

The European Parliament : a giant with feet of clay?

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The European Parliament

A giant with feet of clay?

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The European Parliament

A giant with feet of clay?

PROEFSCHRIFT

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in het openbaar te verdedigen
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All errors that remain in this thesis are, as ever, the responsibility of the author alone.

List of abbreviations

Committees of the European Parliament mentioned in this thesis

AFCO	Constitutional Affairs
AFET	External Relations
AGRI	Agriculture and Rural Development
BUDG	Budgets
CONT	Budgetary Control
CULT	Culture and Education
DEVE	Development
ECON	Economic and Monetary Affairs
EMPL	Employment and Social Affairs
ENVI	Environment Public Health and Food Safety
FEMM	Women's Rights and Gender Equality
IMCO	Internal Market and Consumer Protection
INTA	International Trade
ITRE	Industry, External Trade, Research and Energy
JURI	Legal Affairs
LIBE	Civil Liberties, Justice and Home Affairs
PECH	Fisheries
PETI	Petitions
REGI	Regional Development
TRAN	Transport and Tourism

Political groups in the European Parliament in alphabetical order

ALDE	Alliance of Liberals and Democrats for Europe
ECR	European Conservatives and Reformists
EFD	European Freedom and Democracy
EPP	European People's Party
Greens/EFA	Greens/European Free Alliance
GUE/NGL	European United Left/Nordic Green Left
S&D	Progressive Alliance of Socialists and Democrats

Other abbreviations

ACP	African Caribbean and Pacific
BEUC	Bureau européen des unions de Consommateurs
BNP	British National Party
CESAGEN	Centre for Economic and Social Aspects of Genomics

CIAA	International Commission for Food Industries
Copa-Cogeca	European Farmers Organisation
Coreper	Committee of Permanent Representatives
DG EXPOL	Directorate General for external policies
DG IPOL	Directorate General for internal policies
DG	Directorate General
ECSC	European Coal and Steel and Community
ECU	European Currency Unit
EEA	European Environmental Agency
EEAS	European External Action Service
EFSA	European Food Safety Authority
EGEST	European Group on Ethics in Science and New Technologies
EIPA	European Institute of Public Administration
ENA	Ecole nationale d'administration
EP	European Parliament
EPSO	European Personnel Selection Office
EU	European Union
FAO	Food and Agriculture Organisation of the United Nations
GATT	the General Agreement on Tariffs and Trade
GM	genetically modified
GMO	genetically modified organism
IFOAM	International Federation of Organic Agriculture Movements
IGC	intergovernmental conference
IoN	Institute on Nanotechnology
IT	Information Technology
LSE	London School of Economics
MEP	Member of European Parliament
MFF	multi-annual financial framework
NGO	non governmental organisation
SCENIHR	Scientific Committee on Emerging and Newly Identified Health Risks
SCFCAH	Standing Committee on the Food Chain and Animal Health
SPD	Sozialdemokratische Partei Deutschlands
SPS	Sanitary and Phytosanitary Measures
STOA	Science and Technology Options Assessment unit
TBT	Technical Barriers to Trade
TFEU	Treaty on Functioning of the European Union
UKIP	UK Independence Party
US	United States
WHO	World Health Organisation
WTO	World Trade Organisation

