, more focused on implementation, and with a weakened rotating presidency. The second contradiction is the overlap between the Commission, the High Representative, and, since 2007, the permanent European Council President with regard to external representation, with only vaguely defined divisions of labor. Practice will show how these contradictions in the design of the external administration will be resolved.

Between practice and design

How do the external machineries of the Commission and the Council relate to a European administrative space as discussed in Chapter 4 under independence,

integration, and co-optation? The entrepreneurial Commission established the EU's main *independent external administrative capacity*, based on a diplomatic network of its own with other countries, IOs, and 'clubs' such as the G7; a focused bureaucracy with a broad external compass reading; a willingness to reach internal compromises (with the Council); and playing a coordinating role in IOs and at international conferences. Although trade policy is at the heart of this administrative capacity, it covers many more issue areas as dealt with by the variety of IOs and international conferences in the Commission's diplomatic and political network. The Council's administrative capacity came into being much later, was much weaker in staff numbers, and was more related to the member states (and seconded personnel). The European Council, a hierarchically high player in the field, remained without any considerable administrative capacity of its own.

With regard to *internal cohesion and integration*, the Commission's administrative capacity kept its position for a long time, but saw the Council's scope grow as a result of the creation of the High Representative (1997) and the formulation of a European security and defense policy (2001), based on the successful management of sensible EU-NATO and EU-WEU relationships. This was followed by a position for the High Representative in the new EU design of 2007 that was remarkably stronger, with the Commission losing much of its say over foreign policy in this design, particularly through curtailed competences and the creation of the EEAS. Although this integration of Commission and Council capacities may give the impression of a common 'foreign ministry' and diplomatic corps, various internal overlaps still have to be settled, in particular with regard to external representation and international coordination by the Commission, the High Representative, and the European Council President. The precise relationship between the European Council and the Council is another matter to be resolved in practice, based on the expectation that the European Council has the opportunity to show leadership, in particular in times of crisis. It also remains to be seen how administrative practices and routines will develop in a 'mixed' bureaucracy with both Commission and Council traditions and, compared to the Commission's original position, more seconded personnel.

Co-optation with (agencies within) other IOs is based on the ability to develop intensive working relations with IO secretariats or specific departments and to represent the EU as an institution. The Commission has succeeded in doing this with the GATT and many other IOs, but also has shown willingness to have shared double representation (with the Council) through observer positions (for example, in the UN system). Given the new EU design, the High Representative may succeed in representing the EU as an institution but still has to achieve the authority the Commission has built up previously, while

the Commission has to continue its relations from an institutionally weaker position.

Most fascinating about the European administrative space and its interaction capacity with IOs are the comprehensive changes the EU has been going through since 2007/2010: the shift from the Commission's rather independent administrative capacity to one which is closer to that of the Council and the member states and which still has to settle and build up authority.

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23

The Expert–Executive Nexus in the European Administrative System: Expert Groups and the European Commission¹

Åse Gornitzka and Ulf Sverdrup

Introduction

The European administrative system is characterized by an interpenetration of different levels of government and multiple connections between the European Commission (Commission), European agencies, national and subnational administrations, and a range of non-state actors. Part of these administrative capacities involves the extensive use of specialized expertise in various stages and institutions at European level. Nowhere is this more prevalent than in the structure of EU committees and particularly in the set of expert groups under the Commission. This organized system of consultative connections constitutes a large system for preparing and implementing policies and a main organized nexus between outside experts and the EU executive.

The Commission has established an elaborate system of organized committees that link different types of experts to its policy making. In this sense, this system is in its form a collegial organizational supplement to the Commission's (hierarchical) organizational structure, a supplement that spans the Commission's organizational boundaries. Given the size, roles, and multilevel character of the Commission's set of expert groups, it is a paramount component of the everyday European administrative system. Consequently, in order to understand the European administrative system, we have to unpack the nature of this type of nexus that has been established between the European executive and external actors that are counted as experts. This chapter maps the Commission's expert groups system and explains its key properties,² drawing on empirical research that covers the entire set of expert groups: What is the extent of the expert consultative system? What is the distribution of expert groups, and what are the patterns of participation? Who are defined as experts in this system, and what are the main actor constellations? Under what conditions do the

various kinds of experts take part in the Commission policy making via these organized groups? Building on organization theory and previous research, we develop arguments that can account for variations in the expert group system's composition and the role it plays in the administrative system of the EU.

Firstly, we give a brief presentation of what an expert group is and how we can map and analyze this aspect of the European administrative system. Then we develop three competing ideas about access of experts to the Commission and point to the factors that we can assume affect the Commission's expert group system. We then map out core features of this system and analyze its configurations of participants. We examine how the consultative connections that the Commission forges with different types of experts are affected by the following factors: the organizational traits of the Commission, variations in the tasks and policy fields that confront the Commission, and the types of environments that it operates within. In the concluding section, we outline some implications of these patterns for understanding the nature of the European administrative system.

Organizing expertise – Key characteristics of expert groups

There are several models for how expertise can be organized into policy making. They vary in location (expertise located both within and outside the central government apparatus), in permanence (ad-hoc temporary versus permanent arrangements), in how rule governed they are (formal or informal), and in how closely connected they are to the political center of executive institutions. Most political-administrative systems will draw on a combination of models for organizing expert advice. Executive organizations' staff represents considerable in-house expertise, a bureaucratic trait that is reflected, for example, in the very principles of recruitment to administrative bodies and the weight given to formal professional qualifications. Administrative bodies can also organize specialized advisory positions (permanent and temporary) or advisory units within the organization, often organized in staff rather than line positions, that is, officers or subunits that are expected to be especially oriented toward an expert role. Formal organizations with full-time permanent staff that are specialized in producing professional advice, information, and knowledge – such as regulatory agencies, statistical bureaus, or, in the case of the Commission, the Joint Research Centre – are also found with a central administrative apparatus but are typically organized at arm's length from any direct political steer.

The extramural model for bringing expert advice into policy making also comes in several versions: the system of scientific advisor(s) or offices, government-supported policy research centers, the ad-hoc purchase of consultancy services or research projects, and advisory councils and committees. The latter model is the focus in this chapter.

Formally, a Commission expert group is a consultative entity comprising external experts advising the Commission in the preparation of legislative proposals and policy initiatives, as well as in its tasks of monitoring, coordinating, and cooperating with member states. It is a collegial organization, where coordination is non-hierarchical and participants are included on a part-time basis, having their primary organizational affiliation elsewhere (Egeberg, 2003, 117–118). Expert groups are created by the Commission,³ either by a Commission decision/other legal act or by a Commission service/unit with the agreement of the Commission's Secretariat-General. Most of the groups are of the latter kind. They can be either formal or informal and also vary in permanence (temporary or permanent groups). This organizational model for linking external expertise to executive policy making represents a collegial and ad-hoc auxiliary to the administrative capacities of the Commission and resembles in many ways how other polities have organized consultative connections to expert communities.

Traditionally, this is a part of EU policy making that has not been regulated by formal rules that specify the participation rights and the roles that such groups are meant to have and play. However, over time the Commission has developed guidelines for its use of such groups, partly argued on the basis of the need to democratize and make transparent the use of expertise in policy making. These guidelines have come as a response to increasing attention to this part of the European administrative system in the past decade. The European Parliament and civil society groups particularly have attacked the Commission for maintaining a biased and opaque system of expert advice (Holst and Moodie, 2013). This has occasioned the establishment of a public register of expert groups (see below). However, the Commission's consultative connections to expertise have remained controversial. This culminated in 2011 when the European Parliament blocked the budget for expert groups based on the claim that the Commission had not adequately addressed the issue of the balanced composition of groups and secrecy in the use of such groups.⁴

Parallel to the growing attention in the political system toward expertise structures, scholarly attention to the expert–executive nexus in the EU has also increased. Studies of committee governance have been an established line of research in EU scholarship (Checkel, 2005; Christiansen and Kirchner, 2000; Egeberg et al., 2006; Quaglia et al., 2008), but little systematic attention has been paid to the overall characteristics of this system until this decade. This chapter relies on qualitative studies of the expert groups system that have more recently been added to the research on expertise, and in particular we refer to findings from large-N research and databases that have been constructed with administrative data found in the Commission's register on expert groups. These data contain information on the number of groups and the key properties of

these groups, such as the lead services in the Commission, policy area, tasks, and composition of the group (Gornitzka and Sverdrup, 2008, 2010, 2011). The quantitative data display the overall characteristics of the expert group system in the EU's administrative order. However, the data entail some clear limitations. They do not allow us to examine the dynamics within and the behavioral impact of these groups or the relative influence of the advice provided by the expert groups on policy making and implementation. There are also limitations as to how precise the categorizations are and to the level of detail in information on participants and expert groups. However, these data give a basis for identifying the main configurations of expert groups and patterns of participation, that is, the main questions raised in this chapter.

What kind of experts for what kind of Commission?

Accessing expert information is central to the Commission's autonomy and to reducing decision-making uncertainty. The Commission is dependent upon relevant and timely information in order to develop sound and effective political and legal initiatives in various policy areas, some of which are highly technical, posing high demands on the level of expert knowledge. Information is also important for identifying the range of possible and acceptable political initiatives and solutions in the interinstitutional environment in which the Commission acts. Information on the preferences and positions of the member states, societal actors, and scientists is important for adjusting and calibrating Commission proposals. Consultation with interest groups, national officials, and scientific experts may enable the Commission to assess the interests and constraints defended by these parties. Consequently, we can expect that the sources of expert advice are multiple and their use multimodal when the Commission's administration collects information, prepares policy proposals, and implements the political directives of the College of Commissioners. We also know that complex bureaucracies such as the Commission are organizationally differentiated, and we can expect that core variables of such formal structures – including the structural capacity of a unit (organizational size), type of tasks, and policy-making instruments used by organizational units – as well as the characteristics of a unit's environment will affect how the Commission's DGs relate to external sources of expertise in policy making.

Three types of expertise systems

We can separate between three types of experts that are relevant as participants in the Commission expert group system: scientists, societal actors and associations, and government administrations of member states. Focusing on these different actors as sources of expertise articulates different principles of organization and public policy making. These differences are in turn grounded

in various assumptions about what bolsters the autonomy and authority of bureaucracies. The different types of actors possess different kinds of resources, responsibilities, knowledge, information, and experience that EU policy makers may draw upon. At the same time, these actors may be influential as they may appear as formal veto players, as social reference groups, or as actors that may impact on the legitimacy and effectiveness of decision making.

- (i) Science-oriented expertise: The underlying rationality of making scientists the basic information providers is that a bureaucracy is organized to house and foster specialized expertise. However, bureaucratic organizations have limited resources as repositories of knowledge and for gathering and processing scientific information by themselves. Thus, they are expected to link to external scientific expertise. From such a perspective, the autonomy and influence of an administration is connected to its ability to present itself as neutral and to ground its actions in updated and specialized information. The administration is seen as deriving its legitimacy from principles of enlightened, knowledge-based government (Olsen, 2008). This is the case in national administrations – both national ministries and national agencies. The latter public bodies in particular are organized at arm's length from a direct political steer and have developed strong connections to parallel scientific communities and research institutions (Gornitzka, 2003). At the level beyond the national state, international organizations in general often establish formal and informal channels for scientific input to the policy process (Andresen, 2000; Haas et al., 1977). Studies show that international organizations are particularly influential when they draw on independent expert sources to provide information that is scarce and valuable to its member states (Barnett and Finnemore, 2004; Martin and Simmons, 1998). Scientific expertise has the added attraction as a source of information because it may transcend the bias of information imbued with national interests. This latter aspect would also apply to the Commission as a multinational institution. Also in the EU, the increased complexity and 'technical' uncertainty in governing modern societies have increased the role of scientific arguments and the role of expertise (Radaelli, 1999). The nexus between the European executive and scientists underlines the European administrative system as an epistemic, scientized space. Drawing on scientists as the main information providers would thus legitimize the Commission's autonomous basis for action, independent of national, societal, and partisan interest, and would potentially buffer it from the political and intergovernmental logic of policy making.
- (ii) Society oriented expertise posits a direct relationship between societal actors and public administration. A pluralist idea suggests that societal

interests and affected parties have a legitimate right to be heard and have their views incorporated into policy making. The authority and legitimacy of the Commission is derived from opening up to, channeling, and mediating different political forces, that is, it reflects deference to principles of input legitimacy, representation of societal interests, and attention to experience-based expertise. Administrators need information and support from such groups for making and defending their policies in their relationships with other political institutions; and such groups can use these organized links to further their interests and perspectives on policy issues (Peters, 1995, 181). As is the case in national administrations, the Commission will be interested in cultivating a relationship with business groups and organized interests as providers of information about grassroots preferences and of factual information in complex policy areas (Bouwen, 2004; Broscheid and Coen, 2007). Societal groups make claims to represent specialized and professional information as well as experiential expertise (Greenwood, 2007). Constructing stable and manageable relationships with interest groups will also be important for securing a stable environment and for enhancing the Commission's political effectiveness toward other EU institutions (Mazey and Richardson, 2001).

- (iii) In government-oriented expertise systems, the Commission is seen as inviting national government administrations into the decision-making process in order to access information as well as to promote administrative integration. In a multilevel administrative system, through these exchanges the Commission can get to know more about member states' interests, perspectives, and experience than any single member state can know about another. Moreover, since the Commission is in many areas dependent on member states' administrations for additional expertise and for implementing policies, it is interested in developing and promoting administrative infrastructures and networks that can serve to facilitate administrative interaction and integration (Egeberg, 2006b; Chapter 1 of this volume). A high degree of involvement of national officials in the expert groups can thus be seen as a way for the Commission to develop structured and organized connections with national administrations of member states. Administrations in the now 28 member states represent an enormous pool of technical/professional expertise in highly specialized areas. These are also officers with first-hand insight into what are politically acceptable proposals in member states' capitals. Interaction among national officials could also lead to the development of ownership of proposals and contribute to helping the Commission's proposals through the Council decision-making process, that is, expert groups playing a role in interinstitutional relations at EU level.

Accounting for variation

The prevalence of these different types can be seen as an indicator of the kind of relationship to expertise that is considered to be most appropriate and relevant for the Commission to cultivate. The relative importance of these three ideal types also shed light on the overall sources of legitimacy, and the effectiveness of the Commission in a European administrative system. However, we cannot expect a complex executive institution such as the Commission to have a uniform approach to expertise. Consequently we need to address how variation can be accounted for.

A fundamental organizational characteristic of the Commission is its sectoral differentiation, and consequently sectorally organized units within the Commission operate under very different conditions. Firstly, the formal autonomy of the Commission's department is defined by the legal framework of the policy field it operates within. In the treaties, competences and powers have to varying degree been delegated to supranational level. Some DGs operate with exclusive competencies to develop and implement supranational policies, with hard law as the main policy instruments. For others, competencies are shared with the member states, while some DGs operate within a legal framework that allows only for supplementing or supportive action from the supranational executive, with 'soft' policy coordination or incentive programs as the main governance approach. We can assume that these basic parameters also affect the sector DGs' approach to expertise and external consultations. It would, for example, be reasonable to assume that DGs operating in areas with a considerable transfer of competencies to supranational level would be less inclined to seek consultation and external expert advice, in particular from national ministries, than in areas where the European level has shared competencies or merely a supporting role.

In-house expertise and administrative capacity represent core capabilities for action in political administrative systems (March and Olsen, 1995, 91–118). In the case of the Commission, these capabilities are unevenly distributed among the Commission's portfolios, and DGs differ in how much in-house expertise and professional staff they have at their disposal. In order to increase the quality of the policy-making process, different DGs may use expert groups as a way of outsourcing tasks to compensate for their own limited administrative capacity. We can also expect that the basis for autonomous action by the European executive is affected not only by its current capabilities but also by the experience and routines for action amassed in the DGs. Some policy fields have been subjected to European governance since the establishment of the Commission, whereas new portfolios have been added as a consequence of task expansion at European level. According to an organization theory-based institutional perspective (March and Olsen, 1995), we could expect that over

time processes of institutionalization and routinization and the development of experience, understanding, and meaning may reduce the propensity and need for ad-hoc consultations with external actors.

However, different DGs face varying types of uncertainties and operate in different task environments irrespective of the age of the Commission's portfolios. Some policy areas are more technically complex or more politically salient and contested than others. Although such policy-characteristic factors are hard to quantify, they are theoretically relevant factors, particularly in accounting for patterns of participation/activation and for the use of expertise in the policy process (Boswell, 2008; Radaelli, 1999). We can get some indications as to the role of such societal supply-side pressure and policy-specific variables for the overall configurations and participatory patterns in the expert group system by looking at the density of interest groups in different policy areas. Social actors in general recognize expert groups as an important policy venue in the EU policy process. However, the number of organized and active societal groups also varies considerably at EU level (Broscheid and Coen, 2007; Mazey and Richardson, 2001), and we can expect that the density of interest groups in a policy area affects the likelihood that expert groups have societal actors as participants.

Mapping the configuration of expert groups

Expert groups have been with the Commission since its beginning and have multiplied over the years. The growth in the number of such groups peaked in 2006 with around 1,300 groups on record. Although the number of groups has dropped in the last decade (Metz, 2013), the size of this type of expert system is still significant. This is far from unique to the EU polity. In most developed politico-administrative systems, collegial arrangements to link expertise to the executive branch of government are commonplace. For example, the US federal level organizes more than a thousand federal advisory bodies, and they have a recognized and regulated role in the federal political system (Balla and Wright, 2001). In the EU, this kind of expert system appears to be a fairly flexible part of the multilevel administrative system, as demonstrated by the most recent fluctuations in the number of groups. Groups can be established and dismantled without going through elaborate procedures. When the number of groups peaked in the mid-2000s, about three quarters of the groups were informal and about half were temporary (Gornitzka and Sverdrup, 2008).

Based on data from 2007 and 2009, we can also see that the use of expert groups varies considerably among different parts of the Directorates-General in the Commission. Since the Commission's primary organizational principle is sectorial (Egeberg, 2006a) and the expert groups are managed at the Commission's administrative levels, the distributions of expert groups according to DGs,

to their degree of formalization and permanence, and to their task structure in the DGs can give us telling insights into the variation of how expertise and the Commission are organized in different policy sectors. A main pattern observed is that expert groups contribute to the sectoral differentiation of EU decision making, amplifying the sectoral organization of the European administrative system. The cross-sectoral coordination of expert group activities is at a very low level, and most expert groups are highly specialized and sector/issue specific (Gornitzka and Sverdrup, 2008).

This heterogeneity is first of all visible in the simple fact that for some DGs such collegial bodies are not important at all, while for others they seem central to their approach to policy making. Data for 2009 (Table 23.1) show that compared to data from the peak years most DGs reduced their number of expert groups and that the two top users of expert groups from previous overviews (DG Research and DG Environment) cut their numbers considerably. However, the overall reduction in the number of groups did not change the main pattern of heterogeneity in the DGs' approach to expertise. The groups of DGs that relatively speaking organize many expert groups (in 2009 more than 50) as opposed to few groups (ten or fewer) are fairly stable. Expert groups continue to be found among policy DGs and not among the internal services or the DGs that relate to external relations of the EU.

As we can see from Table 23.1, the DGs that are the most frequent users cover very different types of policy areas: DGs for taxation and customs union, DGs for enterprise, EUROSTAT, and DGs for health/consumer protection, research, environment, and transport/energy. This group is very much a mixed bag and not part of any obvious 'family' of DGs. In terms of their primary tasks, they cover regulatory DGs, spending DGs, and DGs with legislative tasks (see Kassim et al., 2013 for classification).

Consequently we need to look for other factors that contribute to the heterogeneity of the Commission's expert system. Analysis of the factors that affect the propensity among DGs to establish expert groups (based on data from 2007) indicates that variations in the legal frameworks of the DGs matter, but this relationship seems not to be linear but curvilinear – most expert groups operate in areas where the EU and member states share competencies (Gornitzka and Sverdrup, 2008, 739).

Looking at the relationship between in-house administrative capacity and the use of expert groups, we see that there is little support for the idea that less administratively endowed DGs draw more on external expertise through organizing expert groups than DGs with a relatively high level of expertise. In fact, the opposite is the case. Internal administrative capabilities as measured by the number of officials are a prerequisite for organizing an elaborate set of expert groups. Well-endowed DGs do not pursue a strategy of 'self-reliance' compared to DGs with less in-house staff. In summary, we see that the density

Table 23.1 Distribution of expert committees, by DGs (absolute numbers)

Service	Service	2007	2009
Taxation and Customs Union	TAXUD	95	114
Enterprise and Industry	ENTR	120	99
Eurostat	ESTAT	85	92
Health and Consumer Protection	SANCO	89	77
Environment	ENV	127	72
Research	RTD	129	71
Energy and Transport	TREN	94	61
Agriculture and Rural Development	AGRI	64	56
Education and Culture	EAC	71	52
Employment, Social Affairs, and Equal Opportunities	EMPL	62	41
Justice, Freedom, and Security	JLS	33	40
Regional Policy	REGIO	58	39
Internal Market and Services	MARKT	51	38
Information Society and Media	INFSO	38	28
Directorate General for Development	DEV	30	21
Fisheries and Maritime Affairs	FISH	25	20
Economic and Financial Affairs	ECFIN	10	10
Trade	TRADE	7	8
Competition	COMP	7	6
External Relations	RELEX	11	6
Bureau of European Policy Advisors	BEPA	5	4
European Anti-Fraud Office	OLAF	5	4
Secretariat General/Legal Service	SG	4	4
Personnel and Administration	ADMIN	3	3
Europe Aid	AIDCO	5	3
Directorate General for Translation	DGT	1	3
Budget	BUDG	3	2
Joint Research Centre	JRC	3	2
Directorate General for Communication	COMM	1	1
Enlargement	ELARG	1	1
Total		1,237	979

of organized expert groups is highest in the policy areas where administrative and policy-making capacity has been amassed in the Commission (Gornitzka and Sverdrup, 2008, 740–741).

We also find that external pressure in terms of the number of interest groups is significantly correlated with the DGs' propensity to establish expert groups. This suggests that some supply-side pressure from societal groups can influence how DGs relate to experts (Gornitzka and Sverdrup, 2008, 737–738).

Qualitative studies of expert groups organized by the Commission also point to how resorting to using an expert group or another instrument often depends on DG-specific habits and traditions (Metz, 2013). The Commission services

have developed varying organizational identities and subcultures that have a bearing on the routines and informal norms for how DGs connect to their environment, including how they relate to external experts. Similar observations are also made by Larsson in his case study of the use of expert groups in DG Enterprise and Industry (Larsson, 2003). How such organizational routines develop and change comes across as an important topic for further research as this could be a key for understanding the *dynamics* of expert group systems. The more recent drop in the use of expert groups further underlines this, and suggests that periods when routines and practices are contested can upset the establishment of groups as a default model for organizing external expertise into Commission's policy making. Whether DGs that considerably reduce their use of expert groups turn to other models for connecting to external expertise or 'retreat' from extramural relations to expertise has so far not been investigated.

Who participates?

Governmental actors are the principal actors in the expert group, that is, expert groups in the European administrative order are mainly a system that connects the Commission to experts in national administrations in EU member states (see Figure 23.1). Four out of five expert groups have participants from national administrative bodies. We also note that a mixed, multiactor configuration is quite frequently present in the expert groups. Fourteen percent of all expert groups are multilevel conglomerates where representatives from national officials, scientists, and societal actors come together. However, by far the most common constellation is for national administrative officials to meet only other national administrative officers. Officials from national administrations are absent in only 19 percent of the groups (see Figure 23.1).

Scientists/academics participate in one out of three expert groups, but they do so most often in combination with other actors. Similar to what we see regarding science, societal actors are involved in 40 percent of all expert groups. However, few (seven percent) of the groups are composed of only societal actors.

Table 23.2 unpacks these broader categories to reveal the detailed picture of patterns of participation in the expert-executive nexus based on data from 2009. We see that participants from business and enterprises form quite a large group, participating in around 20 percent of the expert groups. There has currently been considerable discussion in Europe regarding the role of industry and business interests in influencing EU policy making and the process of increasing transparency and regulations related to participation. Some have claimed that industrial interests capture large parts of the expert groups (AlterEU, 2008). Data from 2007 and 2009 show that business participation is certainly present, yet below the level of governmental involvement and participation by scientists;

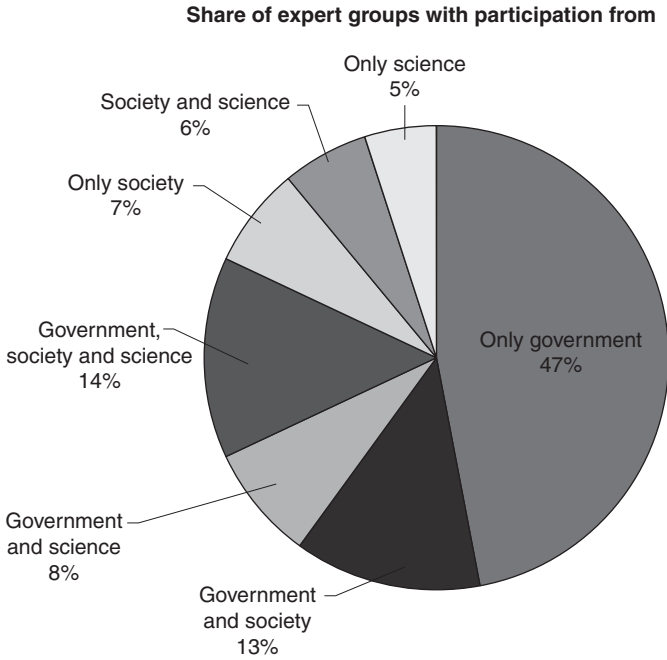


Figure 23.1 Configurations of participants in expert groups organized by the Commission 2007: National administration ('government'), scientists/academics ('science'), societal interest associations/social partner/business ('society') (N=1236)
Source: Data from Gornitzka and Sverdrup, 2011, 54

but again there is inter-DG variation in the participation of businesses – they are particularly present in DGs Enterprise, Research, Environment, Transport, and Energy (Skogen, 2010).

The high degree of access by officials from national ministries provides additional support for the government-oriented expertise model. We also find some support for the idea that expert groups are part of the policy networks that penetrate deep into the national administrative system and incorporate national *agencies*. National agencies participate in 35 percent of the expert groups. This observation further illustrates the multilevel character of the EU administrative system (Curtin and Egeberg, 2008; Egeberg and Trondal, 2009). Finally, we observe that representatives from international organizations hardly participate in Commission expert groups at all.

In summary, the relative absence of pure scientific groups and societal groups and the many mixed compositions illustrate the thoroughly composite nature of EU decision making; and it can be regarded as an attempt by the Commission in some policy areas to build and organize a broad societal, scientific, and governmental base for its policies.

Table 23.2 Participation in Commission expert groups according to type of actor (number and percent of total number of expert groups 2009) (N=979)

	Number of groups	% of all groups
National administrations	680	69,5
Competent national authorities	346	35,3
Academics	169	17,3
Scientists	122	12,5
Professions/Practitioners	74	7,6
Business/enterprise	190	19,4
Public interest groups	159	16,2
Management and labor	112	11,4
Others	62	6,3
Regional administrations	54	5,5
Agriculture	41	4,2
International organizations	39	4
Local administrations	31	3,2
Members of the European Parliament	2	0,2

Source: Skogen, 2010

Accounting for patterns of participation in the expert system

As with the configuration of expert groups, there are strong variations across policy areas when it comes to patterns of participation. The ratio of expert groups that are composed of only national officials to the total number of expert groups per DG varies considerably – from DG Taxation and Customs and EUROSTAT organizing practically only ‘pure government’ groups to DG Research and DG Education and Culture, where such groups make up only a small proportion of their wide set of expert groups.

Multivariate analyses (see Gornitzka and Sverdrup, 2011) have identified some factors that are systematically related to differences in the patterns of participation in the Commission’s expert group system. There is support for the argument that the formal legal parameters for EU action do affect the kind of actors that DGs include in their information systems. The findings suggest that DGs in areas of strong EU competence tend to be more oriented toward national governments and to organize expert groups that are ‘purely’ governmental, that is, quite the opposite of what can be expected. In these areas, it seems to be even more important for the Commission to establish organized information channels to member states’ administrations. This is also what Larsson (2003) found. This may also suggest that member states are more eager to access the Commission’s policy process and present their policy advice in such policy areas. In addition, we found that national officials are more likely to participate in

institutionalized and mature policy areas. There is no support for the argument that over time DGs seek and acquire independence from the expertise of member states' administrations. As indicated regarding the DGs' propensity to use expert groups, group composition could also thus be seen more as the product of habits and routines and less as the result of ongoing strategic calculation by the Commission.

The administrative capability argument only finds support in our data when it comes to the participation of national governments. DGs with a limited staff tend to use groups composed purely by national officials to a larger extent than the larger DGs. This is consistent with the argument that the use of expert groups is a way of outsourcing and increasing administrative resources.

If we turn to the expert groups that have included societal actors as participants, we find that the composition of these groups is related to societal demand and pressure. Political mobilization among societal actors seems to be reflected in access patterns (Gornitzka and Sverdrup, 2011, 61–63). A high number of interest groups working in a policy field increase the likelihood for the involvement of societal actors in the Commission's information system, as is the case in environmental policy and in industrial policy. We also observe that DGs with a larger staff tend to bring in more societal actors than DGs with a smaller staff. This is opposite to what we found for the expert groups where only national ministries and agencies participate. There is no significant relationship between legal competence and the inclusion of societal actors in expert groups.

As with the participation of societal actors, the larger the administrative capability of the DG, the more scientific experts tend to be included. Thus, organized channels to science through expert group participation do not reflect a need of DGs to compensate for meagre in-house administrative capabilities. Neither societal actors nor scientists can substitute bureaucratic-administrative expertise in the way that national administrations potentially can. A more elaborate multivariate model for explaining the participation of scientists (see Gornitzka and Sverdrup, 2010) also suggests that the Commission is concerned with bringing in scientific expertise in order to increase its legitimacy, handle policy uncertainty, and secure support for new proposals in areas that are less settled and in informal/temporary settings. The nexus between policy making and science is significant yet confined.

Conclusions – Expertise and the European administrative system

The Commission as a multinational administration working with limited in-house resources and with knowledge-intensive tasks relies on external expertise from a wide range of sources. In this chapter, we have given an overview of the Commission's expert group system. This set of groups is a main organized system through which the Commission consults and connects to actors that are seen to contribute with expert knowledge of various kinds. This system is a key

way in which the European administrative system extends beyond the Commission, and in how it incorporates outside actors in developing, monitoring, and implementing European policies. The organized nexus between experts and the Commission is essential for promoting, developing, and cultivating interlevel and interinstitutional relations. The expert group system cannot be regarded merely as a technical or scientific problem-solving instrument but must also be seen as a system for resolving political and interinstitutional conflicts, as well as for building legitimacy for EU policy making.

Based on data on how expert groups are composed, we can conclude that although scientists and various interest groups, industries, and NGOs play an important role in the expert–executive nexus, the informational foundation in the Commission is strongly biased toward officials from national administrations.

However, the use and composition of expert groups vary remarkably in the various policy domains. Distinct policy segments have different modes of connecting to their environment. The high degree of sectoral differentiation is accentuated by the fact that there are weak horizontal coordinating structures among the DGs in their use of expert groups. Some DGs organize up to 100 groups, while others do not connect to outside experts in this way. While some areas are clearly multiactor and compose their expert groups of a mix of types of participants, others do not. This heterogeneity found across policy domains can to some extent be explained by organizational factors, conditions that affect the Commission's capacity for autonomous action, and variation in the DGs' environments. Patterns of participation in expert groups are affected by routines, habits, and an element of path dependency and cannot be merely seen as the result of ongoing strategic calculation by the Commission.

These findings have implications for how we perceive European governance and the European administrative system. The scale, regularity, and patterns of participation in the expert groups represent a significant element of EU governance and may contribute to creating an informational advantage for the Commission, preparing debates and increasing the probability of support for its policy initiatives in the Council and the European Parliament. This kind of horizontal specialization is an important element in decomposing problems and conflicts into smaller and manageable portions and thereby also contributes to reducing the level of interinstitutional conflict and uncertainty. The Commission can factor its decision problems into subproblems and assign the subproblems to subunits, such as expert groups, focusing on a limited set of problems and goals. Linking different types of experts to specialized policy making is also likely to reduce conflict and uncertainty between levels in the EU's administrative system. The expert group system's organizational form – collegial and predominantly temporary/informal – makes the executive–expertise nexus potentially a flexible and adaptable supplement to

the hierarchical and proceduralized policy making of the EU. However, mapping the overall configurations and patterns of participation in the nexus between external experts and the Commission gives very limited systematic insights into the mechanisms involved in the composition of these groups, into how the advice and input is used within Commission decision making and position formation and into the overall consequences of organizing the nexus between external and the executive in this way. To address such questions, we need to look to previous studies on role conceptions in EU committees (see especially Egeberg et al., 2006), case studies of groups dynamics, and modes of expertise utilization (see, for example, Boswell, 2008; Larsson, 2003), and the promising recent additions to the study of experts and the European executive (see, for example, Field, 2013; Holst and Moodie, 2013; Metz, 2011).

The recent developments in the configurations of expert groups also direct our attention to the *dynamics* of this part of the European administrative system and to how *changes* in organized consultative connections occur. We have pointed to some fluctuations in the overall scale of the system and how this may be linked to critical attention from other EU institutions and societal groups and to public contestation of the legitimacy of the way in which the Commission organizes its expert–executive nexus. However, we also find a fair degree of robustness in these flexible and temporarily organized links between the Commission and external expertise. A critical factor, however, that merits systematic analysis is how the expert–executive nexus is part of and affected by change dynamics in other parts of the European administrative system within which it is embedded. We suspect in particular that the development of European agencies and how they link both to national administrations and to scientific/technical expertise (Egeberg and Trondal, 2009; Groenleer, 2009; Kelemen and Tarrant, 2011; Thatcher, 2011) may affect the DGs’ organization and use of external expertise in policy making.

Notes

1. This chapter is based on Gornitzka and Sverdrup (2011).
2. This chapter maps the overall system of expertology, explains the variations in the consultative connection of the Commission’s access to decision-making situations, and is not concerned with explaining the behavior and socialization that takes place within these committees or their influence on actual decision making (see chapters 1 and 12 of this volume).
3. Commission expert groups should not be confused with Council working groups and comitology committees, since only the expert groups are established and composed by the Commission. They formally serve a different role in the interinstitutional decision-making process.
4. See, for example, EUobserver: MEPs unblock funds for EU expert groups, <http://euobserver.com/institutional/117633>.

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24

Comitology: Over 50 Years of Institutional Reforms and Emerging Practices

Gijs Jan Brandsma

Introduction

Comitology is the European Union's most important mode of policy making when measured by the number of directives, decisions, and regulations passing through it (Brandsma, 2013). It refers to a system of committees of member-state representatives but chaired by a 'chef de dossier' from the Commission, in which the committees need to be consulted before the Commission can adopt executive measures. In total, about 250 committees exist, which together pass 2,000 to 2,500 executive measures per year.

When compared to the other modes of EU governance discussed in this volume, comitology is quite difficult to categorize. On the one hand, it cannot be seen as separate from the Commission. In the end, it is the Commission that is drafting and adopting executive measures, and it is quite unlikely that the Commission proposes and discusses measures it does not find acceptable for itself. The Commission organizes and chairs the committee meetings; it may therefore, and in fact does, steer discussions in committee (Brandsma and Blom-Hansen, 2010), and organizationally for the committees the same transparency rules apply as for the Commission (Dehousse, 2003). In this sense, it is part of the core administration of the EU.

However, on the other hand, comitology is mostly seen as an executive subcenter, having seemingly autonomous decision-making dynamics. Many authors have pointed to expert-driven deliberations between experts or to bargaining between member-state representatives (for example, Blom-Hansen and Brandsma, 2009; Dehousse, 2003; Joerges and Neyer, 1997a, b), to the European Parliament's lack of ability to control decision making within committees (Bradley, 1997), or even to emerging European identities among member-state participants secondary to their original national identity (Trondal, 2004). All in all, it is probably safe to argue that comitology provides for a strongly

organized space of interaction among officials working on the same policies within different jurisdictions.

This chapter outlines the state of the art in comitology research by running through three recurrent debates. The first debate concerns the formal setup of the system and asks how the comitology system has developed. Besides describing these processes, various authors have attempted to provide explanations for the dynamics of the system – explanations that seem remarkably stable over time and may well also predict future changes of the comitology system.

The second debate concerns interaction patterns within committees, and this debate shows that practices differ significantly from what one would expect from the formal setup of the comitology system, namely bargaining between member-state civil servants and the Commission on the basis of national preferences. A large variety of authors have mapped out informal practices such as deliberation (Blom-Hansen and Brandsma, 2009; Joerges and Neyer, 1997b), socialization (Trondal, 2002, 2004), and mediation (Brandsma and Blom-Hansen, 2010).

The third debate relates to more general issues of delegation and accountability. This includes both delegation from the legislator to the Commission, using comitology as well as the mandating and accountability of member-state civil servants toward their domestic political systems. Besides explaining patterns of delegation, this debate also includes a more legally inspired evaluative component about the degree to which the European institutions, the member states, and the public at large are able to control committee decision making.

Before addressing each of these three debates, the next section first explains in more detail the organization and development of the comitology system.

The organization and development of the comitology system

Currently, comitology comes in two forms: ‘implementing committees’ and ‘expert groups for delegated acts’. They differ in the type of legal act that is to be adopted, as well as in the committees’ formal powers.

Implementing committees, as their name suggests, deal with implementing acts adopted by the Commission under Article 291 (TFEU), and their formal vote is required before the Commission can adopt its measures (Council and European Parliament Regulation, 2011/182/EU). Under the strongest scheme, the Commission needs to secure a qualified majority in favor in committee before adopting its policies, while less strict schemes require lower majorities or do not even provide a binding outcome. When failing to reach sufficient votes in favor, the Commission may take the matter to an appeal committee of member-state representatives, which again votes. The voting rules therefore have a constraining effect on the Commission, and they are regarded as one of the prime sources of committee power (for example, Brandsma, 2013;

Franchino, 2000; Steunenberg et al., 1996). The European Parliament has no participation or veto powers apart from adopting non-binding resolutions on the legality of adopted measures and having limited information rights.

The expert groups for delegated acts deal with a new category of legal acts that was not regulated specifically before the Lisbon Treaty. Sometimes the European legislators delegate to the Commission the capacity to update or supplement annexes of legislation adopted by the Parliament and the Council. This is referred to as 'delegated acts', and the Council and the European Parliament both enjoy veto rights when delegated acts are about to be adopted (Art. 290 TFEU). Much to the dismay of the European Parliament, the member states in the Council insisted on a committee system to oversee the Commission's actions in this regard, which was created in the form of informal member-state expert groups, without formal powers, that 'coincidentally' consists of all member states. In order to redress institutional imbalances, the European Parliament successfully negotiated information and observation rights (Brandsma and Blom-Hansen, 2012). Besides giving input to the Commission before it finally adopts its delegated acts, the expert groups can serve as signaling tools to the Council and the European Parliament since those institutions have veto rights.

The comitology system has been changed relatively frequently, and the current system is the fourth since the first committee was installed in 1962. In fact, the first comitology system was not a system in the true sense of the word since committee procedures were specified on an ad-hoc basis, and comitology had no basis in the treaties. However, there were many shared properties: before adopting executive acts, the Commission was to consult a committee of member-state representatives; voting rules were specified in each and every basic piece of legislation; and after an unfavorable vote outcome the Commission could appeal to the Council of Ministers, which again voted according to procedures specified in basic legislation.

The system changed in 1987 following the Single European Act, which specified that the Council could impose conditions on the Commission in adopting executive acts. This was achieved by codifying the comitology system in the 1987 Comitology Decision (Council Decision, 1987/373/EEC), providing general rules applying to all new comitology committees, most notably a fixed set of voting procedures. The system was reformed again in 1999 (Council Decision, 1999/468/EC), further limiting the number of voting procedures and removing the ones most constraining for the Commission, and introducing a very limited (and materially ineffective) right of scrutiny for the European Parliament. As a prelude to the current delegated acts system, this third comitology system was amended to introduce more extensive veto rights for the Council and the European Parliament when annexes to basic legislation were to be amended through comitology (Council Decision, 2006/512/EC). The fourth

and current system turned the committee system into advisory groups for delegated legislation and replaced the Council as the appeal body with a special appeal committee. History thus saw a gradual narrowing down of the number of voting procedures, a gradual removal of the strictest voting procedures, and increasing scrutiny rights for the European Parliament.

Debate 1: The formal setup of the system

Changes to the comitology system have been relatively well documented and therefore have been researched quite frequently. Bergström (2005) offers the most comprehensive account, describing in meticulous detail the development of the comitology system from its inception in the early 1960s through to the 1999 reform. Others have taken a more specific focus. Several legal scholars, for example, have focused on the question of whether the comitology system, at a certain point in time, creates institutional imbalances. Particular attention in that regard has been paid to the European Parliament, which gained co-decision powers in 1992 but only acquired very weak scrutiny rights in 1999 (Bradley, 1992, 1997). Further reforms have also been addressed, particularly with a view to parliamentary empowerment (Bradley, 2008; Schusterschitz and Kotz, 2007). The most recent reform left researchers puzzled. In the 2011 reform, for the first time the European Parliament was able to co-decide on the setup of the comitology system, but it did not push for parliamentary involvement regarding implementing acts (Brandsma and Blom-Hansen, 2012; Christiansen and Dobbels, 2012).

Others have sought to explain why the comitology system has developed the way it has. Without exception these explanations are based on rational choice institutionalist theories. Most authors agree that the Council installs comitology committees because it prefers to control the Commission (for example, Franchino, 2000; Steunenberg et al., 1996). Blom-Hansen (2008, 2011b) challenges this conventional wisdom on the creation of comitology by modeling it as a battle-of-the-sexes game. Several options were available to the Council when delegating implementing powers to the Commission for the first time in the early 1960s, so why was comitology chosen? On the basis of wide documentary evidence, Blom-Hansen demonstrates that the Commission coordinated this solution, and thus the question should not be why comitology was created, but rather why the Commission wanted it.

This question is all the more salient, because all explanations for subsequent comitology reforms start from the assumption that the Commission in fact prefers no comitology, or at most a very weak form of it. The Council is expected to safeguard member-state interests and thus to press for a variety of control mechanisms, including strong voting schemes; and the European Parliament is expected to strive for equality with the Council: it seeks either to

gain access and control rights or to strip the comitology system of all its powers. All studies of changes to the comitology system confirm this state of affairs, be it studies of single reforms (Blom-Hansen, 2011c; Brandsma and Blom-Hansen, 2012) or studies taking a long-term perspective (Héritier et al., 2013). This preference distribution, combined with the institutional rules in place at the time of a system change, explains the eventual outcome remarkably well.

Explanations of comitology system change other than rational institutionalist accounts do not exist. Probably this is because the European institutions, in negotiating system changes, play a hard-ball game, and they play this game remarkably openly (Héritier et al., 2013, 128). A finding that has been left implicit so far is that sometimes policy preferences dictate institutional preferences, because the institutions anticipate that certain decision-making structures may ease the adoption of specific policies. In the most recent comitology reform, for example, a major dispute on the external trade policy emerged between two groups of member states, with the comitology voting rules on this issue being at stake. In the end, the Commission broke the stalemate by declaring to accept one voting rule only, which again was inspired by the Commission's own policy goals in external trade (Brandsma and Blom-Hansen, 2012).

Debate 2: Practices within committees

Several authors have noted that the workings of the committee system are different from what one would expect, given its formal set-up. With the same distribution of votes in place as in the Council of Ministers and with a variety of voting rules for comitology, one may expect comitology to be just another arena for intergovernmental bargaining. This image, again, originates from rational choice institutionalism, and it has been applied to comitology on several occasions (for example, Pollack, 2003; Steunenberg et al., 1996).

However, this account has been challenged successfully, perhaps because an alternative theoretical framework has been developed modeled on comitology: deliberative supranationalism. This theory, launched by Joerges and Neyer (1997b) following a case study of a foodstuffs committee, combines empirical and normative aspects. Empirically, deliberative supranationalism emphasizes repeated interaction between policy experts in committee leading to a common *esprit de corps*. More normatively, Joerges and Neyer have argued repeatedly that this mode of decision making is superior to other forms of decision making: it forces member-state representatives to take each other's views into account, and the decisions coming about following deliberation between policy experts are supranational and therefore binding (Joerges, 2006; Joerges and Neyer, 1997a, b).