Contents

Chapter 1	
Introduction	15
1.1 Topic and research question	15
1.2 Thesis structure	18
Chapter 2	
Powers and Capabilities: The European Parliament in its academic and historical context	21
2.1 The European Parliament : evolution of powers and role	22
2.1.1 <i>Ever evolving formal powers</i>	22
2.1.2 <i>Informally gaining power</i>	24
2.2. "Swiss cheese": an analysis of the relevant academic literature on the European Parliament's powers and the gaps therein	27
2.3 A fundamental capability for legislatures to exercise powers: administrative organization	30
2.3.1 <i>Administrative organisation of legislatures – an American perspective</i>	31
2.4 Literature on the administrative capabilities of the European Parliament	35
2.3.1 <i>The European Parliament's administrative system: who, what and how many?</i>	35
2.3.2 <i>Tasks and roles</i>	37
2.5 Concluding remarks	39
Chapter 3	
Measuring the capability to exercise powers: an analytical framework tailored for inter-institutional negotiations	41
3.1 Central research question	42
3.2 March and Olsen's capabilities: a conceptual framework to assess the ability to exercise powers	43
3.2.1 <i>Capability factor 1: Rights and Authorities</i>	44
3.2.2 <i>Capability factor 2: Resources</i>	45
3.2.3 <i>Capability factor 3: Expertise</i>	47
3.2.4 <i>Capability factor 4: Organising Capacity</i>	48
3.2.5 <i>Interconnectedness and interaction between capabilities</i>	50
3.3 Methodology and operationalization: assessing the four capabilities	52
3.3.1 <i>How to assess influence on outcomes comprehensively: process tracing as the catch-all method</i>	52
3.3.2 <i>How to assess the capabilities of the EP: concrete operationalization of the four capabilities</i>	57

3.4	Case studies	62
3.4.1	<i>Justification of cases</i>	62
3.4.2	<i>Background on cases</i>	64
3.4.3	<i>Concluding remarks</i>	70

Chapter 4

The Baseline: The European Parliament's rights in the ordinary legislative procedure, the budget procedure and comitology		73
4.1	Introduction	73
4.2	The ordinary legislative procedure: EP and Council on an equal footing	74
4.2.1	<i>The ordinary legislative procedure according to the treaty</i>	74
4.2.2	<i>The ordinary legislative procedure in practice</i>	77
4.2.3	<i>The ordinary legislative procedure in the case of comitology and the regulation on novel foods</i>	80
4.3	The budgetary procedure after Lisbon	86
4.3.1	<i>The legal base of the budgetary procedure</i>	86
4.3.2	<i>The annual budget negotiations in practice – the 2011 case</i>	87
4.4	Comitology after Lisbon: what role for the EP?	89
4.5	Conclusion	92

Chapter 5

Resources		93
5.1	The importance of the EP's financial resources	94
5.1.1	<i>Budget as a resource in the context of the EP's activities</i>	94
5.1.2	<i>The role of budgetary resources in the case of comitology</i>	97
5.1.3	<i>The role of budgetary resources in the case of novel foods</i>	97
5.1.4	<i>The role of budgetary resources in the case of the 2011 budget</i>	98
5.1.5	<i>Conclusions</i>	99
5.2	The importance of time in the EP: work overload in a three-day-work-week	99
5.2.1	<i>Time as a resource in the context of the EP's activities</i>	99
5.2.2	<i>The role of time in the case of comitology</i>	105
5.2.3	<i>The role of time in the case of novel foods</i>	109
5.2.4	<i>The role of time in the case of the 2011 budget</i>	112
5.2.5	<i>Conclusions</i>	114
5.3	The importance of information in the EP: yearning for input	116
5.3.1	<i>Information as a resource in the context of the EP's activities</i>	116
5.3.2	<i>Information as a resource in the case of comitology</i>	122
5.3.3	<i>Information as a resource in the case of novel foods</i>	124
5.3.4	<i>Information as a resource in the case of the 2011 budget</i>	128
5.3.5	<i>Conclusions</i>	129
5.4	The importance of staff in the EP: Few in numbers but strong performance?	130
5.4.1	<i>Staff as a resource in the context of the EP's activities</i>	130

5.4.2	<i>Staff as a resource in the case of comitology</i>	135
5.4.3	<i>Staff as a resource in the case of novel foods</i>	135
5.4.4	<i>Staff as resource in the case of the 2011 budget</i>	137
5.4.5	<i>Conclusions</i>	138
5.6	Conclusions on resources as a capability factor	138