Empirically, however, the picture seems mixed. On the basis of surveys, Egeberg et al. (2003) and Sannerstedt (2005) argue that the intergovernmental

picture is dominant, while Blom-Hansen and Brandsma (2009) argue that both intergovernmental bargaining and deliberation are present but in varying degrees across committees. Brandsma (2013) adds that, despite the variation, scores on measures of deliberation indeed vary but are still relatively high. Numerous case studies of practices in individual committees show traces of both perspectives, sometimes even in coexistence within the same committees (for overviews, see Blom-Hansen, 2011b, 146–148; Blom-Hansen and Brandsma, 2009, 724–726).

Besides the behavior of member-state representatives, some research has also investigated the beliefs, attitudes, and identities underlying their behavior. The variable of interest here is a feeling of allegiance with the European project (Egeberg et al. 2003; Trondal, 2002, 2004; for a review across more types of EU committees, see Quaglia et al., 2008). Findings show that sustained participation in EU committees indeed affects the formation of EU identities, but that such identities do not supersede preestablished identities such as national or sectoral affiliations.

Surprisingly, the behavior of the Commission representatives in the committees has hardly been investigated, despite its very strong position. Furthermore, most evidence is indirect. Brandsma and Blom-Hansen (2010) have asked member-state representatives about their perception of the Commission's behavior in their respective committees and found that the Commission takes on two uncorrelated roles: one of advocating its own policy preferences and one of mediating between member states. Case studies show an even more mixed picture. In the foodstuffs committee, for example, some committee participants found the Commission primarily acting as a neutral arbiter, while others found it primarily advocating its own preferences (Joerges and Neyer, 1997b). Töller (1998) found similar results with respect to the question as to what degree the member states effectively constrain the Commission. Studies directly measuring the Commission's stance in committee are very rare and usually focus on extreme cases in which the Commission faces a negative committee opinion and appeals to the Council (for example, Bradley, 1998). Despite some efforts to map out the Commission's behavior in the committees, to a large extent this remains unexplored terrain.

Debate 3: Delegation and accountability

The third debate, relating to delegation and accountability, falls into two sub-debates that are intrinsically linked to one another. Beginning with delegation, a central argument is that comitology is a matter of legislative choice. Even though the setup of the comitology system as such is decided upon every certain number of years (see debate 1), four choices need to be made by the EU institutions for each and every piece of legislation adopted: (i) Does this piece

of legislation require further executive measures to be adopted by the Commission? (ii) If so, which? (iii) Does the Commission need to be controlled in this via a comitology procedure? (iv) If so, which procedure should apply? These four questions are subject to sometimes fairly intense political bargaining.

The most commonly applied theoretical framework that helps to explain the structure of this bargaining exercise is a variant on the principal-agent framework. This variant does not see the principal's desire for efficiency to be the driving force behind the negotiations, but rather the principal's desire to remain able to affect policy choices down the line, where possible without interference (Blom-Hansen, 2011a, b; Franchino, 2000; Héritier et al., 2013; Steunenberg et al., 1996).

Under this assumption, the preferences of the institutions in legislative bargaining are as follows. The Commission prefers extensive delegation with minimal comitology controls. The Council has no problem with extensive delegation as this eases its own workload, but it also prefers comitology procedures with strongest veto powers (that is, the regulatory procedure). Since this procedure only allows for member-state and Commission participation in comitology committees, it effectively shuts out the European Parliament (EP). This is exactly why the EP wants to avoid applying this procedure at all costs. However, due to the institutional changes that have taken place in the comitology system, its own preferences have changed over recent years.

Up to 2006, there were no comitology procedures that allowed for a strong role to be played by the EP. This is why, up to 2006, the EP preferred no comitology at all, or at most advisory procedures that did not restrict the Commission in the slightest way. These options allowed the Parliament to be able to call the Commission to account, without the Commission being able to hide behind any binding comitology opinion.

From 2006, the regulatory procedure for scrutiny was put in place for a limited number of policy fields, which equipped the EP with more veto powers. Finally, the Lisbon Treaty replaced this procedure by delegated acts with extensive veto powers. This is why in recent years the Parliament started preferring the new two options. For the pre-Lisbon period, empirical evidence is in line with this distribution of preferences (Blom-Hansen, 2011b; Héritier et al., 2013). For the post-Lisbon period, empirical evidence has not yet been published, but it has been noted that finding agreement on comitology procedures is one of the main difficulties in many legislative files.

The mirror image of delegation is accountability. Questions that have guided research in this respect include the following: which actors are accountable to whom, to what degree, and about what? These questions have been addressed primarily not only in law but also in political science. Typically, three accountability forums have been in scope: the European Parliament, the general public, and the civil services within member states. Until the 2006 comitology reform,

authors have pointed to the EP's lack of scrutiny powers over the comitology system (Bradley, 1992, 1997, 2008; Neuhold, 2008). Hitherto it had no veto powers over comitology decision making and was generally not kept informed of the goings on in committees. However, gradually, as the EP saw its scrutiny powers increase, attention moved toward action undertaken by the EP, given the scrutiny powers that it has.

In practice, the European Parliament has to some degree become able to get a foot in the door not only due to the specific rights that are foreseen in the design of the comitology system, but also due to its own strategic use of co-decision powers that can well be, and sometimes are, used strategically for retaliation in different files (Kaeding and Hardacre, 2010). Where the European Parliament has veto powers, the Commission would be wise to consult the European Parliament informally before matters are put before the committees.

Nevertheless, practice shows that attention, especially for matters where the European Parliament does not have comitology-specific veto powers, is quite low (Brandsma, 2013). In everyday practice, it shows that the Parliament behaves more like a legislator than a controller. This is nothing spectacular, given that parliaments in general are more interested in making new legislation rather than scrutinizing the activities of the executive (Andeweg, 2007; Maurer, 2007, 93–96). With respect to comitology, this materializes in two respects.

Firstly, the European Parliament only began to organize its internal methods for the systematic handling of comitology documents from the moment it obtained veto rights under the regulatory procedure with scrutiny in 2006. This process also included the appointment of dedicated parliamentary support staff for comitology affairs. However, even though such a structure is now in place, overseeing comitology measures on a day-to-day basis is a daunting task, if only because of the sheer number of acts passing through it. It is just too much for MEPs to deal with on a structural basis (Brandsma, 2013). Furthermore, the quality of the information that is publicly available via the Internet register of comitology, which currently includes only information on implementing rather than on delegated act committees, is such that it is not of much help to interested parties who may act as alarms for the European Parliament (Brandsma et al., 2008).

Secondly, before any resolution can be adopted in plenary, draft resolutions have to follow a time-consuming route mainly via committee meetings and coordinator meetings. These are not procedures that are specified in the treaty or in any comitology decision, but result from the European Parliament's own rules of procedure. Usually a one- to four-month deadline applies to adopting resolutions on comitology affairs, and plenary meetings take place only once a month. In this respect, the European Parliament has created its own obstacles to exercising accountability. Having said that, it has in the recent past succeeded in getting some resolutions through plenary and tabling an additional number

in committee. It has also succeeded a number of times in taking political action beyond legality checks or vetoes, in cases of what is now referred to as delegated legislation; and, on occasion, the Commission has proved responsive to the Parliament's wishes (Brandsma, 2013; Lintner and Vaccari, 2009). In these respects, it must be concluded that the European Parliament does not exhaust in full the opportunities that it has, as a result of its own cumbersome working procedures and also a lack of capacity to control comitology measures.

With regard to the member states' civil services, several observers have noted that the member-state representatives in the comitology committees have a fair degree of autonomy over their own work (Brandsma, 2013; Egeberg et al., 2003; Sannerstedt, 2005). They have some room for maneuver, and thus they do have something to be accountable for. In fact, the relatively high degree to which they report back in writing to their superiors does display a general willingness to provide information on the goings on in committee (Brandsma, 2010).

However, in a similar vein to the findings regarding the European Parliament, their hierarchical superiors, although generally happy with the amount and quality of information coming in, find it hard to find the time to process it. Often other files take priority, meaning that comitology information lands on a pile of paper that in the end is never read. In cases where committee participants, in their working relationship with their home organizations, are expected to work autonomously, their hierarchic superiors are happy to receive less information and their staff act accordingly by sending them less. Discussions on past performance in committee appear to occur infrequently and are not very fundamental. Opportunities for imposing consequences, however, are many, in the form of both formal and informal sanctions and rewards. All in all, evidence at national level shows that superiors risk losing sight of comitology participants who are supposed to work more autonomously, which is the majority (Brandsma, 2010, 2013).

The need for transparency in comitology decision making has now finally been discussed and defended on several occasions (for example, Brandsma et al., 2008; Dehousse, 2003; Türk, 2003). The general public has only two systematic sources of information on comitology: the Internet register maintained by the European Commission and the Commission's annual report of the committees' activities. The latter report only includes general statistics on, for example, numbers of committees existing, numbers of meetings held, and numbers of opinions given under certain procedures. The Internet register has been studied for completeness in the year 2005, which showed that it is fairly incomplete and that many documents are less than informative. For example, minutes usually only mention that a discussion has taken place, while the overwhelming majority of measures about which comitology effectively decides were missing (Brandsma et al., 2008). Although this study has not been

repeated since, when visiting the Internet register nowadays, it could be concluded that it has been made much more user-friendly in the meantime, but that it still lacks numerous documents.

Conclusion: Old debates, new challenges

As this review has shown, comitology is no longer the underresearched area of EU policy making that it used to be. Many have discovered that it is not just important due to the vast number of executive measures passing through it but also is a veritable microcosm in which many of the debates about the European Union more generally come together: tensions between supranational and intergovernmental logics, interinstitutional bargaining over institutional design, legitimacy and accountability questions, and many more issues all apply to comitology *en miniature*. The development of the comitology system has generally kept pace with the development of the EU, from relying mainly on intergovernmental guidance toward becoming more open to the general public and involving the European Parliament.

In recent history, many authors saw comitology as being not transparent, allowing its participants to deliberate and decide in secret and avoiding responsibility. However, several developments have taken place since the turn of the century, which may well indicate that its legitimacy problems may not be as grave today as they have been previously. The general trend across various European institutions is that they gradually become more accountable over time (Bovens et al., 2010). A number of events show that this may well also be the case for comitology. Although perhaps still not up to the highest standards, the transparency of comitology has in fact increased (Brandsma et al., 2008), and the constitutional fabric of comitology now includes a much stronger position for the European Parliament than what used to be the case (Blom-Hansen, 2011a).

The recent reforms resulting from the entry into force of the Lisbon Treaty fit this historic development, but at the same time have been so path breaking that the current development of the comitology system needs to be watched carefully. The newly introduced Article 290 (TFEU) on delegated acts effectively means that a large part of the committee system has become informalized and stripped of its formal powers, while at the same time it introduces informal EP participation into meetings that hitherto exclusively included civil servants. It remains to be seen to what degree politico-administrative interaction will effectively emerge across levels of policy making, and whether and to what degree the Commission will take advantage of its strengthened position. Quite another matter is the suddenly diminished transparency toward the general public that resulted from the reforms. However, at the same time, the pre-existing comitology system, which only included member-state civil servants

continues to exist under Article 291 (TFEU), and the legislative institutions struggle to choose between either of the articles when delegating the adoption of executive measures to the Commission. These issues may call for a re-formalization of the committee system for delegated acts.

The development of the comitology system is far from finished. New institutional reforms seem unavoidable, and new spheres of politico-administrative interaction have been created. This gives enough reason to keep a close watch on its development and its practices.

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25

Subnational Administrations in the EU Multilevel System: Perspectives from the Bureaucratic Elite

*Michael W. Bauer and Stefan Becker*¹

Introduction

Although it is acknowledged that European integration poses both significant challenges and opportunities for subnational entities, less is known about how regional actors perceive this new constellation. This chapter seeks to fill this void by analyzing the attitudes of regio-crats, that is, high-level officials at regional level, toward the emerging multilevel system of the European Union (EU). In doing so, we not only aim to further our understanding of the European administrative system (EAS) by elucidating attitudinal patterns and variations in regional bureaucracies but also seek to add to the debate on subnational mobilization, which is a well-established branch of the discussion on multilevel policy making in the EU (Hepburn, 2010; Hooghe and Marks, 2001; Jeffery, 1997, 2000; Keating, 1998; Marks, 1992, 1993; Moore, 2008; Tatham, 2010). In this regard, regio-crats are considered representatives of their regional administration's 'thinking', and their aggregated orientations can therefore be used as evidence for understanding the logics of subnational mobilization.

With attitudinal data gathered from five countries, we revisit three central propositions of the early subnational mobilization debate (Hooghe, 1995): (i) the logic of bypassing the national level leads subnational actors to desire strong supranational institutions, (ii) the subnational resource base determines the intensity of subnational–supranational political exchange, and (iii) there should be a certain degree of subnational convergence.² We choose these three propositions because they best reflect the core of subnational mobilization theory if the focus lies on explaining the transformation of interaction patterns between subnational and supranational political authorities.³

This chapter proceeds as follows. Following this introduction, the three propositions on subnational mobilization will be presented in more detail

(Section 2). The regional survey data will then be described, including the socio-demographic composition of the regional elite bureaucracy (Section 3). Subsequently, the three propositions will be confronted with the regionals' attitudes and preferences (Section 4). This chapter will conclude by summarizing the findings and highlighting their implications for our understanding of both the emerging EAS and subnational mobilization theory.

Subnational mobilization theory

The theoretical debate on subnational mobilization encompasses a broad range of assertions and potential empirical implications (Hooghe, 1995, 177; Jeffery, 2000; Marks, 1992, 1993).⁴ We choose three claims for systematic assessment in this chapter, which we believe cluster around the core of subnational mobilization theory.

Firstly, the theory has usually portrayed subnational and supranational actors as 'brothers in arms', united in a drive to 'bypass' and eventually disempower the nation state. The expectation is that interest homogeneity will emerge between subnational and supranational actors. Such interest homogeneity is, however, difficult to observe empirically. A central implication is that subnational actors will develop a genuine interest in a strong and active supranational level; they should be seen, for example, to prefer a supranational conception of EU governance than an intergovernmental model.

Secondly, the empirical variation in the subnational bodies' eagerness to engage in political exchange with the EU has essentially been explained in terms of varying regional capacities and institutional constellations. The proposition is that subnational entities, if they had the resources in terms of staff, finances, and institutional access, would automatically engage in intensifying interaction with the supranational level. Thus, the subnational resource base should determine the intensity of subnational-supranational political exchange. An empirical implication is that institutionally or economically strong subnational entities should be interested in intense interaction with the supranational level.

Thirdly, the theory posits that the political environment of the integration process should little by little favor the intensification of subnational-supranational interaction by transnational learning, interregional competition, or other factors. Thus, subnational entities (at least the 'stronger' ones) can be expected to take advantage of the emerging new opportunity structures and converge in their engagement with the supranational level. One should thus be able to observe convergence with respect to their preferences regarding engagement with the supranational level.

Data

In order to scrutinize these claims, this chapter reports on the preferences and beliefs of regional bureaucrats with substantial exposure to EU policy making. We carried out a telephone survey of regio-crats in five countries and 60 regions. Interviews were conducted by native speakers in the five languages of the 347 interviewees. Between one and 11 individuals were interviewed in each of the 60 regions, averaging 5.5 interviewees per region. Regional civil servants were randomly selected with the constraining criteria that they had to hold a senior position and that they had to have policy responsibilities in areas where EU influence is strong (such as regional economic development and agriculture). The countries were chosen to reflect various accession waves and a broad geographical distribution. We eventually settled for Germany, Spain, France, Poland, and Hungary. While we included countries from southern, eastern, and western Europe, we could not (for pragmatic reasons) select a country from northern Europe. Thus, while we are confident that our findings apply to similar countries, they cannot safely be extended to the Scandinavian, Baltic, or Anglo-Saxon states.⁵

There are two main reasons for selecting regio-crats to study subnational mobilization. Firstly, surveying individuals as representatives of an organization allows us to compare responses to standardized ‘stimuli’ over a broad range of institutional contexts and configurations (Aberbach et al., 1981, 2006). Secondly, and most importantly, we assume that the institutional positions of regional top officials will determine their beliefs and attitudes.⁶ The responses of regio-crats are to a large extent representative of the ‘philosophy’ or ‘thinking’ found within the institution. Unlike politicians, top regio-crats usually have substantial permanence within their institution, where they occupy a pivotal position between subnational administration and politics. They are socialized within their organization and, at the same time, given their seniority, they are able to shape the regional position in their respective policy areas.

The socio-demographic composition of our sample hardly differs from findings for other elite bureaucracies (for example, Aberbach et al., 1981). The regio-crats in the countries under consideration are predominantly male and middle-aged. Nearly 40 percent of the interviewees are aged between 46 and 55 years; about 30 percent are aged over 55 years. As with many other top positions in the public and private sectors, the proportion of women is significantly lower than that of men. Only about one third of the sample are women. Apart from two exceptions, all interviewees have a university degree. Their disciplinary background is, however, quite heterogeneous. Within the German *Länder* administrations, we observed a predominance of people trained in law and public administration, although the proportion of these specialists is somewhat lower than in the German federal administration (Luhmann and

Mayntz, 1973; Schwanke and Ebinger, 2006). Among the Spanish and French regio-crats, we also found a relative predominance of public servants trained in law or public policy, but officials with other educational backgrounds – for example, economics, natural sciences, and social sciences and humanities – are almost equally well represented. Among the Polish and Hungarian regio-crats, economists constitute the largest group.⁷

Evidence

Preferences for EU governance

If we follow the argument that supranational institutions are on the side of subnational authorities, we should find regio-crats being in favor of strong and active supranational institutions. A strong supranational orientation with respect to the EU governance structure encompasses at least two aspects. Firstly, decision-making procedures should be dominated by supranational rather than intergovernmental institutions. Secondly, supranational institutions should also become stronger and more powerful vis-à-vis the member states.

We measured the first dimension of supranationalism by asking how decisions in the Council of Ministers should be taken: by majority or unanimity. A supranationalist attitude is reflected by support for majority voting. Indeed, only ten percent of all interviewees are in favor of unanimity as the decision-making rule, while an overwhelming majority (90 percent) states that they prefer the majority principle. Although we find only low cross-country variation, the French regio-crats above all prefer the majority criterion as the general decision-making rule in the Council of Ministers (96 percent). Our data thus indicate that the vast majority of regio-crats favor a supranational architecture in the EU.⁸

With regard to the second dimension of supranationalism, we asked several questions to elicit the subnational administrators' perceptions of the Commission – usually considered to be their obvious ally – and other EU institutions (see Table 25.1). Asked whether the Commission should be the government of the EU, there is positive consensus, with Spanish and Hungarian regio-crats being most in favor. Furthermore, the average subnational administrator wants to have a Commission that is free from mandatory restrictions, that is, they do not want the Commission to be transformed into an intergovernmental body (COREPER III). Only the Polish regio-crats show reservations about a strong Commission.

This particular Polish attitude is also reflected in lower support for the statement that the European Parliament should have the same rights as the Council of Ministers during the legislative process. The regio-crats in the other countries are significantly more supportive of a strong European Parliament. Finally, we assessed the preferred role of the European Court of Justice (ECJ), which

Table 25.1 Subnational preferences for EU governance: Supranational versus intergovernmental

	Germany	Poland	Hungary	France	Spain	Total
The EU Commission should be the government of the EU.	7.0	6.3	7.9	6.5	8.3	7.2
In carrying out its tasks, the EU Commission should strictly follow the instructions of the member states.	4.7	6.9	4.0	4.8	4.9	5.0
In the EU legislative process, the European Parliament should have the same rights as the Council of Ministers in which the nation states are represented.	8.5	6.5	7.0	7.3	8.9	7.6
In the case of a dispute between the EU and a member state, the ECJ should render the final judgment/be the final arbiter.	7.7	8.9	9.5	8.0	9.1	8.6

Note: The table reports means by country. The scale of the possible answers ranges from 1 (strong disagreement) to 11 (strong agreement)

has played an important ‘integrationist’ role (Weiler, 1994) in the history of European integration. Our regio-crats strongly agree with the statement that the ECJ should have the final judgment concerning disputes between member states and the EU; this broad agreement also reflects the general acceptance of the European jurisdiction.

Literature on subnational mobilization has identified different channels through which regions can represent their interests in the European policy-making process (Hooghe, 1995; Hooghe and Marks, 1996). Following the above-mentioned arguments, we may find that regio-crats may not see their national governments as direct enemies, but still feel a stronger affinity with the EU level. Indeed, by asking them how helpful the different institutions are when it comes to influencing decisions in their favor, we can see that national institutions are rated as less efficient (see Table 25.2). National parliaments are assessed as the least helpful institution, whereas the European Parliament seems to be a better partner when regions want to influence European decisions. Comparing the mean values per country for the national government

Table 25.2 Helpfulness of channels of interest representation

	Germany	Poland	Hungary	France	Spain	Total
National Parliament	5.1	6.1	5.8	5.2	6.2	5.6
National Government	8.3	7.9	6.1	7.9	7.7	7.5
European Commission	8.2	9.0	6.9	8.7	7.3	8.0
European Parliament	7.3	8.4	7.2	7.8	7.0	7.5

Note: The table reports the means by country. The scale of the possible answers ranges from 1 (strong rejection) to 11 (strong support)

and the Commission, we find that the latter institution receives better marks on average. Only the Spanish regio-crats see their national government as being more helpful. In consequence, as expected by subnational mobilization thinking, EU institutions are seen by and large as potential allies for regional authorities in the European multilevel governance system.

Interest in subnational–supranational interaction

In order to empirically analyze the claim that regional entities have a general incentive to intensify subnational–supranational ties, we introduced a distinction between the establishment of institutional structures to potentially interact and policy interaction in specific areas – which we call a ‘polity nexus’ and a ‘policy nexus’ of subnational–supranational interaction.

Polity nexus

Being interested in how regio-crats assess different elements of the emerging institutional setup, we examined our interviewees’ attitudes concerning the following issues: the participation of regional parliaments in the ‘early-warning system’,⁹ the possibility of delegating regional ministers as national representatives in the Council of Ministers, the option of bringing before the ECJ suspected breaches of the subsidiarity principle, and the usefulness of the Committee of the Regions as the formal representation of subnational interests in the EU.

Among our sample of regio-crats, there is fairly strong support for the idea that subnational parliaments should signal to the Commission their suspicion that a particular EU proposal violates the subsidiarity principle in the context of the ‘early-warning system’ (see Table 25.3). Only German regional bureaucrats are less in favor, perhaps unsurprisingly if one considers that German federalism has a strong bias in favor of vertical executive (and not legislative) multilevel cooperation.

Table 25.3 Strengthening of the institutional nexus

	Germany	Poland	Hungary	France	Spain	Total
Involvement of regional parliaments in the national early-warning system	7.9	8.7	9.0	8.8	8.6	8.6
Possibility to delegate a subnational representative to the Council of Ministers	6.9	8.2	8.1	8.3	8.4	7.9
Right to file an action with the ECJ if the principle of subsidiarity is endangered	5.3	7.4	8.1	8.5	8.9	7.5

Note: The table reports the means by country. The scale of the possible answers ranges from 1 (strong rejection) to 11 (strong support)

The Maastricht Treaty has already established the possibility of regional ministers participating in the Council of Ministers as representatives of their respective member states (Hooghe, 1995). Use of this option is made in cases where policies are negotiated that fall under regional responsibility of a particular member state. We receive somewhat lower mean values of bureaucratic support for this instrument than for the option of filing subsidiarity complaints in the early-warning procedure. The reason might be that subnational representatives in the Council of Ministers negotiate on the basis of a ‘national’ position. Such a position usually already represents a compromise between central and subnational governments; therefore, regional delegates cannot unconditionally promote the position of their individual entity. The pattern is similar with respect to direct complaints to the ECJ regarding suspected breaches of the subsidiarity principle. Spanish, French, and Hungarian respondents are very much in favor of having such an option, whereas the German regio-crats are much less approving.

Finally, we asked about the desired future for the Committee of the Regions, which by many accounts constitutes the single most important structure of interest representation between the subnational and European arenas (Hooghe, 1995; Hooghe and Marks, 1996). We might therefore expect clear-cut preferences in favor of an institutionally strong body representing subnational authorities within the EU. The majority of regio-crats indeed want to give more rights to the Committee of the Regions (see Table 25.4); about one fifth even responded that they want this institution to have a competence equal to the Council of Ministers or the European Parliament (‘third chamber’). However, German regio-crats are again comparatively more critical: a significant minority

Table 25.4 Future role of the Committee of the Regions

	Germany	Poland	Hungary	France	Spain	Total
Abolition	13.3	1.5	4.0	8.2	4.2	6.4
Maintain the status quo	34.7	16.4	14.7	13.1	6.3	18.1
More rights at the stage of law formulation	41.3	61.2	61.3	54.1	75.0	57.4
Equal third chamber alongside EP and Council of Ministers	10.7	20.9	20.0	24.6	14.6	18.1

Note: The table reports percentages of respondents by country

even wants to abolish the Committee of the Regions, while one third simply wants to maintain the status quo.

In summary, our data suggest that regio-crats want to moderately or significantly intensify what we call the 'polity nexus': they want to introduce or optimize systemic structures that allow the subnational level to potentially engage in a subnational-supranational political exchange. This was to be expected from a subnational mobilization point of view.

Policy nexus

The 'policy nexus' concerns subnational actors' preferences regarding participation in multilevel policy making across particular policy areas.¹⁰ This aspect is extremely relevant because it reflects subnational attitudes toward the vertical dimension of the EU multilevel governance system. There are two important questions in this regard. Firstly, in which policy areas do subnational bureaucrats want to see their regions involved? Secondly, under what conditions do they want to cooperate with the supranational level? It has been suggested that regions may benefit politically from cooperation between subnational and supranational levels in particular policy areas (Mazey, 1994), but notwithstanding the debate about policy allocation in the EU (Alesina et al., 2001; Breuss and Eller, 2003), this aspect has not yet been studied systematically from a subnational vantage point.

Asked whether regional authorities should be involved in policy making across 12 policy areas, regional bureaucrats showed only a moderate desire for participation: on average, they want subnational competences in about four policy areas. However, national differences are evident. Whereas Hungarian respondents are satisfied with few competences (1.6), Spanish regional bureaucrats demand extensive competences in about eight policy areas. The Polish (4.8), French (4.3), and German (3.4) regio-crats desire only modest participation rights across policy areas in the EU multilevel system.

We also asked the regio-crats in which policy areas they want to cooperate with the supranational level. Overall, a constellation where policy making is shared vertically across political levels and involves subnational and European actors is preferred for about one policy out of 12. In other words, the subnational preference for vertical cooperation in policy making involving the supranational level turns out to be even lower than the subnational preference for policy competences as such. In short, on the basis of these data, the subnational level should neither be seen as 'by default' expansive in terms of desired policy involvement nor as overly sympathetic to supranational involvement where subnational policy competences are deemed appropriate. Both results sit badly with the present transformative conception of the dynamism of the emerging multilevel governance order in Europe.

Again, there is variation across countries. German and Polish regio-crats favor subnational–supranational cooperation in about one policy area, whereas Hungarian bureaucrats do not want to have any policy competences together with the EU level. With a mean value of about two policy areas, French and Spanish regio-crats are relatively open to vertical interaction.

Examining these preferences in more detail, we can identify three policies for which a stronger nexus between regions and the EU is supported: research and technology, business development and structural policy, and environmental protection. Around half of the regio-crats favoring subnational competences in these policy areas want the EU as a partner. These policies can be categorized as issues of 'low politics'. By contrast, with regard to policies primarily falling under the sovereignty of the nation state (so-called high politics), very few regio-crats favor the involvement of regional authorities. Besides the policy variation, our data also indicate that preferences for EU and regional cooperation in policy making vary cross-nationally. Around one third of the German and Polish as well as half of the French respondents regard shared responsibilities as being most useful in business development and structural policy, while Spanish regio-crats prioritize subnational–supranational cooperation in research and technology, tourism, and environmental protection.

Summing up, regio-crats favor the intensification of subnational–supranational political exchange, yet only to a modest degree. Far from wanting to expand policy involvement in all areas, they carefully select specific policy areas. The areas where the regio-crats favor competences are mainly policies that can be characterized as 'low politics'. Seen from the subnational mobilization theory perspective, this is at best a mixed result.

Preference patterns: Convergence and variation

The third expectation of subnational mobilization theory concerns convergence among comparable groups of subnational entities. Clearly, our non-longitudinal survey data do not allow us to assess convergence in terms of

growing similarity over time, but they do provide evidence of preference patterns. According to subnational mobilization theory, the effects of European integration on regional entities will vary depending on the different resources (institutional, financial) that individual regions have at their disposal (Hooghe, 1995, 192): more resources mean a greater probability of eagerness to engage in vertical political exchange. Furthermore, the hypothesis that institutionally well-endowed regions should have a higher incentive to engage with the European level implies that subnational administrators from these regions will converge in their attitudes toward policy cooperation with the EU. We therefore compare rich and poor regions, as well as institutionally strong and weaker entities.

In their response patterns regarding European governance and the subnational–supranational polity and policy nexus, our sample of regio-crats shows striking similarities – despite quite different degrees of subnational autonomy. Regional administrators are overwhelmingly in favor of strong supranational institutions and display positive attitudes toward subnational–supranational interaction in general. At that level of generality, however, such a consensus is not surprising.

The picture changes at deeper levels of analysis. Distinguishing between poorer and richer regions with respect to the attitudes expressed about the polity nexus, we observe interesting results. We find that the mean values of ‘poorer’ regions are higher than those of socioeconomically richer entities (see Table 25.5). Furthermore, a Kruskal-Wallis test for group differences shows that

Table 25.5 Differences between resource-rich and resource-poor regions with regard to the institutional nexus

Subnational authorities with ...		Integration of regional parliaments in national early-warning system	Possibility to delegate a subnational representative to the Council of Ministers	Right to file an action at the ECJ if the principle of subsidiarity is endangered
GDP < EU average	Mean	8.9	8.1	7.8
	sd	2.4	2.9	3.1
	n	233	232	232
GDP > EU average	Mean	8.1	7.6	7
	sd	2.5	3.1	3.4
	n	103	98	102
Kruskal-Wallis test		Significant	Not significant	Significant

Note: The table reports the average number of policies for which the respondents favor competences for regions and the EU, differentiated for socioeconomically strong and weak regions, that is, regions with a GDP which is higher/lower than the European average. The data reported are group mean values, standard deviation (sd), and number of respondents (n) for each group

these differences are significant for the early-warning system and for the right to file an action at the ECJ. This indicates that, on average, regio-crats from socio-economically well-developed regions are less in favor of a strong integration of regional authorities in the institutional setting of the EU than their poorer counterparts. Subnational mobilization theory would expect this relationship to be the other way around.

In order to assess the factor ‘institutional strength’, we again divided our sample into two groups, the first characterized by a relatively low degree of regional autonomy (France, Hungary, and Poland) and the second by a relatively high degree (Germany, Spain).¹¹ Once again, it is the institutionally ill-equipped regions that have higher mean values, which indicates a preference for greater political exchange with the European level (see Table 25.6). Additionally, the results of the Kruskal-Wallis test point to significant group differences.

With respect to the policy nexus, we also find significant group differences (see Table 25.7). However, compared to the pattern described above, we see quite a different picture when it comes to the regions’ socioeconomic situation: regio-crats from socioeconomically strong regions are more in favor of cooperation with the EU level across various policy areas. Although the standard deviation within the group of socioeconomically strong regions is higher, the regio-crats on average prefer for about two policies a constellation that brings together European and regional levels. Comparing the groups of regions with low and high autonomy, we observe a similar picture. Albeit at a relatively low level, administrators from institutionally strong entities, compared

Table 25.6 Differences between institutionally strong and weak regions with regard to the institutional nexus

Subnational authorities with ...		Integration of regional parliaments in national early-warning system	Possibility to delegate a subnational representative to the Council of Ministers	Right to file an action at the ECJ if the principle of subsidiarity is endangered
Low autonomy	Mean	8.9	8.2	8.0
	sd	2.4	2.8	3.0
	n	210	209	209
High autonomy	Mean	8.2	7.5	6.7
	sd	2.5	3.1	3.3
	n	126	121	125
Kruskal-Wallis test		Significant	Significant	Significant

Note: The table reports the average number of policies for which the respondents favor competences for regions and the EU, differentiated for institutionally strong and weak regions. The data reported are group mean values, standard deviation (sd), and number of respondents (n) for each group. Note that all group differences are significant

Table 25.7 Group differences for subnational–supranational interaction for 12 policies

	Subnational authorities with ...			
	GDP < EU average	GDP > EU average	Low autonomy	High autonomy
Mean	1.0	1.8	1.0	1.6
sd	1.5	2.2	1.7	2.0
n	233	105	213	125
	Kruskal-Wallis test is significant		Kruskal-Wallis test is significant	

Note: The table reports the average number of policies for which the respondents favor competences for regions and the EU, differentiated for socioeconomically strong and weak regions and for institutionally strong and weak authorities. The data reported are group mean values, standard deviation (sd), and number of respondents (n) for each group

to their weaker counterparts, would again prefer a more intense interaction with supranational institutions based on policy competences.

In summary, our data suggest that it is regio-crats from institutionally weaker regions and from regions that are economically poorer than the EU average who are in favor of consolidating subnational–supranational institutional interaction (polity nexus). By contrast, with respect to cooperation in particular policy areas, it is the regio-crats from regions with a GDP above the EU average who are in favor of involving the EU in policy areas in which they have or seek competences (policy nexus). These results do not sit well with subnational mobilization theory, according to which – in particular with a view to institutional transformation along the vertical dimension of multi-level governance – the institutionally ‘stronger’ regions were expected to take the lead.

Conclusion

Using survey data from five countries, this chapter has shed light on the attitudes and preferences of regional bureaucrats toward the emerging multilevel system of the EU. Their orientations show how subnational administrations deal with increasing integration. While some patterns cut across all subnational bureaucracies, there is also some interesting variation. We used these data to put three crucial propositions of subnational mobilization theory to an empirical assessment: subnational actors want a supranationalist EU; they want to intensify the subnational–supranational exchange; and subnational entities – in particular, institutionally strong ones – can be expected to converge in their preferences regarding interaction with the supranational level. There is good cause to revisit subnational mobilization propositions today because the original concept is based on expectations of transition and transformation,

that is, patterns of interaction are supposed to increase as European integration intensifies.

In general, regio-crats are indeed in favor of a supranational EU system with strong and independent supranational institutions. Seen in terms of having a powerful 'brother in arms' to emancipate them from national tutelage, this is precisely what should be expected on the basis of subnational mobilization theory. The picture gets more complicated, however, when preferences for subnational–supranational political exchange are analyzed. We distinguished between polity- and policy-centered exchange and found that structural vertical interconnections that open up a potential to interact are much more broadly supported than are options to cooperate with the EU in specific policy areas. With the exception of Germany – where reservations are strong – European regio-crats clearly prefer strengthening institutional channels for political exchange with the EU, but are much less keen on working jointly with the supranational level in actual policy making.

The obvious question is why regio-crats show enthusiasm for strengthening the institutional nexus but remain fairly reserved when it comes to cooperation across governmental levels in specific policy areas. We think that the regio-crats' preferences indicate that there is little hope for transformative governance dynamics fuelled by the expansive agendas of subnational levels; the regio-crats' yardstick for competence allocation appears to be the status quo of their respective national systems and not a vision of an emerging European multilevel system in which their level could expand its authority.

In this view, regional bureaucrats seem to be cautious actors in the European administrative system. After all, the institutional nexus is basically a defensive tool, good for alerting about and, if possible, inhibiting, threatening EU decisions. It does not entail any obligations in terms of positive subnational action. Our data thus suggest that regio-crats think that there are limits to what their subnational authorities should do and where they should engage in intensifying the subnational–supranational nexus in multilevel policy making. Such self-restriction is of great interest, and not only to those expecting huge transformative repercussions from multilevel policy making at subnational level.

Finally, analyzing the preferences for intensifying the polity and the policy nexus from a convergence perspective, we observe that it is the financially and institutionally weak 'camp' that is more eager to support polity-related interaction, while the 'camp' of institutionally stronger and economically better-off regions display some hesitation. In contrast, with respect to subnational–supranational interaction in concrete policy areas, it is the better-off regions whose regio-crats support a relative degree of increased cooperation with the EU. However, the word 'relative' is important here, because, generally speaking,

the eagerness to cooperate vertically with the EU in policy making is much less developed than the support for institutional interaction.

This chapter has revisited central claims implicit to subnational mobilization theory; integrating our results into a revised synthesis of subnational mobilization theory is beyond its scope. Regarding future attempts to renew subnational mobilization theory and to remedy the shortfalls that have been identified, the most likely candidate variables are found in the area of 'domestic bargaining games' (see also Jeffery, 2000). Differential regionalist ideologies (Masseti and Schakel, 2011) and varying interest intermediation features (Tatham 2010, 2011), for example, appear to be promising ways to account for the differential political strength of regions vis-à-vis the center in subnational mobilization analysis. Whatever the direction subnational mobilization theory may take, we are convinced that bringing in the attitudes and beliefs of regional top bureaucrats as a proxy for the preferences of the regional organizational level is a useful contribution in that it increases empirical leverage and has important theoretical implications.

Notes

1. This chapter emerged from a research project funded by the German Research Foundation (DFG) with the title 'Governance-Präferenzen im europäischen Mehrebenensystem. Subnationale Exekutiviten zwischen Sozialisierung und Nutzenmaximierung'. We are grateful to Philipp Studinger for his input to an earlier version of this chapter.
2. Some of these 'early' claims have already been criticized by other authors (see Jeffery, 2000), but mainly either on a conceptual basis or on the basis of evidence taken from individual case studies (Bourne, 2003).
3. Those who interpret subnational mobilization in a different way or from a different perspective would probably opt for other claims. It is true, however, that these particular claims are crucial to our own focus on the vertical transformative potential in the EU that subnational mobilization may explain.
4. Hooghe and Marks have refined their prominent theoretical claims in separate and joint publications over the years (Bache, 1998, 1999; Hooghe and Marks, 1996, 2001; Marks et al., 1996), but the crucial claims revisited here have remained by and large intact. Because we believe that these claims are outlined with greater purity in the original publications, we refer in the following to these.
5. A fuller description of the data set can be found in an earlier work (see Bauer et al., 2010).
6. The extent to which the position of an individual within an organization determines his/her attitudes is a matter of debate (in particular if compared to other potential causal factors, such as individual utility or socialization in someone's formative years before joining the organization). Nevertheless, the existence of a basic link between an individual (especially if he/she is at the top of an organization) and the general aims and philosophy of this organization is well established, and the elite survey method is certainly a standard tool used in this area (Bauer, 2012; Hooghe, 2002; Kassim et al., 2013).

7. Our data reveal that regarding the questions addressed in this chapter, national preference trends are clearly and robustly identifiable. This encourages us to focus on the presentation and comparison of the results of the national subsamples. For more details about the sample, see Bauer et al. (2010).
8. There is a slight variation among the countries with respect to the preference in favor of the majority criterion: Poland: 91 percent; Hungary: 87 percent; Spain: 94 percent; and Germany: 84 percent.
9. The Lisbon Treaty includes an early-warning mechanism for subsidiarity control. The system allows national parliaments – including regional parliaments – to object to Commission proposals within eight weeks of their publication on the grounds that they breach the principle of subsidiarity.
10. We are aware that multilevel governance is a complex concept comprising aspects both of policy competence and of varying modes of coordination and interaction (Benz, 2007; Benz and Zimmer, 2010; Tömmel, 2008); we focus here on the former.
11. This classification is based on the regional scores of the regional authority index by Hooghe et al. (2010). Regions with a value lower than ten are classified as regions with low authority.

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26

The Europeanization of Civil Services and Human Resources (HR) Policies

Christoph Demmke

Defining the impact of the EU integration process on national civil services

Generally, politics should not try to form the character or cultivate the virtue of its employees, for to do so would be to legislate morality (Sandel, 2005). However, things are different regarding state employment. Here, for a long time all political groups shared the idea that governments should not be neutral, but instead should interfere strongly in employment issues. State employment as such was loaded with moral discussions and the need to have neutral, loyal, and impartial state servants. The purpose of a specific civil status and working conditions was also to achieve fairness and equity, to implement the merit principle, and to protect public employees against arbitrary administrative decisions.

Traditionally, a specific public service ethos and a number of moral principles – a hierarchical and formalized organizational structure, clear and rigid career paths, lifetime tenure, full-time employment, seniority, advantageous pension systems, and rigid remuneration systems – were introduced in order to reduce as far as possible the risk of excessive political influence, corruption, misconduct, the exercise of private interests, and the instability of governments. Consequently, the traditional argument for a specific organizational structure was to produce a certain ethical status for civil servants, who should be committed to the public good, neutrality, impartiality, observing confidentiality, and displaying expertise. In many countries, civil servants were therefore working in hierarchical organizations and had very specific recruitment procedures, specific ethical obligations, little mobility, varying working conditions, and specific social security systems.

In the 21st century, governments' employment frameworks are very ambitious (OECD, 2009, 9). They want employment systems that guarantee the observation of fundamental values and administrative law principles and ensure a focus on effectiveness, efficiency, and accountability. Government policies must ensure equal treatment and fairness while also rewarding

individual efforts. In the meantime, government employment structures should also be diversified and representative, while ensuring the merit principle and the equality of opportunities. Furthermore, governments' employment policies must be attractive and competitive with respect to private sector policies while managing tax payers' money as prudently as possible (OECD, 2009, 9).

Despite the power of tradition, more governments are withdrawing from interfering in public employment issues and moral issues. This can best be seen in trends toward the alignment of working conditions between civil servants, other public officials, and employees in the private sector. Today, public employment is increasingly under the influence of the market, individual interests, and social partners.

Instead of being separated from society and citizens, today there is a trend toward blurring the boundaries between public and private spheres as well as between civil servants, public employees, and private sector workers. Physically, the walls between the civil service and the labor market are also coming down. Almost all member states have started to facilitate recruitment procedures, reform or even abolish careers, reduce internal hierarchies, support more mobility, delegate more responsibility to line managers, and align working conditions between civil servants and other public employees. Public tasks are increasingly carried out by non-state bodies, and more tasks which have traditionally been performed by civil servants are carried out by other public employees or private service providers.

All of these reform trends have also opened up the national civil services to the influence of international relations, international politics, and the marketization of employment conditions. Today, the concept of the civil service is also increasingly influenced by changes to the definitions of sovereignty, nationality, citizenship, exercising public powers, and safeguarding the general interest. Recent developments also indicate a change in the pattern and exercise of state authority from government to governance (Bevir, 2011) and from a hierarchic or bureaucratic state to governance in and by networks, outsourcing, public-private partnerships, and hybrid organizations (Kickert, 2008).

In this chapter, we will delineate the impact of the EU integration process on national HR policies in an area that can be characterized by the existence of many 'undefined boundaries and grey areas' (Demmke, 2002).

The direct impact of European law and jurisprudence

For a long time, the EU had no competence to regulate any of the above-mentioned employment issues. Consequently, 'the civil service is without the section of the politico-administrative system of the Member States of the European Union (EU) which has been most influenced by the respective

national traditions and histories and which for a long time was least affected by European Integration' (Bossaert et al., 2001, 3). As a result, the 'quiet construction of a Europe of offices' (Spinelli, 1966, 71) or, more neutrally, the European dimension of civil services and HR policies, has not received much attention in the field of public administration.

There is no longer a clear dividing line between EU administrative law and national administrative law or between EU administration and national administration – as the scholarly discussions on the Europeanization of public law (Jans et al., 2007), the Europeanization of administrative law (Terhechte, 2011), and the emergence of a 'European *Verwaltungsverbund*' (Schmidt-Assmann and Schöndorf-Haubold, 2005) illustrate. However, the question as to the impact of the integration process on the civil service and HR policies has – despite different views on the subject – basically been left unanswered in view of the increasing 'grey areas' where Community and national competence overlap (Alber, 2002; Kämmerer, 2001). For example, the question as to which tasks and positions should be carried out exclusively by civil servants is becoming more difficult to answer as the boundaries between the public and the private sectors, as well as between European and national policies, become 'blurred'. Today, 'exercising national public power' and 'safeguarding the national interest' are more difficult than ever to define. This can best be illustrated by the changing interpretation of Article 45 (4) of TFEU and the case law of the Court of Justice regarding the question as to which positions fall under the exception clause of Article 45 of TFEU (Ziller, 2010). The legal interpretation by the European Court of Justice (ECJ) has certainly helped to clarify the word 'public employee' and 'civil servant' concerning the legal interpretation of Article 45 (4) TFEU. This jurisprudence impacts on the ability of member states to define for themselves which sectors fall within the civil service and which do not (Demmke and Moilanen, 2013). However, evaluating the impact of Article 45 (4) TFEU on the national civil services is difficult and differs among member states (Ziller, 2010). The (legal) importance of opening up the exception clause in this article has not resulted in a substantial rise in the number of EU nationals working in the civil service of another EU member state. The opening up of civil services to nationals from other member states has thus on the whole remained a 'dead letter' – if the yardsticks we use are real impacts and not legal consequences. Thus, this example shows that legal and political impact should not be confused with administrative impact.