Chapter 6

The power of knowledge: expertise		143
6.1	Expertise as a capability factor in the context of the EP's activities	144
6.1.1	<i>What is expertise?</i>	144
6.1.2	<i>The importance of expertise for legislatures</i>	144
6.1.3	<i>Challenges for the EP's in relation to expertise</i>	146
6.1.4	<i>Background and experience of members and staff</i>	151
6.1.5	<i>Conclusion</i>	159
6.2	The role of expertise in the case of comitology	160
6.2.1	<i>Expertise of the key players</i>	160
6.2.2	The role of expertise in the negotiations	165
6.2.3	<i>Findings</i>	176
6.3	The role of expertise in the case of novel foods	178
6.3.1	<i>Expertise of the key players</i>	178
6.3.2	<i>The role of expertise during the negotiations</i>	183
6.3.3	<i>Findings</i>	196
6.4	The role of expertise in the case of the annual Budget 2011	199
6.4.1	<i>Expertise of the key players</i>	199
6.4.2	<i>The role of expertise during the negotiations</i>	203
6.4.3	<i>Findings</i>	218
6.5	Conclusion	219

Chapter 7 **223**

Organising Capacity: How the EP prepares for inter-institutional coordination		223
7.1	Organising capacity as a capability factor in the context of the EP's activities	224
7.1.1	<i>Introduction: the importance of structures and procedures for organising capacity</i>	224
7.1.2	<i>Structure and positions</i>	225
7.1.3	<i>Procedures: the importance of internal EP coordination</i>	228
7.1.4	<i>Procedures: the impact of trilogue negotiations for the EP's internal organisation</i>	230
7.1.5	<i>Concluding remarks</i>	235
7.2	The role of organising capacity in the case of comitology	235
7.2.1	<i>The formulation of its position and the EP's handling of the negotiations in comitology</i>	236
7.2.2	<i>Findings</i>	240

7.3	The role of organising capacity in the case of novel foods	241
7.3.1	<i>The formulation of its position and the EP's handling of the negotiations in novel foods</i>	241
7.3.2	<i>Findings</i>	247
7.4	The role of organising capacity in the case of the 2011 budget	247
7.4.1	<i>The formulation of its position and the EP's handling of the negotiations in the 2011 budget</i>	248
7.4.4	<i>Findings</i>	253
7.5	Conclusion	254
Chapter 8		
Conclusion		257
8.1	The importance of studying capabilities	257
8.2	Findings	261
8.3	Lessons learnt	270
8.3.1	<i>The European Parliament : the need for expertise and sharing power</i>	270
8.3.2	<i>Research agenda: studying capabilities and testing the framework</i>	272
8.4	Giant with feet of clay? Final remarks	273
Bibliography		275
Interviews		289
Samenvatting		293
Curriculum vitae		299

List of figures and tables

Tables per chapter

Table 2.1:	Number of civil servants working at the EP	36
Table 3.1:	Types and use of data in this thesis' process tracing	56
Table 3.2:	Operationalization of capabilities	60
Table 4.1:	Number of co-decision files concluded	77
Table 4.2:	Evolution of the proposal for a regulation on implementing acts (art. 291 TFEU)	81
Table 4.3:	Evolution of the negotiations regarding the Common Understanding (art. 290 TFEU)	83
Table 4.4:	Evolution of the proposal for a regulation regarding Novel Foods	85
Table 4.5a:	First round of negotiations of the Annual Budget 2011	88
Table 4.5b:	Second round of negotiations on the Annual Budget 2011	89
Table 4.6:	Types of informal contacts between the co-legislators	89
Table 5.1:	EP budget related to resources as a capability factor (2008-2011)	95
Table 5.2:	Number of civil servants working at the EP	131
Table 5.3:	Number of civil servants working at the EP in the years of analysis	131
Table 5.4:	Number of administrators in DG IPOL and Committee	132
Table 6.1:	Turnover of MEPs throughout the years	158
Table 6.2:	Summary of key issues in the negotiations on the Common Understanding and the new comitology regulation	176
Table 6.3:	Summary of key amendments on the novel foods regulation	196
Table 6.4:	Evolution of the 2011 budget negotiations	205
Table 7.1:	Positions inside the EP	226
Table 7.3:	EP votes in first reading on the 2011 budget	251
Table 8.1:	The conditions under which capabilities fall short of powers	270