On the other hand, the effects of secondary law (that is, mostly the Antidiscrimination Directives, the Working-Time Directive, and the Fixed-term Directive) and the rulings by the ECJ in particular have frequently, and sometimes highly controversially, illustrated the significance of Community legislation for national HR policies – exemplified by the fields of working hours (for example, the on-call hours for physicians) and the recognition of diplomas

(for example, the *Burbaud* case of 9 September 2003). Yet, how are we to judge the effects of these developments? What kind of criteria should be applied when measuring the impact? Take, for example, the working-time directive: does this instrument have an important impact or not? Any judgment involves different issues at stake (for example, the interpretation of the importance of different articles, the derogation clauses, or the jurisprudence of the ECJ, and the different impact on the national legal and political system).

Another dimension that is becoming increasingly important to look at is the direct impact of intergovernmental and soft-law policies, which are increasingly adopted at EU level in the framework of the Open Method of Coordination (OMC), the European Employment Package, and the European Economic Governance. Many of these policies have an important impact not only on national public budgets but also, more specifically, on national pay and pension systems and employment conditions in national civil services.

The impact of secondary law on working and employment conditions

European secondary law, in conjunction with the relevant case law of the ECJ, may have a direct impact on working and employment conditions in the civil services and the laws and regulations governing them, if and when secondary law makes no exemption for the civil service and when the term 'public employee' is also to be applied to civil servants.

Currently, the greatest impact of EU law exists in the field of antidiscrimination and, more precisely, in age-related antidiscrimination issues. This is particularly sensitive as many HR policies and processes include 'hidden' and mostly unintentional forms of discrimination. Take, for example, the classical seniority principle in the national pay and career development systems, which implies automatic salary increases, promotion opportunities, and increases in holiday entitlements. These traditional elements in national HR policies may have discriminatory effects for younger employees and may contradict EU requirements. Thus, many national civil services are required to remove a number of traditional structural features as they may have discriminatory effects.

Other European directives in the area of social legislation, and in particular those having regard to the regulation of working hours and working contracts, also directly affect working conditions in the civil service as in any other type of employment, as does European legislation in the areas of safety and health and parental leave, which is equally applicable to the civil service. The civil service is also directly affected by European legislation concerning the social security of migrant workers and the mutual recognition of professional education and training. Finally, one should mention European legislation on employees' rights

in the event of transfers of undertakings, businesses, or parts of undertakings or businesses – for example, in the event of a privatization of public organizations.

However, the overall impact of the EU should not be exaggerated, as only a handful of directives and regulations have been adopted in the field of working and employment conditions that are applicable to national civil services and HR policies. More precisely, so far European legislation has in no way had a direct influence on the main characteristics of civil services and HR policies, such as the specific nature of employment relationships, the criteria and procedures for admission into the public service, the systems of promotion, and performance management systems. However, the impact of EU law on national civil services and HR policies depends on the actual issues at stake and may change from article to article and according to the ECJ's interpretation of the various issues at hand.

In the following, we will restrict ourselves to one case and will analyze this influence more deeply in discussing one EU directive.

The flexibilization of employment contracts: The case of Directive 1999/70/EC

Due to the overall increasing numbers of fixed-term contracts in national public administrations, it is important to discuss the scope and limitations set down in EU law. In this respect, the most important are the Directive on the Framework Agreement on Fixed-term Work concluded by ETUC, UNICE, and CEEP (1999/70/EC) and the Directive on Temporary Agency Work (2008/103/EC). For practical purposes, we will restrict ourselves to Directive 1999/70/EC.

Directive 1999/70/EC regulates an issue (the use of fixed-term contracts and the relationship between fixed-term contracts and unlimited contracts), which concerns a highly important policy issue. Whereas the spirit of the directive is clearly critical about the development of 'too much flexibility' and regulates that unlimited contracts should be the general form of employment relationship, the reality in the public and private sectors at national level shows a different picture. During the past years, flexible employment contracts have increasingly become the norm in many sectors and countries. This could be interpreted as a 'weak' impact of the directive on national civil services.

The purpose of Directive 1999/70/EC is threefold:

- (a) It allows the conclusion of fixed-term contracts, subject to certain conditions.
- (b) Its aim is to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination regarding workers with fixed-term contracts and those with unlimited contracts.

- (c) It establishes a framework to prevent abuse arising from the use of successive fixed-term contracts or relationships.

Regarding the latter, member states should introduce one or more of the following measures in a manner that takes account of the needs of specific sectors and/or categories of workers:

- (a) Objective reasons justifying the renewal of such contracts or relationships
- (b) The maximum total duration of successive fixed-term employment contracts or relationships
- (c) The number of renewals of such contracts or relationships (clause 5)

Member states may also introduce measures such as a maximum total duration of successive fixed-term employment contracts or relationships or limitations as to the number of renewals of such contracts or relationships. Moreover, it is also up to the member states to determine what shall be regarded as 'successive contracts'. The most popular measure for preventing the abuse of fixed-term contracts, on its own or combined with another measure, is a cap on the total duration of such contracts. For example, Luxemburg has a strict regime and does not allow fixed-term contracts to exceed two years.

The importance of the directive for national civil services stems from the fact that (according to Article 4 (1) of the directive) workers shall not be treated in a less favorable manner than *comparable* permanent workers solely because they have a fixed-term contract. As the definition of workers also applies to civil servants, this directive requires member states to align the working conditions of different categories of public employees, including civil servants.

The Court of Justice ruled on 18 October 2012 in cases C-302/11 to C-305/11 that *comparable* means that if the persons concerned are engaged in the same nature of work, they can be regarded as being in a comparable situation. In the meantime, the Court has also decided upon a number of issues regarding differences in treatment between (fixed-term) employees and employees with unlimited contracts. For example, in the case of Del Cerro Alonso C-307/05, the Court of Justice held that the principle of non-discrimination in the employment conditions of fixed-term workers compared with permanent workers also covered aspects relating to pay and the length-of-service allowance despite the fact that the EU has no competence to legislate in relation to pay, as stated in Article 153 (5) TFEU.

In case 177/10, the Court of Justice decided that the duties performed by an interim civil servant who was in a comparable situation to that of a career civil servant must in principle be taken into account in the calculation of seniority required for internal promotion. A length-of-service increment as an employment condition is also covered by Article 4 (1) of the Framework Agreement

annexed to the Fixed-term Work Directive (1999/70/EC), that is, fixed-term workers can contest less favorable treatment without objective justifications (C-444/09 and C-456/09).

The above-mentioned cases C-302/11 to C-305/11 concerned a situation where workers who worked under successive fixed-term employment contracts were placed on the permanent staff of that authority under an employment relationship of indefinite duration. The employer (AGCM) placed the workers at the starting level of the pay scale category which they were in when their earlier fixed-term contracts were terminated, disregarding the length of service accrued under those contracts. The Court of Justice decided that this practice constituted a violation of Article 4 of the directive. Therefore, the implications of the directive for the status of public employees and civil servants, as well as for the relationship between public and private employees, are considerable as the interpretation of the principle of antidiscrimination in the directive supports the alignment of working conditions between public employees, civil servants, and private sector employees. However, the directive does not stop member states from continuing with the adoption of fixed-term contracts, as it allows for a wide discretion in using fixed-term contracts.

Overall, the case of this directive is typical and representative of many other cases which have an impact on national public administrations and civil services (for example, the Working-Time Directive only sets a minimum standard of 48 hours per week but is nevertheless important regarding the definition of inactive and active working time and the application of the derogation in Article 17 of the directive).

However, the exact extent of this impact remains impossible to estimate as any judgment requires a subjective and political opinion.

The indirect impact on HR policies and the impact of European economic governance

If we turn our attention to intergovernmental and informal policies and their impact on national civil services, other examples confirm that national civil services are being increasingly influenced by the European integration process, almost through the back door (Mangenot and Polet, 2004). Furthermore, EU law and policies have an impact in policy areas that fall exclusively under national competence (Bruun et al., 2012) and even concern Article 153 (5) of TFEU, which states that the provisions of the social chapter of the treaty shall not apply to pay.

For example, in the framework of European economic governance, the European Council has been particularly active in policies that lead to an extension of economic and monetary policies into social policies and which are

also applicable to the civil services. Regarding the latter, the European Council meeting of 23 March 2011

committed the Eurozone states to a regime of economic surveillance with direct implications for labour law. The Pact envisages regular monitoring of unit labour costs at the national level, with the aim of ensuring that they evolve 'in line with productivity'; the setting of targets for long-term and youth employment and labour market participation rates; and the taking of steps to ensure that state expenditures in the area of pensions, health care and social security benefits do not threaten the 'sustainability' of public finances.

(Bruun et al., 2012, 34)

This commitment addresses areas that fall under national competence and implies a further extension of EU policies in an area that has always been understood to be a domain of the member states.

The right/prohibition to strike for civil servants is also a national competence and is explicitly mentioned in Article 153 (5) TFEU as a national prerogative. However, the right to strike is recognized by various international instruments. In this context, Article 28 of the Charter of Fundamental Rights of the European Union expressly recognizes the right to collective bargaining, which, in cases of conflicts of interest, includes the right to take collective action to defend interests, including strike action. According to the European Court of Human Rights, the right to collective bargaining and to negotiate and enter into collective agreements constitutes an inherent element of the right of association – that is, the right to form and join trade unions for the protection of one's interests, as set out in Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms. While the European Court of Human Rights acknowledged in the case of *Enerji Yapi-Yol Sen v. Turkey* that the right to strike was not absolute and could be subject to certain restrictions, it held that a ban applying to all civil servants was too large a restriction. This case (*Enerji Yapi-Yol Sen v. Turkey*) puts all existing civil service systems where civil servants are not allowed to strike (for example, the German system) under pressure.

However, this example shows that long-standing issues and respective national civil service and HR traditions (such as the prohibition to strike), which for a long time were not affected by the European integration process, are increasingly influenced by the EU and other international developments. Similarly, other national traditions are also being put under pressure, but more indirectly. For example, the European Commission agrees that benchmarking and the identification of good practices are beneficial and bring added value to all EU member states, if more and better data on performance information can be generated at EU level and the work on comparable indicators is to be

continued. Currently, this is the case in the field of European employment policies, public performance comparisons, and flexicurity policies, where common indicators are being discussed and adopted. For example, in 2011, the Commission started a substantial research program on public sector innovation. The Commission is also piloting a European Public Sector Innovation Scoreboard as a basis for further work to benchmark public sector innovation.

In fact, benchmarking in the framework of the Open Method of Coordination has an increasingly strong effect on member states as the quality of indicators improves and thus the peer pressure at national level. As a consequence, recent years have seen the introduction of comparable reforms in the field of employment policies and a gradual alignment in the field of job security, as many member states abolished life-time tenure and introduced greater job flexibility in the public sector. These trends have been influenced by the OMC discourse at EU level in the field of the employment policy package and 'flexicurity'. However, linking the relaxation of job security at national level to the flexicurity debate would be too simplistic as it suggests that the main trigger for forcing member states to implement these reforms is found at EU level. In fact, other national pressures (budgetary and competitiveness constraints, and high unemployment rates) and reform priorities (reform of the labor market and employment policies) played a more dominant role.

There is also very little factual and empirical evidence about the effects of benchmarking within the OMC and about whether converging trends are a result of more benchmarking, public sector performance comparisons and competitions, or the refinement of common indicators in the field of flexibilization of labor market policies ('flexicurity').

However, the European Public Sector Innovation Scoreboard (EPSIS) is informal and experimental. By giving visibility to the extent of innovation in the public sector, it could nonetheless provide a solid basis for the further development of best practices in this field, potentially resulting in an established scoreboard providing data annually on public sector innovation in member states.

In most cases, national civil services are integrated in these benchmarking initiatives. This again raises the question of the possibility of converging trends on the basis of performance and scoreboard data.

The effects of informal cooperation, benchmarking, and mutual learning in the field of Human Resource Management (HRM): The case of EUPAN

In recent years, it has been fascinating to compare new forms of cooperation between the EU and national administrations with old dichotomies – that is, the formulation and implementation of policies, direct implementation

through community bodies, indirect implementation through national bodies, and so on (Terhechte, 2011). New and different forms of administrative cooperation have emerged and take the form of an administrative fusion ('Verwaltungsverbund') (Schmidt-Aßmann, 1996; Sydow, 2005) between the EU and national administrations. For example, the creation of regulatory authorities in all member states (in the field of telecommunications) goes beyond the traditional form of administrative cooperation, which was based on the distinction between the decision making of EU policies at EU level and the execution of community policies at national level. For the network of Directors-General for industrial relations, whose objective is to help the European Commission to prepare new initiatives in the area of industrial relations, to apply and revise the *acquis communautaire* in the field of labor law also goes beyond the traditional concept of administrative separation.

For a number of years, new forms of administrative cooperation have also been emerging in the field of national civil services and HR policies. The most important network is the so-called EUPAN network. Together with the European Commission, member states have set up an informal dialogue for those central administrations who share overall responsibility for the development of central public administrations and the reform of the national civil services. Although within the broader framework of the EU and confined to EU member states, the cooperation is supervised by ministers and, more regularly, by the Directors-General for public administration. Agendas and meetings are managed by the rotating EU presidency, and the Commission is invited to take part in the cooperation. The cooperation is purely voluntary and outside the formal boundaries – as difficult as these are to define – of the EU. However, the network also deals with issues that fall under EU competence – for example, new developments regarding the interpretation of Article 45 (4) TFEU and the impact of new developments in the field of social dialogue for national civil services. These developments make the network an interesting subject for research on Europeanization issues.

The EUPAN network has grown in size and density over recent years and demonstrates a joint interest in or concern with the overall development of public administration within the EU and a pronounced will to promote cooperation and exchange. It focuses on issues of common interest in the area of central public administration modernization as well as issues concerning human resources, ethics, quality management, and social dialogue in the civil services. The objective of EUPAN is both to exchange information and to launch joint initiatives, in particular – in more recent years – with regard to quality improvement and management in public administration. The network is also debating whether its objectives and activities contribute to the emergence of a European administrative space.

However, the question as to whether the network itself has actually contributed to mutual learning or has had 'imitational' effects in the sense of member states taking over practices of other member states remains open and disputable (Demmke and Engel, 2003, 255). Currently, the most important issue concerns developments in the field of social dialogue for the national central administrations. EUPAN has set up an informal working group in the field of social dialogue. At the same time, a number of member states have decided to go one step further and have created a formal sectoral social dialogue committee for the central public administrations. Thus, this case shows that 'spill-over' effects from informal cooperation to formal cooperation have emerged in a field that was supposed to be strictly informal.

The activities of the EUPAN network demonstrate very well that the boundaries between national and EU competence, and 'obligatory/voluntary' adaptation to EU requirements, are not easy to draw in the field of civil service. However, the emerging forms of administrative cooperation in the field of civil service and HR reforms are not formalized and are highly fluid. In the future, however, it is likely that administrative cooperation in the field of civil services and HR policies will further increase because of a growing interest of the EU central administration regarding comparisons, identification of best practices, benchmarking, and (social) innovation, as well as the idea that the creation of these networks is beneficial for all partners.

Conclusion

When evaluating the impact of the EU integration process on the reform of national civil services and HR policies, there is a risk of personal judgment (Pollitt and Bouckaert, 2000, 22) because of the 'sheer difficulty of doing large-scale comparative research on administrative change' due to the huge amount of material and linguistic barriers (Pollitt and Bouckaert, 2000, 22), the lack of a good database, and the difficulties in clearly identifying the impact of the EU integration process on national civil services. The latter is also due to the lack of any clear legal basis and, at the same time, the growing emergence of grey areas where EU and national competences overlap.

Today, all national civil services are going through important reform processes (Demmke and Moilanen, 2010; van der Meer, 2010). Although many of these reform trends are influenced by political and legal developments at EU level, most reforms are triggered by national reform pressures and reform priorities.

In all countries, the reform process in the national civil services is also characterized by an overall move away from the classical bureaucratic model. This global reform trend is only partly influenced by developments at EU level. Furthermore, this common reform process does not indicate a trend toward

a common (European) civil service administrative model, although some forms of discursive and decisional convergence take place (Pollitt, 2002). In fact, national management reforms in the civil services toward more decentralization, responsabilization, flexibilization, agencification, performance orientation, efficiency, citizen orientation, and more openness are fluid concepts that do not easily allow comparative conclusions. Moreover, common concepts such as restructuring, decentralization, citizen orientation, openness, and transparency and – in the field of personnel policies – performance management, performance-related pay, and the decentralization of human resource management responsibilities are applied in completely different ways at national level (Bach and Bordogna, 2011).

As a consequence, all national public services no longer have a centralized, single, coherent paradigm or conceptual framework. ‘Disaggregation promotes decomposition of the civil service. Two concepts central to traditional management are now disappearing. One is that any particular government, whether federal, state, or local, should act as a single, unified employer. The other is the concomitant idea of a unified civil service’ (Rosenbloom et al., 2008, 545). Whereas once the vast majority of national public employees were subject to the same statutes and working conditions, today the number is declining (Demmke and Moilanen, 2013). Consequently, in almost all EU member states, there is a trend toward the fragmentation of national public services as a result of decentralization, delegation, agencification, public-private partnership policies, the increasing diversity of the public sector workforce, and differences in the structure and size of national civil services.

This trend could easily be interpreted as a trend toward more differentiation and not toward any form of ‘Europeanization’. In fact, things are more complex.

As our discussion has shown, the present concept of the national civil services is becoming increasingly decoupled from the traditional concept of the nation state. However, there is no trend toward a European model of civil service and no convergence of HR reform policies. Instead, the present Europeanwide reform trend is resulting in a legitimacy crisis of a specific civil service as such and the removal of a number of classical bureaucratic features. In the field of civil services and HR reforms, there is no new ‘promised land’ and no common understanding about the need to introduce a new, universal model of civil service. This, at least, is common to all EU member states.

In fact, the decline of the bureaucratic model has led to a situation in which alternative administrative role models in Europe (like at the time of the Napoleonic or Prussian model and, later on, of the bureaucratic model as such) no longer exist. Furthermore, compared with 30 years ago, today there seems to be a greater variety of administrative systems. For example, although geographically close to each other, the Baltic States have very different civil service structures. A comparison between the Czech Republic and Slovakia, Romania,

or Bulgaria may also reveal only a few commonalities. Moreover, even continental countries, such as Germany and Austria, the Scandinavian systems, or the British, Irish, and Maltese systems are not easily comparable.

Thus, most member states seem to be keeping some traditional elements and throwing away others. The decision on what to keep and what to abandon is closely connected with national traditions, habits, and beliefs, and national political interests. However, no country has yet found a final reform destination, as new administrative or management models, such as the New Public Management model, are themselves too diverse and (partly) not attractive.

The changing character of national administrations and civil services can thus only partly be explained by the impact of the European integration process. Although the role of the European Union and the influence of EU policies on national civil services remain limited, they should not be underestimated either. For example, in the coming years, the role of the EU is likely to increase in informal arenas and regarding the use of informal (soft) instruments such as benchmarking and the identification of best practices. However, predictions are risky as the existing policies and structures are in a constant process of change, and it seems that change is happening at ever-faster speeds. If decades ago, European civil services were a synonym for stability (Bekke and van der Meer, 2001), today they are a symbol of rapid change.

As Ferlie et al. (2007, 1) point out, 'Long-standing taken for granted assumptions and orthodoxies no longer hold. Traditional public services are under pressure to change and seem to be evolving – but into what?' Existing studies (Demmke et al., 2006; Demmke and Moilanen, 2010, 2013; Meyer-Sahling, 2009, 2012; OECD, 2009, 2011, 2012; Vaughan-Witehead, 2012) suggest that many national reform pressures and reform priorities are heading in similar reform directions with or without the impact of the EU integration process. However, the concrete implementation of civil service reforms produces different outcomes as the political, institutional, legal, economic, and cultural contexts remain different from one country to the next (Hofstede et al., 2010). Moreover, many reform effects are uncertain. For example, most current restructuring processes in national civil services have so far had unclear effects. First results suggest that most restructuring policies have negative effects on the morale of staff and the attractiveness of civil service employment as such (Huerta Melchor, 2013). However, it would be naïve to state that this situation will be uniform in all countries and in all civil services in the long run.

Note

Throughout this chapter, I will use the term 'civil service' or 'civil servants' in referring to the professional civil service for (central) state administration only. Directive 2008/104/EC is currently in a process of amendment.

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Part VIII

Conclusions and Challenges

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Holding Executive Power to Account: The EU Administration's Accountability Challenge(s)

Anchrit Wille

Controlling the EU executive

The oft-heard complaint that Brussels-based bureaucrats exercise extensive executive powers with no accountability is one of the critical issues in debates about EU governance. The EU administration is characterized either as a 'leviathan' or as a set of unelected 'eurocrats'. As a leviathan, it is depicted as 'a monolithic and virtually uncontrollable force eating away at personal liberties and economic resources' (Peters, 2010, 266). As eurocrats, they are stereotyped as a set of zealous bureaucrats bound with red tape and rule books, who forge useless interventionist policies 'such as the size of strawberry or the curve of a banana' (Curtin, 2009, 104). These opinions of the Brussels bureaucracy, by politicians and academic commentators, suggest that the rapid growth in the reach and influence of EU governance arrangements is unchecked and uncontrolled. It qualifies EU governance as relatively unaccountable.

Concerns about accountability are not new or specific to EU governance. Centuries ago classical thinkers – such as Madison, Locke, Montesquieu, and John S. Mill – all pointed to the need for close oversight of the executive. These thinkers stressed the importance of institutions and mechanisms designed to constrain the illegitimate, arbitrary, or tyrannical exercise of power, and to discourage abuse, mismanagement, and illegalities. Madison pointed, in the United States, to the importance of establishing 'auxiliary precautions' within the government to encompass an array of checks and balances exercised by judicial review through investigations, commissions, hearings, and budget examinations, down to day-to-day case work (Behn, 2001, 42–43). In Europe, Montesquieu and Mill determined the normative desirability and the basic objectives behind the powers of oversight, sanction, and prevention

(Rosanvallon, 2008, 14–32): to shed light on the government's actions and to hold it accountable. In John Stuart Mill's words (1861, 104): 'to watch and control the government; to throw the light of publicity on its acts; to compel a full exposition and justification of all of them which any one considers questionable; to censure them if found condemnable'.

The purpose of this chapter is to reflect on the powers of oversight and what 'holding to account' means in the specific context of the European administrative space. A thorough empirical survey of accountability of the EU administration would require an examination of who is accountable to whom, for what, and through which procedures. This goes beyond the scope of this chapter. Here, I will focus on the (arguably) limited question: what accountability forums are in place with regard to a range of administrative actors engaged in the exercise of executive power in the EU? The chapter concentrates on the pivotal watchdog institutions and tries to explore the web of accountability arrangements that has been woven around the EU executive. The picture presented in this paper is one of a fragmented and complex accountability architecture that provides the groundwork for overseeing the European executive.

Holding the EU executive to account: A conceptual framework

The European project started as an ambitious but limited venture. Over time, its institutional structure has grown more 'mature' and 'dense', evolving into what is today's EU. A continuous expansion and fragmentation of the executive sphere resulted in a vast multilevel governance structure with the capacity to formulate and implement policies at EU and national level (Curtin, 2009, 135; Curtin and Egeberg, 2008). With the rise of these new governance structures, 'accountability' has increasingly become a topic both in the literature and in discussions on EU governance.

What is accountability?

As the interest in 'accountability' has increased, the definition of the term itself seems to have become more ambiguous. Therefore, it is necessary to agree on a working definition of accountability, one that focuses across a range of actors at different levels of government, if one aims to focus largely on EU governance. Bovens (2007, 450) views accountability as a social relationship between an actor and a forum, in which the actor explains his conduct and gives information to the forum, in which the forum can reach a judgment or render an assessment of that conduct, and on which it may be possible for some form of sanction to be imposed on the actor.

The concept of ‘holding to account’ obliges officials to disclose information, to explain and justify the exercise of authority, and to submit to sanctions if necessary. Although public officials are expected to act in anticipation of having to account for their actions (Bovens, 1998; March and Olsen, 1995, 59; Mulgan, 2000), accountability itself relies on a combination of structures, mechanisms, and procedures that is concerned with *ex post* oversight.

In this chapter, accountability is restricted to a review after the fact – *ex post*. It includes forums that make inquiries about policies that are or have been in effect, investigations of past administrative actions, and the calling of executive officers to account for their financial transactions. It will concentrate on external control rather than internal control. Internal organizational mechanisms may be the simplest means of keeping the EU administration accountable, but if these mechanisms within the organization do not prove effective in controlling administration – as indeed they may not – then a second level of accountability will be required – through external institutions. This requires the existence of an external accountability forum of one type or another – which can be political, administrative, legal, or financial – to ‘watch over’ the executive.

Accountability in EU governance: contending perspectives

EU integration has produced a complex, quasi-federal polity in Europe, but not (yet) elsewhere (Mattli and Stone Sweet, 2012). This raises particular challenges for those seeking to understand the EU order and the nature of its accountability regime. In describing the emerging European polity, scholarly debates have been divided over whether the EU was fundamentally intergovernmental or neo-functionalist, or more supranational, regulatory, multilevel, or network based (Schmidt, 2006, 184). The conception of what kind of political system the EU is provides an implicit structure underlying the debate on the role of accountability. The varying perspectives on the nature and purpose of EU governance translate into a different set of principles for the legitimating beliefs and the design and performance of public accountability (Bovens et al., 2010, 180; Harlow 2002; Olsen 2010). Three competing accountability logics for the EU executive and administration stand out:

- The regulatory perspective is a perspective that is predicated upon output legitimacy and non-majoritarian institutions designed to enhance ‘problem-solving capacity’. The role of the EU executive in this perspective is that of an independent public governing institution that should regulate the economy with a view to achieving objectives of efficiency (Majone, 1996). This perspective is even-minded about the level at which accountability forums are organized, but strongly favors administrative, professional, and social accountability over political (Bovens et al., 2010, 180).

- In the intergovernmental perspective, the role of the EU executive is an agent operating on the basis of the guidelines of the member states. European institutions do not have autonomy or power, because it is the national governments that decide on the future of the EU and that are the guardians of democratic legitimacy and accountability (Moravcsik, 2004). This perspective favors strong national-level accountability forums and focuses on enhancing the democratic legitimacy of the Union through the member states and national parliaments.
- The supranational perspective favors strong accountability practices at EU level where the decisions are taken. The focus on the 'democratic deficit' in the EU and the weakness of the European Parliament's powers in the 1980s has centered on the notion of accountability. The EU's lack of accountability was perceived as detrimental to its development as a democratic political system. It has culminated in parliamentarization at EU level and representative democracy as the normative frame (Judge and Earnshaw, 2008).

How we perceive this EU institutional structure has a bearing on the role that is ascribed to its accountability forums.

Who holds the EU executive to account?

This chapter addresses three questions. Firstly, it looks at the development and the diversification of accountability forums (and mechanisms) in the EU and reviews the watchdog institutions that check on the expanding EU administration. Secondly, it tries to understand the implication of this development and whether it can be considered as heralding a regulatory, an intergovernmental, or a supranational model of governance. Thirdly, on the basis of this review, the chapter tries to run through the main challenges of accountability in the EU system.

The focus on the actors that play a role in holding EU executive actors to account (accountability forums), that is, on the 'whom' to which EU executive actors and the administration are accountable, is a relevant one because it shows what opportunities exist in the system and what forms of accountability they impose. By describing the institutional design of these accountability arrangements, this chapter tries to improve the understanding of the way in which the EU's institutional accountability framework fits within the presumptions about how power should be controlled and accountability achieved.

Europe's watchdogs: Emerging powers of oversight

Owing to the growing complexity of the expanding administrative system, we are witnessing an expansion and proliferation of formal accountability forums

and mechanisms in the EU system. However, who is holding the executive to account? What institutions impose accountability in the EU system? Seven watchdog institutions are part of a list of forums that have been devised to attempt to hold the EU executive to account.

The European Parliament

Launched in 1952, the Common Assembly of the European Coal and Steel Community, as the European Parliament (EP) was then known, amounted, in the words of David Farrell, to little more than 'a multi-lingual talking shop.'¹ The Assembly had no legislative powers and only 78 members, drawn from the national parliaments of the member states. However, over the years, the Assembly, renamed the European Parliament in 1962, slowly increased its powers and legitimacy. In 1979, for the first time, its members were directly elected instead of being appointed by governments, which gave a major boost to the EU's claim to democratic representation for voters across the continent. Subsequent enlargements, however, have raised the number of members to a total of 751 today. Having first acquired limited budgetary powers in 1970, the European Parliament has since continued to expand its remit and responsibilities.

The Maastricht Treaty (1992) marked the beginning of Parliament's metamorphosis into the role of co-legislator. By the time the Lisbon Treaty came into force, the Parliament was in effect put on a legislative par with the Council. At the same time, the Parliament also progressively acquired oversight powers over the Commission. The European Parliament has the right to approve and dismiss the European Commission. Since 1995, Commissioners designate have been required to appear before an EP hearing. The EP can censure the Commission and ultimately dismiss it. The EP ensures democratic control over the Commission, which regularly submits reports to Parliament including an annual report on EU activities and on the implementation of the budget.

Over the years, the EP has thus become a much more powerful actor and its oversight function has steadily gained ground. Several factors have increased a greater incidence of oversight. Among them are the rise in the number of MEPs, the increasing staff resources, and the committee structure with 22 committees; but indications of fraud and mismanagement and the resignation of the Santer Commission have also had a profound effect on the emphasis that is placed on oversight activities.

The National Parliaments

Until the late 1980s, increasing the EP's powers to make up the democratic deficit in the EU was sufficient (Dehousse, 1998). However, the need for political accountability forums at national level has led to a trend for national parliaments to reinforce their own powers vis-à-vis their national executives for the performance of the role of representing their national interests at EU

level (Bovens et al., 2010, 194). The need to involve national parliaments in EU affairs stems from the idea that parliamentarization at EU level does not suffice to legitimize European integration and should be accompanied by strong national parliaments who control national governments and their activities at EU level (Cooper, 2012; De Ruiter, 2013; Winzen, 2012). According to the prevailing concept of ‘dual legitimacy’, national parliaments constitute an important source of democratic legitimacy in the EU. Strengthening parliamentary scrutiny and participation rights at domestic level is thus seen as an effective measure in addressing the perceived ‘democratic deficit’ in EU decision making – the reason for affording the strengthening of their oversight role a prominent place in the new Lisbon Treaty. Whether this will be realized, however, depends crucially on the degree and the manner in which national parliaments actually make use of these provisions. However, this is still too early to tell.

The European Court of Justice (ECJ)

The European Court of Justice is one of the pillars of legal accountability in the European Union, which is the most unambiguous type of accountability as the scrutiny will be based on legal standards (Costa, 2003). The ECJ, together with the national courts of the member states, has a responsibility for ensuring that the rules laid down under the Union treaties are observed. The Court’s mandate is general: ‘The Court of Justice shall ensure that in the interpretation and application of this Treaty the law is observed’ (Article 164). The ECJ does not only guarantee the respect of Community law but also ensures the mutual limitation of the powers of its actors – European institutions, national governments, and individuals. Any member state or private individual can ask the Court to make a judgment on the legality of acts adopted by the Community, and even to contest some of the decisions made by its institutions. The Court gives opinions that are often binding in the last resort and thus contributes to some form of ‘mutual checks and balances’. The ECJ has, therefore, a greater legal authority than the EP Parliament.

Given the formal independence of the ECJ enshrined in the treaties, it is often portrayed as existing in a kind of ‘splendid isolation’ in Luxembourg, but the Court is actually surrounded by specialized and often very circumscribed legal communities (Kelemen and Schmidt, 2012). The ECJ’s relationship with national courts has been fundamental to its development as a supranational institution. This relationship has been symbiotic, with both the ECJ and lower national courts benefiting. The ECJ and national courts have developed a mostly cooperative relationship: national courts receive guidance on European Community (EC) law from the Court, and the ECJ relies on national courts to refer cases and apply EC law – most EU law is applied by national courts (Heisenberg and Richmond, 2002). The ECJ has from the start played an

indispensable role in the EU's accountability architecture, putting forward the rule of law.

The European Court of Auditors (ECA)

The European Court of Auditors is the EU institution established by the treaty to carry out the audit of EU finances. The European Court of Auditors was set up in 1977 (Laffan, 2003, 764–765). The change in the financing of the EU budget as a result of the 1970 and 1975 budget treaties created political pressure for the establishment of a stronger external auditing capacity in the EU. The European Court of Auditors assumed the status of a full institution of the Union when the treaty on European Union came into operation in 1993.

As the EU's external auditor, its role is to contribute to improving EU financial management, promoting accountability and transparency, and acting as the independent guardian of the financial interests of the citizens of the Union. The Court of Auditors has the right to check ('audit') any person or organization handling EU funds and frequently carries out on-the-spot checks. Its findings are written up in reports submitted to the Commission and EU national governments.

Most of the Court's financial and compliance audit is carried out in the context of its annual statement of assurance, presented to the EP and the Council, which is generally known by its French acronym DAS (*Déclaration d'Assurance*). The EC Treaty requires the Court to give such a statement – or opinion – on the reliability of the accounts and the legality and regularity of underlying transactions. Thus, the Court's work provides an important basis for the annual discharge procedure whereby the Parliament, basing its decision on recommendations from the Council, decides whether the Commission has met its responsibility for the execution of the previous year's budget.

Despite its name, the Court has no judicial powers. Traditionally, it saw its role in terms of horizontal control and accountability, but in the 1990s it began to highlight the national dimension of financial accountability and to highlight problems in the member states and not just at EU level. In addition to the work done by the Court, many national audit institutions audit European funds that are managed and spent by national administrations. Although the ECA carried out extensive technical work tracking the use of EU monies across the member states and beyond, it left the political dimension of accountability to the Parliament and the Council (Laffan, 2003).

The European Ombudsman

The European Ombudsman was established by the Maastricht Treaty, and the first European Ombudsman was appointed by the European Parliament in 1995. Any EU citizen or entity may appeal the Ombudsman to investigate an EU institution on the grounds of maladministration: administrative irregularities,

unfairness, discrimination, abuse of power, failure to reply, refusal of information, or unnecessary delay. Citizens – and Members of Parliament – make complaints directly to him/her with no formal conditions and at no cost. The Ombudsman has no binding powers to compel compliance with his/her rulings, but the overall level of compliance is high.

The hybrid nature of the European Ombudsman is the key to its success (Magnetite, 2003). On the one hand, acting like a Court, it is addressed by individual complainants and it defines and applies ‘general principles’ to solve the cases submitted to it. In his or her interpretation, he or she builds a doctrine of ‘good administration’. On the other hand, acting as a parliamentary organ and with the strong support of the EP, he or she uses his or her powers of inquiry and proposition to suggest wide-ranging reforms of European governance. In so doing, he or she promotes the principles of transparency, participation, and explanation. Magnetite (2003) argues that ‘the powers of the Ombudsman, limited as they are, give him the opportunity to combine the instruments of parliamentary scrutiny and judicial control in an original way’. The independence of, and easy accessibility to, the Ombudsman largely explains the increasing recognition of this form of ‘soft justice’, as opposed to the length, cost, and formalism of traditional legal action.

The Anti-Fraud Office (OLAF)

The EU’s Anti-Fraud Office (OLAF) was set up on 1 June 1999, and its aim is to fight against fraud, corruption, and other irregularities identified in the Community budget (Cini, 2007, 165). OLAF is the acronym of its title in French, the *Office Européen de Lutte Antifraud*. When the Community institutions were granted their ‘own resources’ – independent from the member states – in the 1970s (Pujas, 2003), the European institutions became aware that fraud and corruption were of direct concern. The newly installed ECA reported on irregularities and fraud, and this was then presented as a problem which ought logically to be addressed by the European Community and no longer by member states alone.

OLAF investigates cases of fraud, assists EU bodies and national authorities in their fight against fraud, and contributes to the design of antifraud legislation and policies in the EU. It is part of the European Commission but is independent in its investigative function. Despite OLAF’s role in implementing an antifraud policy, its legitimacy and operation are regularly questioned by national and European institutions. A lack of guarantees regarding the objectivity and transparency of its investigations, as well as the deficient protection of the fundamental rights and freedoms of the personnel investigated, means the relationships between OLAF and other European institutions and organs have remained problematic and tense (Cini, 2007, 167; Pujas, 2003).

Non-governmental watchdogs

Civil society organizations and, particularly, non-governmental organizations (NGOs) are increasingly important in the process of EU accountability. A large number of NGOs act as watchdog organizations that have come to play a significant and visible role in making the European institutions more accountable (Kohler-Koch, 2010; Rosanvallon, 2008, 63). These are usually non-profit groups that view their role as critically monitoring the activities of the EU, national governments, industry, or other organizations and alerting the public when they detect actions that go against the public interest. Examples are Statewatch, OneTrust, Transparency International, Human Rights Watch, the European Consumer Organisation, and the Corporate Europe Observatory. While the NGO term is commonly used to describe organizations that are more activist in mobilizing public support, some organizations are hard to classify. Large international NGOs – especially where a fair degree of local autonomy is allowed – can include national or local branches that operate as fierce watchdogs. They advocate alternative approaches to envisaged politics, overseeing governments, international organizations, and multinationals for alleged misconduct.

The multiplication of accountability forums

Accountability has become one of the key concepts of contemporary EU governance and politics. Summarizing the above discussion of emerging EU watchdogs, four trends become evident.

A first trend is a layering and thickening of oversight and accountability mechanisms and forums. The multiplication of control mechanisms in the EU is part and parcel of a general trend over the past 30 years toward a greater control of public authorities and more accountability from decision-making authorities in the Western world (Costa et al., 2003). New control bodies have been set up everywhere with the tasks of checking that governments abide by their budget obligations and of preventing and sanctioning instances of fraud and corruption (Rosanvallon, 2008). The growth and complexity of the EU administration, increased budget resources, and the multilevel character of the EU governance systems made the establishment of an effective accountability architecture progressively critical. The institutional development of new watchdogs and their increased scrutiny pointed to the increased relevance of accountability and control over the EU executive. Moreover, each EU enlargement has given the new member states the opportunity to bring in ‘their’ conception of accountability and to try to integrate some of the founding principles of their national constitutional cultures in the treaties (Costa et al., 2003: 668): ‘It is no surprise that strengthened control by Parliament ranked high on the European agenda after the United Kingdom and Denmark joined the

EU. Likewise, the establishment of the principle of transparency and of extrajudicial control mechanisms coincided with the membership of Sweden and Finland.' New institutions were enacted, which recognized the importance of the oversight function and of the capacity for holding the executive to account.

A second trend is the concurrent politicization and depoliticization of accountability arrangements. The evolution of watchdogs and accountability arrangements is but one part of a wider development involving the establishment of political and administrative accountability mechanisms in the EU. Part of this evolution is linked to a strategy for heightened democracy. A considerable number of political reforms in the EU over previous decades were actually occupied with the task of solving the democratic deficit. The parliamentarization of the EU, through the emergence of the EP and the tentative commitments of national parliaments, has developed since the Single European Act with the treaties of Maastricht, Amsterdam, Nice, and Lisbon. Another part of this evolution is linked to the diffusion of ideas about good governance, enhanced administrative performance, and institutional transparency (Erkkilä, 2012). New forms of administrative accountability (courts of auditors, ombudsmen, audit bodies) outside the sphere of parliamentary control have evolved in addition to these political accountability mechanisms and have emphasized the need for complete and accurate publicly available information as a basis for debate and decision making, both to improve financial management and to ensure accountability. These non-majoritarian 'guardian'-type institutions play a major role in democratic governance in all political systems. The key to their legitimacy lies in their independence. In calling for these watchdogs to control and assess the EU administration, the EP itself has shown the importance in the EU of non-parliamentary control procedures.

A third trend concerns the increased hybridization of the different logics in the evolution and design of the accountability architecture. The European Community was from the start set up as a hybrid institutional system based on the intertwining of competing accountability logics and objectives. The evolution of accountability mechanisms and forums cannot be reduced to a single logic as the EU is subject to diverging pressures and therefore harbors different modes of accountability within its institutions (see Bovens et al., 2010). The increased power of the EP and the Ombudsman implied a strengthening of accountability forums at supranational level. At the same time, intergovernmental accountability arrangements, such as national parliaments, have gained in influence. The development of regulatory control mechanisms, such as OLAF and the ECA, progressively gained new legitimacy in the EU institutional structure and became complementary to the classical parliamentary control tools. A mixture of perspectives is perhaps the most appropriate one to adopt in the case of the complex, multilevel, and multifaceted actors operating in the EU (Bovens et al., 2010, 194). As a result, the EU's complex multilevel network

governance structures cutting across decisional levels result in a diversified set of accountability relationships, which lead to a ‘marble cake’ of accountability mechanisms operating at European, national, and subnational levels.

Finally, once established, the watchdog institutions worked to build on their mandate and to influence the evolution of an accountability architecture in the EU. By providing information – a key ingredient of accountability – through its reports, they helped to hold the executive to account. They also acted to enhance the normative framework of accountability in the Union. The Court of Auditors was part of a wider ‘advocacy coalition’ for improved financial management in the EU. The Ombudsman tried to enhance transparency. The EP fleshed out the norms of political accountability of the Commission. All institutions acted as advocates for improved accountability in relation to the policies and finances of the Union. The growing salience of the watchdogs is thus part of a wider attempt to enhance the democratic fabric of the European Union. This evolution of accountability architecture illustrates a trend toward a legitimization of the political and administrative spaces beyond the state (Davies 2012; Laffan, 2003), which consists in subjecting ‘all of the Union’s institutions to standard sets of rules and procedures, or scrutiny by agents who are dedicated to a single task but responsible for applying it across the entire EU institutional system’ (Peterson and Shackleton, 2012, 401).

Challenges for accountable governance in the EU

In the above-mentioned text, I have presented the growth of accountability forums. Recognizing new possibilities for accountability does not mean that there is no cause for concern. Despite the development and growing salience of accountability forums, the European administrative space generates a number of challenges to supporting an effective accountability system. To conclude this chapter, I will briefly mention a few of them.

Challenge 1: The problem of many hands, many levels, and many eyes

The general idea is that more oversight is usually better than less (Aberbach, 1979, 495), that being watched by multiple controllers has a disciplining effect, and that redundancy improves control (Papadopoulos, 2010, 1041). Accountability in the EU is, however, not confined to neat single-level interactions. In multilevel governance, as in every complex organization, this relationship includes many executive agents with ‘many hands’ that have to be coordinated and many principals with ‘many eyes’ to hold this executive accountable (Bovens, 2007). EU institutions are thus accountable in a range of ways to a whole cast of accountability forums. A growth of accountability forums and a multiplication of accountability mechanisms have resulted in cascading levels of accountability, and this sometimes makes the question ‘to whom is account

to be rendered?' a complicated one. A multilevel governance system diffuses authority and promotes unclear responsibilities; relations are not always characterized by clearly defined mandates or subject to sanctions. The coexistence of multiple accountability logics may be a safeguard measure, but can lead to diffuse systems of accountability in which the separation of powers is not as clearly established as in national constitutional traditions (Costa and Magnette, 2001; Costa et al., 2003). A lack of coordination and an increased compartmentalization of different forums and modes of accountability mean that the efficiency effects of the multiplication of accountability mechanisms can remain indecisive. It makes holding to account of the different EU and non-EU actors operating at EU level in these transnational settings a complex process.

Challenge 2: Watchdogs or lapdogs

Many new horizontal accountability arrangements imply accountability in a 'soft sense'. Soft accountability mechanisms are distinctive because of a lack of formal sanctions and thus run the risk of being toothless. The problem of feebleness is not only related to the availability of sanctions within the accountability relationship – the fostering of co-optation weakens the independence of forums and their ability to render account (Baur and Schmitz, 2011). Moreover, a lack of the requisite variety in policy networks can lead to the formation of 'group-think' and may impede independence, transparency, and critical reflection. Arguably, the long-term prospects for sustainable accountability depend on enhancing a certain degree of autonomy of accountability forums.