Figures

Figure 3.1:	Capabilities of the EP to influence the outcome of inter-institutional negotiations	52
Figure 3.2:	The three case studies and their respective categories	64
Figure 4.1:	Graphic presentation of the ordinary legislative procedure	76
Figure 5.1:	Chart of the EP's budget	95
Figure 5.2:	Information sources of MEPs	122
Figure 7.1:	Organising Capacity	225
Figure 8.1:	Capability factors	267

CHAPTER 1

Introduction

1.1 Topic and research question

The European Union (EU) is founded on the values of freedom, democracy, and equality. Its functioning is based on representative democracy and article 10 of the Treaty on European Union (TEU) foresees that the European citizens “are directly represented at Union level in the European Parliament” (European Union 2010a: 20). The European Parliament (hereafter referred to as ‘European Parliament, ‘EP’ or ‘Parliament’) is thus composed of representatives of the Union’s citizens who are directly elected for a term of five years. It is “the world’s most far-reaching experiment in transnational democracy” and is continuously evolving in step with the EU as a whole (Corbett et al. 2011: 2).

Indeed, the European project has developed from the European Coal and Steel Community in 1951 to today’s EU with twenty-eight Member States and a multitude of institutions. Many powers and competences have been transferred from the national level to ‘Brussels’. The impact of this process of integration on our daily lives has never been greater. From free movement across the borders and the establishment of a single currency, to consumer rights and the standard size of a bottle of wine; European decision-making has penetrated our lives most profoundly. Further integration is almost always linked to questions on democratic legitimacy. The more powers were transferred to the European level, the greater the call for ensuring “proper” democratic control.

Empowering the European Parliament has been central throughout the many treaty changes that have taken place since the 1950s (Rittberger 2003). Strengthening the role of the EP in the decision-making has been a common response to address the concerns on democratic legitimacy. This stems from the idea that the democratic nature of the EU can be enhanced by reinforcing the institution which is supposed to directly represent the European citizens. The logic is that when powers are transferred from the national executive to the European executive, a similar transfer should take place in the legislative branch (Bowler and Farrell 1993). By ‘parliamentarising’ the decision-making, the process would become more transparent and more democratic. The EP has been transformed over the years, from an unelected Assembly in the 1950s to a full-fledged co-legislator on an equal footing with the Council of Ministers. Indeed, most recently, the Parliament has been hailed as one of the ‘winners’ of the Lisbon Treaty (Mahoney 2010). Since its entry into force the EP is co-legislator in almost all

regulatory fields of the EU. The co-legislative powers of the EP were extended in over 40 policy areas such as agriculture, fisheries, energy, and legal migration to name just a few examples and now cover 85 treaty articles. It is often described as one of the most powerful parliaments in the world and it is clear that – more than ever before – it plays a central role in EU decision-making (Hix et al. 2003: 192; Corbett et al. 2011).