Challenge 3: Who watches the watchmen?

Watchdogs exercise power, and with power comes responsibility. The multiplication of oversight powers therefore leads to a new problem: the growth of a controlling class, which makes the question 'who watches the watchdogs' progressively important. Political watchdogs are electoral accountable to citizens, but this is different for the non-majoritarian watchdogs. The question 'to whom are they answerable?' accordingly becomes more significant, depending on the power and autonomy of the watchdogs in question. When they are wrong, what are the means to hold them accountable? This question entails an additional accountability challenge. It is a lesson from the work of Tetlock (2005) and Kahnemann (2011) that experts (and also watchdog institutions) are not better than the rest of us and are not devoid of errors.

Challenge 4: The democratic anchorage of the accountability architecture

The largest challenge is perhaps to shape democratic accountability arrangements by means of democratic legitimacy. The growth of accountability forums does not automatically mean more democracy. Administrations may operate in remoteness from political and democratic institutions, and this remoteness

from parliaments and voters can be the object of deliberate institutional design (as in the case of agencies) in order to make institutions less sensible and less responsive to short-term political concerns.

However, the growth and uncoupling of the accountability of official representative bodies increase the number of actors who are involved in the policy process without being democratically authorized *ex ante* and without being subject to democratic control *ex post* (Papadopoulos, 2007, 476). Depoliticization tendencies limit the possibilities of voters to respond with electoral sanctions. The danger is that the politics of the EU remain the secretive politics of international relations and unable to convert into the relatively open and transparent politics of representative democracy (Curtin, 2009; Curtin and Wille, 2008; Hix, 2008; Mair, 2008; Papadopoulos, 2010). In our democratic age, executive power requires democratic mechanisms through which the governed can give their consent and policy makers can be held accountable.

Concluding comment

The focus of this chapter was to describe how the emergence of watchdogs has contributed to a reconfiguration of systems of accountability in the EU. The contemporary focus on accountability in the EU is a consequence of the growing administrative power and reach of the EU executive. New vertical, horizontal, diagonal, political, administrative, and networked accountability regimes and practices have emerged within the EU (Bovens et al., 2010, 192). The task of these watchdogs was and is to evaluate and control executive activities and EU expenditure and to achieve accountability. The outcome of the evolution of this system of accountability and oversight is likely to be patchy and incremental. There is no neat solution to the problem of accountability in a ‘marble cake’ system that is part intergovernmental and part supranational.

The opportunity for ‘holding executive power to account’ is essential for democratic systems. From a democratic perspective, the development and diffusion of this patchwork of accountability is problematic. The evolution of the various forms of accountability and the growth and variety in watchdogs at EU level make what is going on more difficult to perceive and still harder to interpret. Contrary to classical mechanisms of political accountability at national level (elections and debates), diffuse (multilevel) modes of accountability are not very successful in generating cognitive mobilization among European citizens (Rosanvallon, 2008, 22–24). It generates a picture of an uncontrolled administrative power of unelected eurocrats where transparency is needed. However, new accountability forums and mechanisms will only have the potential to contribute to the democratic legitimacy of EU governance if, to use Kohler-Koch’s (2010, 1136) words, ‘they foster accountability procedures which

are public and which will open windows of opportunity for citizen to pass a political judgment and compel decision-makers to “put matters right”’.

Note

1. <http://www.europarl.europa.eu/sides/getDoc.do?language=EN&type=IMPRESS&reference=20070615IPR07837>

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28

The European Administrative System Reassessed

Jarle Trondal

Introduction

This volume started by addressing a set of research questions that are worth revisiting:

- To what extent, how, and under what conditions may the emergent European administrative system challenge and complement crucial functions of preexisting administrative systems?
- Are the characteristics of this emergent administrative system fairly stable and enduring or easily subject to change and reform?
- Does the European administrative system represent a radical institutional transformation from the inherent Westphalian order of politico-administrative power, or is it merely an adjustment of well-known principles and practices of administrative organization and patterns of public policy making?
- To what extent and how does the European administrative system impact on preexisting processes of administrative control, accountability, coordination, implementation, and policy learning?
- More broadly, how does the European administrative system change public administration as an instrument of national democratic authority and its role in parliamentary oversight?
- Finally, do the different parts of administrative capacity building that we have observed at EU level add up to a new polity formation? In short, does the sum of administrative capacities – and their interrelationships – aggregate to some kind of common administrative system? If so, this volume aims to get a more precise picture of what such a system looks like.

All these questions have been touched upon within the different chapters, and indeed some questions have been answered in full. Despite the fact that this

book has provided thus far the most comprehensive analysis of the European administrative system, several of the questions above remain poorly understood. The general questions on system transformation, the endurance of transformation, processes of aggregation to some kind of polity formation, and the causal mechanisms of change are still up for continued debate. This concluding chapter aims to spur such a debate along some key dimensions.

The European administrative system: Lessons learned

Formulating and implementing public policy in Europe has been a prerogative of national administrations. The capacity of the state has largely been determined by ‘the [administrative] capacity of the state to effectively achieve the chosen policy outcomes’ (Matthews, 2012, 281). This volume has explored how these prerogatives have become complemented with the rise in administrative capacities within and among EU institutions and their interaction with (sub)national actors. A European administrative system serves to create an institutional infrastructure for the joint formulation and execution of public policy. The rise of a genuine European public administration is shown to reflect administrative capacity building, primarily in the Commission and EU agencies but increasingly also in domestic agencies and networks of regulatory agencies. Capacity building at the EU center may subsequently strengthen the Commission’s capacity to pursue independent policy formulation, to manage decentralized policy implementation, and to draw common lessons from experience. In this regard, the rise of an emergent European administrative system at EU level may also strengthen the Commission’s capacity to integrate domestic non-majoritarian institutions – and networks of these – as part of the center, thus integrating public administration in Europe across levels of government. Despite public administration being conceived of as a core state power (Genschel and Jachtenfuchs, 2014), capacity building in public administration serves to achieve regulatory integration in mostly non-core state policies. The following subsections examine the European administrative system with regard to institutional independence, integration, and co-optation (see Chapter 5).

Independence

Firstly, the rise of a European administrative system involves institutionalizing some degree of *independent* administrative capacity at European level, especially relatively permanent and separate institutions that are able to act fairly independently from member-state governments. This volume has shown how the growth of administrative capacities, not only within the Commission but also in institutions surrounding the Commission, may contribute to strengthening the independent capacities of the Commission – thus facilitating the formation of a common European administrative system. In addition to in-house

organizational capacities, the Commission has increasingly been supplied with auxiliary capacities composed of expert committees, EU agencies, networks of national regulators, and even the EP administration.

Jean Monnet had early on intended to create a small, independent, and entrepreneurial bureaucracy above member-state governments for the ever-closer integration of states. However, following a steady growth of administrative Commission staff over the subsequent 60 years, the most recent expansion of the EU administration is found at the level below the Commission, notably among EU agencies. Studies suggest that the organizational capacity built up *inside* the Commission, particularly in sectorally organized DGs, in practice tends to safeguard its independence vis-à-vis member-state governments (for example, Ellinas and Suleiman, 2012). A long-held myth has, however, lingered, which is that nationality fundamentally shapes the preferences of Commission staff and ultimately the internal functioning of the Commission (Kassim et al., 2013). However, the observations reported in this volume by majority challenge such claims. It is reported that the Commission administration has remained fairly independent of member-state governments. Supporting this observation, Ellinas and Suleiman (2012, 65) show that top Commission bureaucrats tend to foremost rely on information from within the Commission administration. Moreover, Commission officials, notably seconded national experts, indicate a rather low degree of identification with their home governments and tend to have infrequent contact with *their* administration (see Chapter 11). Similar observations are made on the position formation among permanent ADs (Hartlapp et al., 2010) and on role perceptions in the College of Commissioners (Egeberg, 2006).

Faced with an increasing agenda overload, one supplementary strategy available to the Commission, in addition to building in-house administrative capacities, is to import external experts when preparing legislative initiatives. Expert committees tend in practice to strengthen the administrative capacity of the sectoral structure of the Commission administration for two main reasons. Firstly, these committees are typically subordinated directly under single DGs; most expert committees report to their parent DG and seldom to other DGs. Secondly, most expert committees are single-task entities largely mirroring the sector specialization of the DGs (see Chapter 23).

In addition, the Commission also has EU agencies and networks of independent national agencies at its disposal (see Part VI of this volume). Firstly, EU agencies may supply the Commission with relevant administrative and executive capacity. 'Agency fever' at EU level has been accelerating fairly recently (Curtin and Dehousse, 2012); since the early 1990s, more than 40 EU agencies have been created. Several of the currently existing agencies are granted some degree of formal decision-making power, while the remaining agencies have tasks such as information gathering, technical support,

and administration (Groenleer, 2009). Most EU agencies have restricted *de jure* powers, particularly with regard to making decisions. In addition to EU agencies, networks of national regulatory agencies have mushroomed, particularly with the role of facilitating the implementation of EU regulations (see Chapter 21). These networks have developed largely on the basis of preexisting structures (for example, comitology committees) and contributed to the accumulation and layering of independent administrative capacities that facilitate the implementation of EU regulations.

Finally, even the EP administration is shown to supply the Commission with relevant administrative capacities (see Part III of this volume). Ever since the EP was established, there has been a dramatic growth in its General Secretariat. Chapter 13 shows that EP officials have a multiplicity of contacts as part of their daily work. However, the most important contact point reported is the Commission. EP officials also tend to emphasize most strongly arguments from the Commission, next to those from the Council. In short, the Commission seems to be the key interlocutor for the EP administration, although a systematic comparison with the Council Secretariat has not been reported. In summary, therefore, the Commission now has profound independent administrative capacities at its disposal in addition to its increased in-house capacity.

Integration

Supplementing the vertical specialization of administrative systems, the internal integration of administrative systems is also increasingly documented within national governments – notably reasserting centers of executive government (Peters, 2004; Pogunthe and Webb, 2005). Similarly, one strand of contemporary research suggests that the Commission has become increasingly integrated – both within the Commission administration and between the Commission administration and the College of Commissioners – supported by an enhanced coordination role of the Secretariat-General (Kassim et al., 2013; Wille, 2013). The history of the Commission documents periods of internal integration – the best known of which, perhaps, are the legacies of the Jean Monnet presidency and the Delors presidency. Essentially, however, the power base of those presidents was largely based on their personal capacities and achievements and not safeguarded through administrative capacity building (Drake, 2000; Duchène, 1994). The contemporary internal integration of the Commission is centered on building organizational capacities around the president, partly by reforming the Secretariat-General (SG) into an administrative service center at the disposal of the president (Kassim and Peterson, 2011). Hussein and Peterson (2011) and Hartlapp et al. (2010), however, suggest that this inherent sectoral logic is increasingly challenged by bureaucratic integration, mainly forged by the Commission SG. Integration within the Commission administration is also observed with regard to intraservice decision-making

processes, the rise of a common 'culture' across DGs, and structured relationships between the Commission administration and outside actors – such as international organizations, EU agencies, and domestic government subunits (see Part VII of this volume).

A second strand of recent research, however, highlights that the presidentialization of the Commission merely coexists with the inherent horizontal specialization, 'silo-ization', and subculturalization of the Commission administration (for example, Ellinas and Suleiman, 2012; Trondal, 2012). A recent study suggests that the integrative ambitions of the Commission President and the SG sometimes exceed the integrative capacities (Trondal, 2012). The horizontal interlocking role of the SG tends to collide with the organizational resources embedded in policy DGs, fuelling inter-DG conflicts of turf and policies (Ellinas and Suleiman, 2012, 73; Hartlapp et al., 2012, 27). The administrative integration of the Commission seems in practice to sometimes be thwarted by the horizontal specialization of the DGs and the influence of the most powerful DGs (Hartlapp et al., 2012, 28). This research suggests that the internal integration of the Commission does not seem to profoundly penetrate the services.

Co-optation

The independence and integration of the Commission not only has implications for how Commission officials think and act. The rise of independent and integrated European administrative capacities also increases its ability to co-opt administrative subcenters by stealth – particularly EU agencies and domestic agencies, but also agencies within other international organizations, thus reaching into global administrative architectures (see Parts VI and VII of this volume).

Firstly, studies suggest that the inherent sectoral logic within the Commission services has certain effects on its ability to co-opt administrative subunits. This is reflected in the development of direct links between Commissioners and 'their' EU agencies (Groenleer, 2009, 130). A recent study confirms that the pivotal role of the Commission in the daily life of EU agencies is evident within policy areas in which the Commission has considerable organizational capacities at its disposal (Egeberg and Trondal, 2011). At the policy formulation stage, the 'parent' Commission DG is seen by EU agency officials as particularly influential. At the policy implementation stage, in contrast, influence shifts toward one's own agency and national agencies, although at this stage the Commission is considered the most powerful institution outside one's own agency (Egeberg and Trondal, 2011). The Commission thus stands out as more vital in the daily life of EU agencies and therefore a *de facto* supplier of administrative capacities for the Commission, particularly within policy areas in which the Commission has considerable organizational capacities at its disposal (see Hobolth and Martinsen, 2013).

Secondly, the sectoral organization of the Commission administration is also reflected in its relationships with domestic agencies and with horizontal administrative networks of domestic agencies. Both horizontal networks of regulators (for example, Yesilkagit, 2011) and domestic agencies (for example, Egeberg and Trondal, 2009) seem to supply the Commission with relevant administrative capacities, particularly in the application of EU regulations. Domestic agencies organized at arm's length from ministerial departments enjoy a certain level of independence regarding their exercise of discretion. This volume (see Part VI) shows that even the daily practice of EU legislation at national level no longer remains solely in the hands of national governments.

Lessons learned in the field of public administration

These empirical insights may have a bearing on how the research community should conceptualize the European polity. This section suggests that there is a conceptual need to supplement the multilevel governance model (MLG) with a model we call multilevel administration (MLA) (see Chapter 2). Arguably, the MLG and MLA models vary with respect to units of analysis, conceptions of the coherence of units, and sources of contingency of governance.

Units of analysis: The MLG approach has both historically and contemporarily applied regions as their favorite unit of analysis (Marks et al., 2008, 113; Piattoni, 2010). Focus has been on the relative autonomy of regions and how this autonomy supplies regions with a capacity to bypass state governments in their interaction with the Brussels bureaucracy. One conclusion is that the separation of domestic and international politics – and thus domestic and foreign affairs administrations – is ambiguous due to the interconnectedness of political authority across levels of governance (Hooghe and Marks, 2001, 4). In contrast, MLA tends to direct research focus toward the administrative interior of international organizations (IOs) – toward administrative subunits of IOs and their staff. For example, MLA research has been interested in the behavior and role perceptions of unelected office holders (for example, Trondal et al., 2010), the autonomy and power of administrative subunits (for example, Ege and Bauer, 2013; Egeberg, 2006; Trondal and Peters, 2013), the 'in-house' socialization processes of staff (for example, Beyers, 2010), and so on. Focus is thus not primarily on government apparatuses as arenas, but rather on government apparatuses as normative structures that aim to mobilize bias (Schattschneider, 1975), and that contribute to a systematic patterning of cognitive search processes among office holders (Simon, 1957). Consequently, the way administrative subunits are formally organized – both horizontally and vertically – at all levels of government is assumed to bias the roles, beliefs, identities, and behavior evoked by the staff involved and ultimately the decisions being reached.

Coherence of units: Although the MLG approach has managed to challenge the coherent nature of states (Piattoni, 2010, 2), it has at the same time largely treated its unit of analysis – regions – as a coherent unit of analysis. The definition of regions does not ‘encompass possible sources of regional authority...’ (Marks et al., 2008, 113). Importantly, neither of the dimensions applied to measure regional authority unpacks the organizational architecture of regions (Marks et al., 2008, 115 – Table 1). For example, the nine dimensions applied by Marks et al. (2008) to measure local authority aim to gauge relationships between regions (as coherent black boxes) and national governments. None of these dimensions suggest, however, how the administrative interior of regions may make a difference in this regard. This lack of interest in the administrative inland of regions is a direct consequence of the fact that the MLG approach is basically interested in ‘the allocation of authority across general purpose jurisdictions’ (Marks et al., 2008, 111). In contrast, MLA treats their units of analysis – public sector organizations – as internally specialized (see above). It is also assumed that different degrees and types of organizational specialization – both at national and EU level – may have a systematic impact on multilevel processes (see below).

Sources of contingency of governance: The MLG approach has been successful in measuring regional authority, and thus in accounting for local conditions of multilevel processes (Marks et al., 2008). It has been assumed that multilevel processes are primarily triggered by different degrees and types of regional autonomy, although contemporary MLG research is also increasingly interested in assessing IO authority. In contrast, MLA assumes that one crucial causal mechanism to account for multilevel processes is the supply of administrative capacities at each level of government. It is suggested that the supply of organizational capacities have certain implications for how organizations and humans act (see the next section). It is assumed that organizational capacity building provides government institutions with leverage to act independently and to integrate external institutions into their orbits. MLA departs from the assumption that norms, rules, and routines embedded in institutions mobilize biases in public policy because these factors offer cognitive and normative shortcuts and categories that simplify and guide decision makers’ search processes (Schattschneider, 1975; Simon, 1957). Consequently, the decision-making behavior of ‘eurocrats’ is likely to reflect their primary organizational embedment into government institutions. Two empirical predictions follow from this assumption: Firstly, the supply of independent administrative capacities is necessary for government institutions to act and to affect how other institutions act. Thus, the supply of administrative capacities in the Commission is expected to increase the likelihood that signals from the Commission will be ascribed importance by officials in EU and domestic agencies. In effect, patterns of multilevel processes across administrative subunits

Table 28.1 Models of multilevel governance (MLG) and multilevel administration (MLA)

	MLG	MLA
Unit of analysis	Political arenas	Public sector administrations, and their subunits
Coherence of units	Not specialized (regions as cohesive units)	Highly specialized (administrative organizations as consisting of horizontally and vertically specialized subunits)
Sources of contingency of (administrative) governance	The supply of regional authority	The supply of administrative capacities at different levels of government

are assumed to be supplied by the variety of administrative capacities of the Commission. Secondly, the behavior, role, and identity perceptions evoked by government officials are expected to be primarily directed toward those administrative subunits that are the primary supplier of relevant decision premises. It is thus assumed that multilevel processes are facilitated by the organizational capacities of government subunits at both levels of government. One implication is administrative integration along sectoral lines, for example between Commission DGs and agency subunits. Table 28.1 summarizes the above discussion.

Lessons to theory: Organizational theory and theoretical supplements¹

This section aims to contribute to complementary theoretical dialogue on the study of common administrative orders (see Zahariadis, 2013) and on the study of public sector organizations (Arellano-Gault et al., 2013). Departing from the observation that organization studies are ‘more fragmented and diverse’ than they have been (Pfeffer, 1993), the need for theoretical dialogue is vital. The varied disciplinary homeland of organizational studies accompanies a range of research questions and goals and subsequent disciplinary fragmentation (Berman, 2012). Organizational studies belong to a host of mother disciplines, such as economics, political science, psychology, business and industrial administration, sociology, and so on (March, 1965, xiv). Our point of departure for theoretical dialogue is not random or eclectic (Sil and Katzenstein, 2010), but departs from an organizational theory approach to public sector organizations. One principal reason for this departure is the empirical observation that we live in a world of formal organizations that are characterized by ‘the dynamic political process involved’ (Arellano-Gault et al., 2013, 12). Public

policy is made by and through such organizations. Formal organizations affect nearly every aspect of societies and life. Administrative order necessitates the existence of independent organizational resources and capacities. One necessary factor, although not the only one, in building such order is the establishment of common institutions, including permanent European administrations independent of national governments, serving some common purpose.

Despite a vast contemporary scholarship on governance and organizational theory, these two strands of research have been in mutual disregard (for example, Kettl, 2002; Olsen, 2010). A 'flowering of scholarship has not always been accompanied by easy conversations among the gardeners' (March, 1996, 280). There is scant theoretical and empirical knowledge on how organizational formats shape administrative governance processes. Illustrative of this, the most recent handbook on governance lacks an organizational approach (Levi-Faur, 2012). Furthermore, two decades of studies of core executive governance have largely abandoned the organizational dimension (for example, Elgie, 2011). Contemporary scholarship on order formation lacks a comprehensive analysis of its organizational dimension. This section argues that organizational theory is a powerful tool both for approaching questions of continuity and change in administrative orders and for explaining administrative governance.

Applying an organizational theory approach may be useful in at least two respects. Firstly, it may add new knowledge on how different organizational architectures shape administrative governance processes and the prospects for the wilful design of government institutions (Olsen, 2007, 92). Secondly, it may also add practical value for administrative policy. *If* organizational variables are shown to affect administrative governance processes in particular ways, these variables may subsequently be 'manipulated' and changed to achieve desired goals (Egeberg, 2012). In this way, theoretically informed empirical research may serve as an instrumental device in administrative policy. Administrative policy encompasses attempts at the wilful design and redesign of government infrastructure – that is, the deliberate change of organizational structures, organizational demography, and organizational locus.

Organizational theory may be instrumental in our understanding of administrative governance in two regards. Firstly, it may be used as an analytical device for studying the effects of organizational structures on administrative governance. Organizational variables are thus applied as *independent variables* that may explain variation in administrative governance processes. Secondly, organizational theory may be utilized to shed light on how organizational structures emerge, change, and disappear. It is applied to explain organizational continuity and change and to explain why and how administrative orders tend to emerge. Organizational structure thus serves as the *dependent variable*. This section suggests that an organizational-theory approach may explain both how organizational structures emerge and how such structures may shape

administrative governance processes, ultimately affecting the decisions being made (March, 1965). When using organizational structure as the *dependent variable*, an organizational approach may be used to explain organizational change. To facilitate theoretical dialogue, however, a non-exhaustive set of supplementary theoretical approaches are also outlined below: a functionalist approach, an environmental approach, and a garbage-can approach.

An organizational approach

One advantage of applying a general or ‘cosmopolitan’ approach such as organizational theory is the prospect of drawing general theoretical inferences from single-case studies and thereby accumulating ‘common knowledge’. One can thus draw general conclusions from stocks of empirical fragments. An organizational approach basically argues that organizational change is contingent and profoundly affected by existing organizational structures, and thus is highly path dependent. An organizational-theory perspective as applied here ascribes an autonomous role for organizational structures in explaining organizational change. Political institutions create elements of robustness, and concepts such as ‘historical inefficiency’ and ‘path dependence’ suggest that the match between environments and new organizational structures is not automatic and precise (Olsen, 2007). New governing arrangements must be extorted from, mediated by, and layered on top of preestablished organizational frameworks that empower and constrain political actors (Skowronek, 1982). Organizational structures also often exist within larger organizational orders, and organizational change includes processes at the interface of different organizational orders and the often complex interactions that may occur among them (Orren and Skowronek, 2004). In summary, the compound organizational terrain of government may serve as an important source of both resilience and opportunity in the genesis of new institutions and in the change of old ones (Olsen, 2010; Pierson, 2004, 47).

Illustrative of this approach, a few studies have explored the ‘stickiness’ of existing European administrative structures, for example in the creation of EU agencies. Krapohl (2004) shows that several EU agencies have evolved from existing EU committees and have taken over most of their structures, while Martens (2008) highlights that the organizational structures and standard operating procedures of some EU agencies have to a large extent been copied from other EU agencies and the Commission framework through a ‘cut and paste’ process. The most recent organizational development in the EU is also largely extorted from pre-existing structures – the European External Action Service (EEAS) and the European System of Financial Supervision (ESFS). Organizational formations are thus profoundly shaped by organizational arrangements that are ‘carried over from the past and situated in an altered setting’ (Orren and Skowronek, 2004, 12). One puzzle is thus which kind of preexisting

organizational arrangements influences which kind of new organizational arrangements.

Administrative systems that face turbulent times – such as financial stress – may also experience ambiguities as to what problems, solutions, and consequences to attend to at any time. Such ambiguities have often been theoretically made sense of by a garbage-can approach (see below). However, it may be argued that even the garbage-can model was initially not assumed to be free of organizational structures. Included in the original garbage-can model was the idea that organizations may bias the degrees and types of ambiguities in decision-making processes and organizational change. Formal organizations may facilitate couplings of streams in decision cycles. ‘Organizations regulate connections among problems, choice opportunities, solutions, and energy by administrative practice’ (Cohen et al., 1976, 31). Organizations sometimes develop capacities to act. Such organizational capacities involve attention structures and access structures (Cohen et al., 1976; March and Olsen, 1976, 40). ‘The less the organizational regulation of the four streams... the more important the timing of the four streams for a decision process and its outcome’ (Cohen et al., 1976, 32). In the latter, one implication may be a relative decoupling of problems and choices (Cohen et al., 1976, 36). Those who have used the garbage-can model may also have overstated the lack of rules and organized practices in so-called organized anarchies. ‘The truncation of theorizing about the origin and coherence of elements of decision streams has led researchers to overemphasize the random nature of decisions’ (Heimer and Stinchcombe, 1999, 27).

Supplementary approaches

A functionalist approach: In order to make sense of organizational change, scholars often analyze the development along functional lines, emphasizing their ability to resolve various collective action problems. The principal-agent model is often the analytical expression of this functional logic, together with the notion of transaction costs (Tallberg, 2003, 25). The benefits of organizations ‘lie in the reduction of political transaction costs, by providing solutions to collective-action problems that prevent efficient political exchange’ (Tallberg, 2003, 26). In a special issue of the *Journal of European Public Policy* (1997), Dehousse, Kreher, Majone, and Shapiro discussed the establishment of EU agencies along these lines. They saw the development of agencies in the EU as a response to conflicting pressures following the creation of the internal market, and in particular as a response to shortcomings in the existing regulatory approach of the Commission (Dehousse, 1997, 246–247). Agencies could relieve the Commission of specific administrative tasks, which would give the Commission more freedom to offer political direction. The special issue pointed out that EU agencies lack the independence and powers of other regulatory

bodies and are generally 'weaker' than agencies in the United States (Majone, 1997, 262; Shapiro, 1997, 276–282). This is also in line with Vos (2000) and Yataganas (2001), who see particularly the first wave of agency formation at EU level as an answer to three problems: (i) a way to cope with new tasks of a technical and/or scientific nature, (ii) a way to finalize the internal market project, and (iii) a way to ensure credibility and transparency. This view has also been reflected in the Commission's own documents. In various position papers, the Commission has presented itself as the principal that must evaluate the possibility of delegating a share of its powers to autonomous bodies, which will assist in completing its tasks and operating the internal market (Dehousse, 2008, 792). This strategy of delegation by the Commission as a means to focus on its core tasks is particularly outlined in the March 2000 White Paper, 'Reforming the Commission' (European Commission, 2000), where independent agencies are seen as a means of improving administrative efficiency, easing the workload of the Commission, and fostering the transparency and legitimacy of the EU.

An environmental approach: This 'approach' broadly speaking harbors two separate mechanisms: firstly, the role of integrated participation and, secondly, the role of institutionalized environments. Firstly, neo-corporatist literature advocates that governmental agendas are penetrated by external non-governmental organizations (for example, Mazey and Richardson, 2001). A long tradition of establishing governmental boards and committees for external actors has systematically organized a host of external actors, problems, and solutions into the government agenda setting stage, including local and regional administrations, interest groups, and individual stakeholders. By systematically and intentionally organizing external institutions into governance processes, organizational change may become sensitive and reactive to the problems, solutions, and consequences of concern of external actors. Governments may also integrate external advice to supply legitimacy to upcoming decisions (Hogwood, 1987). However, these external actors may also activate problems, solutions, and consequences that are deemed unwanted by the government.

Secondly, one strand of research from the Stanford institutionalist school has advocated how organizational change is centered on image making and the manipulation of symbols, myths, and ceremony (Feldman and March, 1981; Meyer and Rowan, 1977). The creation of formal organizations can be seen as reflecting popular trends and fashionable ideas (Christensen and Lægread, 2006). Meyer and Rowan (1977, 73) have emphasized the importance of taken-for-granted rules that may appear in wider institutional environments which take the form of 'rationalized myths'. They are myths because they are widely held beliefs whose effects 'inhere, not in the fact that individuals believe them, but in the fact that they "know" everyone else does, and thus that for all practical purposes the myths are true' (Meyer and Rowan, 1977, 75). For example, delegating tasks to 'independent' agencies was increasingly popular in

government reform programs in the late 1980s (for example, Kelemen and Tarrant, 2007, 31). Furthermore, when the second wave of EU agencies occurred during the 1990s (Part VI of this volume), the agency idea and New Public Management (NPM) rhetoric were widespread across Europe and were also referred to in Commission documents on EU-level agencies (Kelemen, 2002). The sheer fact that EU agencies popped up as a new vital part of the European administrative system within a fairly short period of time in the 1990s and post-2000 – and not during the 1960s or 1970s – may illustrate the strength of fashionable ideas at the time (Groenleer, 2009).

A garbage-can approach: Finally, the garbage-can model may account for how organizational changes sometimes happen when faced with problematic preferences, unclear technology, and fluid participation (Cohen et al., 1972). According to this model, organizational changes are subject to decision makers with limited cognitive and computational capacities in ‘anarchistic’ and loosely coupled organizations. Sometimes solutions are identified before problems are discovered, and organizational change can best be described as the result of flows of problems, solutions, participants, and choice opportunities that randomly match. Organizational change is depicted as fluid, discontinuous, and loosely organized, where sudden windows of opportunity or external shocks activate problems, initiatives, solutions, and participants that are packed more or less randomly together (Heimer and Stinchcombe, 1999, 28).

External shocks sometimes offer opportunity to change agendas within policy areas that are perceived as deadlocked (Ackrill et al., 2013). In garbage-can situations, organizational change is less organized and thus open to creative decision making, policy innovation, and sudden turns. Garbage-can-like situations thus open the door to policy entrepreneurship (Pollack, 1997). Ambiguities are depicted as a central part of the decision-making structure. Policy-making processes characterized by garbage-can elements are centered on matching constant flows of decision opportunities, solutions, and problems, and constantly shifting participants. In democratic polities, governments may have limited control over what items enter the government agenda at any time (Olsen, 1983, 65) – particularly during periods of stress (March, 2010). One of the most precious and scarce resources of governments is the availability of attention – governments are usually only capable of managing a limited number of items at one time (Mayntz and Scharpf, 1975). In an open society, events exogenous to the government often call for attention. Anything from an earthquake to a miscarriage of justice may call for an immediate governmental reaction (Olsen, 1983). Many scholars have depicted governments as essentially reactive to external streams of opportunities, problems, solutions, and decision opportunities. This is also the case in many EU intergovernmental conferences where the agenda is less predictable, stabile, and controlled than within domestic governments (Sverdrup, 2000).

Is the European administrative system all that different? Toward an international administrative system

With this section, a comparative dimension to the European administrative system is launched. Few scholars have systematically compared the Commission with other international bureaucracies (The N = 1 challenge – Trondal et al., 2010; Warleigh-Lack and Phinnemore, 2009, 216). The *sui generis* claim that the Commission is not comparable to any other international bureaucracies has more often been assumed than sufficiently researched. This section argues that the Commission is just one example of international bureaucracy, albeit a crucial one, which has managed to facilitate the rise of some kind of common multilevel administrative order. Two main bodies of literature have combined theoretically informed empirical research on the everyday decision-making dynamics of international bureaucracies beyond the EU. The first strand of research was the functionalist and neo-functionalist studies of the Commission and the UN Secretary, inspired by Ernst Haas (for example, Alger, 1963; Ernst, 1978; Wolf, 1973). The second body of research is the more recent institutionalist and social-constructivist literature on organizations such as the EU, the Council of Europe, and NATO (for example, Checkel, 2005; Zürn and Checkel, 2005). However, even recent literature on international bureaucracy lacks a truly comparative design. Neither the early neo-functional nor the more recent institutional scholarship have systematically studied the executive arms of IOs. Nor have these bodies of literature understood the relationship between the generic organizational properties of international bureaucracies and the behavioral dynamics of the personnel (Kratochwil and Ruggie, 1986, 761).

One rationale for comparing international bureaucracies is that they may share some basic organizational features, as public interstate bodies that are organized according to well-known organizing principles from domestic administrative systems. A second rationale for comparing international bureaucracies is the idea that everyday behavioral dynamics inside international bureaucracies may reflect less the IO in which they are embedded and much more the organizational architecture inside international bureaucracies themselves. This section contributes to this literature by drawing the contours of a second generation of research on IOs (see Reinalda, 2013).

International or internationalized bureaucracy constitutes a distinct and increasingly important feature of public administration studies. This section takes a novel step in the study of IOs – aiming to integrate public administration in this field of scholarship. Paradoxically, this entails that the study of IOs is somehow ‘normalized’, that is, that a public administration turn comes to characterize IO studies (Trondal, 2007). Despite the obvious differences that exist between national and international bureaucracies, a future research agenda on international administration would be based on developments within the area

of national public administration studies. This also entails new questions being asked and new concepts being applied to the field of IO research.

The importance of international bureaucracies has been hotly contested. Scholars early on depicted the nation state as weakened, hollowed out, and fragmented due to the advent of international bureaucracies (for example, Rosenau, 1997). Others argued that international bureaucracies merely strengthen and integrate the nation state as a coherent Westphalian system of territorial sovereignty (for example, Biersteker, 2003; Moravcsik, 1998). Moreover, some scholars see international bureaucracies as a key motor in the transformation of nation state institutions (Cowles et al., 2001; Wessels et al., 2003). Finally, others have argued that the effects of international bureaucracies are modest and largely driven by evolving dynamics of domestic change (Andersson, 2002). Conflicting assessments of these kinds represent more than standard academic turf battles (see Hurrelmann et al., 2007) – we are facing poorly understood relationships between the nuts and bolts of international bureaucracies and policy making within domestic governments. Understanding the *modus operandi* of international bureaucracies is essential in order to better understand how decisions are shaped within IOs, and also how and to what extent IOs contribute to transform domestic government(s) and governance.

IOs penetrate ever more areas and levels of national government. The international political scene has clearly become increasingly organized in the post-World War II period, reflected in the rise of international bureaucracies (Finnemore, 1996; March and Olsen, 1998). There are currently approximately 5,000 IOs, many of which have semi-autonomous executive institutions separated from plenary assemblies (Bauer and Knill, 2007, 14). One essential element of international bureaucracies is that the staff has sworn an oath of undivided and primary loyalty toward the international bureaucracy. With respect to the formal organization of international bureaucracies, they are mostly vertically specialized bureaucracies, often with an administrative leader at the top. The Commission also has a political umbrella at the top with the College of Commissioners and their cabinets. Even more importantly, the Commission is *sui generis* by having its political leadership organized outside the Council of Ministers and thus formally independent of member-state influence and the inherited Westphalian political order. Historically, Jean Monnet argued against the idea of creating a Council of Ministers (Duchêne, 1994; Featherstone, 1994, 152). Today, the Commission has gained the administrative capacities to support its formal independence vis-à-vis the Council and the European Parliament, for example with respect to initiating and implementing legal acts (Curtin and Egeberg, 2008).

In the world of IOs, there is a rising number of ‘unelected bodies’ and office holders that complement the traditional branch of government at domestic

level based on elections (Vibert, 2007). The task of international bureaucracies has become increasingly that of an active and independent policy-making institution and less that of a passive technical servicing instrument for the plenary assemblies (Lemoine, 1995, 28), meaning that the bureaucracies serve as nascent new branches of an international administrative system.² Historically, it was the creation of international bureaucracies that transformed 'a series of conferences into an organization' (Claude, 1956, 194; Lemoine, 1995, 18; Mathiason, 2007, 28). What is essential to the existence of international bureaucracies is that their officials should act relatively independently of the member states and should attach primary loyalty to the international bureaucracy. Whereas most international relation approaches tend to view IOs as an epiphenomenon to interstate relations (see Venzke, 2008), it is argued here that the bureaucratic arm of IOs may have some leeway to act relatively independently. This also implies that the Commission administration is no longer depicted as a unique case among international bureaucracies.

A first generation of research: In the first generation of IO studies, one main line of debate concerned whether or not IOs were effective decision-making forums. There seemed to be general agreement that the most important actors on the world stage were nation states. While some would argue that these nation states reap immediate benefits from international cooperation in the form of reduced transaction costs, others would argue that when the salience of policy issues was raised, that is, when issues were politicized, they were primarily dealt with in purely bilateral forums. In other words, multilateralism is good when it is harmless. In that first generation, there was little interest in what was going on 'back stage' of the intergovernmental surface (see Trondal et al., 2010, 10). IOs were mainly dealt with as black boxes, with the distinct characteristics of international bureaucracies being ignored (see Reinalda, 2013; Venzke, 2008). One important criticism raised toward 'mainstream' IO research was that '... normative claim-making and abstract theorizing have outrun carefully designed and methodologically sound empirical studies' (Checkel, 2004, 1). More recent research on governance in IOs still pays only scant attention to the bureaucracies of these organizations (for example, Hawkins et al., 2006; Karns and Mingst, 2004). One explanation for this lack of scholarly attention to international bureaucracies is partly the gulf that exists between IO literature and public administration literature. One clear example of this gulf is the book by Acharya and Johnston (2007) that makes a comparative analysis of IOs without analyzing their administrative systems. Rationalist accounts of IOs – the realist, neo-realist, and liberalist variants – treat international bureaucracies as epiphenomena of the interaction among states. Studies of IOs have been preoccupied with studying the more visible interplay of states rather than the back-stage activities of the secretariats (Rochester, 1986). One notable exception is the growing volume of studies of the Commission and to some extent

reports on the UN Secretariat (for example, Chesterman, 2007; Egeberg, 2006). Researching the everyday decision making of international bureaucracies has been of less interest than studying the voting behavior of states in general assemblies (Hix, 2002), analyzing the great leaders of international bureaucracies, such as the UN General Secretary (Chesterman, 2007; Cox, 1969, 202; Rochester, 1986), and studying the organizational reforms of IOs (Bauer and Knill, 2007).

One characteristic of the first generation of international bureaucracy studies was its overly descriptive nature – portraying the idiosyncratic administrative histories of international bureaucracies and analyzing the role of great leaders such as the UN General Secretaries (Jordan, 1971). Early international bureaucracy literature was also dominated by single-case studies of individual agencies underneath international bureaucracies (Claude, 1956). The 1960s and 1970s saw several studies of IOs that treated them as hubs of international networks and regimes rather than as organizations and institutions in their own right (for example, Nye, 1975). Regime analysis tended to look at international secretariats as intervening variables that ‘somehow affect regime outcomes’, but did not analyze such secretariats as autonomous bureaucracies in their own right (Bauer, 2006, 26; Reinalda, 2013). International regimes were seen more as arenas than as actors, and thus not of sufficient interest to such scholarship (Underdal, 2008). Such research on international bureaucracies focused more on the administrative functions they performed – such as preparing meetings and documents and providing technical assistance – than on the independent role played by the international bureaucracy (see Haftel and Thompson, 2006). Thus, regime literature downplayed the organizational dimension of IOs (Gehring, 2003, 11). The seminal work of Cox and Jacobson (1973, 428) reflected this lack of organizational focus in international bureaucracy studies, concluding that ‘international organizations facilitate the orderly management of intergovernmental relations without significantly changing the structure of power that governs these relations...’ Discovering that international bureaucracies can have identities, resources, authority, and interests of their own was, of course, an important development (Barnett and Finnemore, 2004). However, seen from a purely public administration point of view, these observations are hardly surprising (Ege and Bauer, 2013).

A second generation of research: In a second generation of research on IOs, attention has increasingly been directed toward the international bureaucracies themselves, highlighting the fact that bureaucracies at international level can be understood as any other bureaucracy. In this second generation, the field of IO research was visited by public administration scholars. This development can be described as a public administration ‘turn’ in IO research (Trondal, 2007). The second generation of IO research has encouraged studies of the patterns, dynamics, conditions, and varieties of international administration.

In the first generation of study, the challenge was simply to bring international bureaucracy to the attention of scholars of international politics and to argue that 'bureaucracies matter'. In a second generation of study, we should be interested in studying how and why international administrations matter. The fact that international bureaucracies are indeed suppliers of decision premises of their own requires that we analytically treat them as such. In the same way as a broad spectrum of public administration tools exists to study the organizational dynamics of national public administrations, the future of research on IOs has multiple research strategies and theories at its disposal.

Contours of a future research agenda

This volume has suggested elements of a new generation of research on an emergent European administrative system. One step forward is to move outside the EU laboratory by incorporating international bureaucracies beyond the EU. More specifically, future research may explore the management of international bureaucracies and its impact on the role perceptions, loyalties, identities, and decision-making behavior among international civil servants. Does the management of international bureaucracies steer administrative behavior in its own house, foster the horizontal and vertical coordination of the services, and reduce 'silo-thinking' among administrative divisions? How do managers combine the balance of unity and diversity, change and stability, exploration and exploitation within international bureaucracies (March, 2008)? How is organizational autonomy fostered, high internal and external reliability assured, and crisis management undertaken? Moreover, do the fragments of administrative subunits in different IOs aggregate to some kind of common administrative system at international level that shares some common perceptions of problems, solutions, and consequences? Some of the questions need answering if we are to understand the nature of a nascent international administrative system. At present, researchers lack a solid knowledge base from which to begin.

Time is also ripe to explore the assumed *sui generis* character of the EU administration. Comparative studies should be prepared both as large-N surveys and as in-depth process-oriented studies of international civil servants. Detailed and process-oriented accounts of agenda setting, decision making, and implementation in and by international bureaucracies are almost non-existent in the relevant literature. Essentially, such research endeavors should be based on a systematic comparative design, carefully incorporating a selection of international bureaucracies on the basis of coherent theoretical models. The value added would be more robust tests of the causal relationship between the organizational architecture of international bureaucracies on the one hand and patterns of decision-making, power and accountability on the other. Recognizing that international bureaucracies are complex institutions means that we

need to take decision-making dynamics in these institutions seriously and to develop research designs that are targeted at understanding the specificity of international bureaucracies. By comparing the Commission with other international bureaucracies, the often-assumed *sui generis* nature of the European administrative system may be thoroughly considered.

Finally, a research agenda for the comparative study of international bureaucracy should aim to establish longitudinal data sets that would enable a study of continuity and change inside international bureaucracies. Research on the Council of the European Union has largely achieved what research on the Commission has not managed so far: to construct a time series that enables the cumulative research of institutional change and persistence (Naurin and Wallace, 2008). Large-N time series data would confirm whether the characteristics of the European administrative system, as presented in this volume, are merely provisional or resilient.

Notes

1. This section draws on Egeberg and Trondal (unpublished).
2. In the EU, Christiansen (2001, 49) demonstrates the increased 'actorness' of the Council Secretariat, particularly within the field of Common Foreign and Security Policy (CFSP). Studies also show that the Commission's power of initiative tends to be weakened during turbulent institutional periods, for example during enlargement processes and treaty revision processes (Sverdrup, 2000).

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'This Handbook reveals the interlocking organizational, political and multi-level dimensions of the EU's administrative system. The individual chapters enrich our understanding of its distinctive institutional and behavioral aspects; together, they delimit how this emerging administrative order enhances and limits the EU's role as an autonomous policymaker.'

— **Chris Ansell**, *University of California, Berkeley*

This important collection examines the emerging bureaucratic framework which underpins the European Union (EU) and in doing so constitutes a primer on the administrative system of the EU. Drawing on the latest research from the administrative sciences and using organizational, institutional, and decision-making theories, this volume highlights that analyzing the patterns and dynamics of the administrative capacities of the EU is essential in understanding how the EU shapes European public policy. Accordingly, this study does not examine administrative capacities in isolation but rather analyzes them as structures that mobilize systematic bias in the production of public policy. This layout allows the chapters to tackle pressing questions about the nature of the EU's emerging bureaucracy such as to what extent, how, and under what conditions do administrative systems change and complement pre-existing public administration systems? Can new administrative systems profoundly transform pre-existing ones? And, what are the principled implications of an emergent new European administrative system?

Michael W. Bauer is Jean Monnet Professor and holds the Chair of Comparative Public Administration and Policy Analysis at the German University of Administrative Sciences in Speyer. He has worked extensively on issues of multilevel public administration. He is interested in the comparative analysis of administrative structures and the consequence on public policy making.

Jarle Trondal is Professor of Political Science and Public Administration at the Department of Political Science in the University of Agder, Norway. He is also Professor of European Studies at the ARENA Centre for European Studies, University of Oslo, Norway, and Honorary Professor at the University of Copenhagen, Denmark. His main research interests are in public administration, organizational studies, and the study of European political order transformation.

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