Ever since the Maastricht Treaty, which granted the Parliament co-decision rights, much has been published on its role in EU decision-making. Scholars have looked into its growing powers (e.g. Rittberger 2003), the European Parliamentary elections (e.g. Stockemer 2012), left-right cleavages (e.g. Hix et al. 2005), party organisation and cohesion (e.g. Hix 2002a), voting behaviour of its members (e.g. Carrubba et al. 2008), etc... They have compared the different decision-making procedures (e.g. Kreppel 2002), analysed the functioning of its committees (e.g. Neuhold 2001), and assessed the Parliament's accountability and democratic legitimacy to name just a few issues (e.g. Börzel and Sprungk 2009). However, the extent to which the European Parliament is actually capable of exercising the powers it has obtained through the various treaty reforms remains under-researched (Hix et al. 2003). We have moved from a system in which the European Commission and the Council were the central decision-makers to a triangular system. Yet, here we find a very interesting paradox: more powers and competences have been transferred to an institution with the aim of making the decision-making system more democratic, accountable and legitimate, but so far the question has been eclipsed whether the EP actually has the capabilities to exercise these powers in the EU's triangular inter-institutional context. The question of a potential imbalance between its powers and the capability to exercise them in negotiations with the other institutions not only deserves further research in order to fully assess the EP's actual power and impact on decision-making, but also to understand the EU's inter-institutional dynamics as a whole. Finally, in light of the many treaty changes that have empowered the Parliament in order to strengthen the Union's democratic legitimacy, it is vital to know whether the EP fulfils its role professionally. The legitimacy of the EU as a whole depends on the trust in its institutions. The Parliament therefore has to live up to its role if it is to be accepted by the citizens as a vital player in shaping European society.

Today, members of European Parliament (hereafter MEPs) have to deal with a vast range of different issues that are often of a technical nature when negotiating with the Council and the Commission. EU legislation for instance deals with setting CO2 emissions rules for cars and vans, technical standards for building products, harmonising rules for the protection of consumers, creating a patent with uniform protection, setting rules for food products containing nanomaterials, harmonising maternity leave, extending copyright protection, setting entry conditions for migrant workers from third countries, to name just some examples. These are policy matters that require specialised knowledge.

Important factors such as resources, expertise, and the capacity to organise itself have become crucial for the role of the European Parliament as co-legislator in the inter-institutional decision-making process. Have these capabilities been developed in line with the powers it has or is the European Parliament an institutional giant on feet of clay? Can we safely assume that institutions are fully capable of exercising the powers they have in practice or is it possible that there is a gap between the European Parliament's powers (i.e. both the formal powers it has according to the Treaties and the informal powers it developed) and its capacity to exercise them in practice? A lack of capacity could have a negative impact on the political weight of the European Parliament in negotiations with the other institutions. As will be explained in Chapter 3, on the basis of existing literature and earlier research it is assumed that Parliament struggles to assert itself in an inter-institutional context because of elements such as a limited number of staff, an overload of information and a lack of expertise. These assumptions will be explored in three case studies. The main research question of this project therefore is: **Under what conditions are the European Parliament's capabilities to influence the outcome of inter-institutional negotiations falling short of its powers?** Assessing Parliament's capabilities will therefore show whether there is a gap between its powers and its capacity or whether it is able to fully exercise the powers it has in practice.

The focus of this thesis will be Parliament's own capacity to exercise its powers. This of course has to be assessed in an inter-institutional context as the ability to exert influence also depends on the actions, capacity and strength of the other players around the table. The context in which Parliament's influence can be assessed best is that of inter-institutional negotiations where it is on an equal footing with the Council. Therefore, in order to answer the research question, the 'capabilities' defined in this thesis as resources, expertise and organising capacity need to be further defined and subsequently assessed in negotiations between the European Parliament and other EU institutions. To this end, a qualitative case study research design was developed on the basis of an analytical framework defining the relevant capabilities. The method of process tracing, in which all decision-making steps are analysed from start to final outcome, in combination with document analysis and in depth interviews is applied. Through this empirical analysis, this thesis will inductively generate a general and testable hypothesis on the gap between powers on the one hand and influence in practice on the other.

This thesis will argue that the EP is indeed struggling with exercising its powers in inter-institutional negotiations. The case studies will show that it is more the handling of the different capabilities by actors inside the EP than the level of capabilities per se, which explains the gap between powers and influence. A poor governance of its capabilities, often guided by the need for efficiency and internal struggles for power, leads to a weakened performance in inter-institutional negotiations.

Powers alone therefore do not account for an institution's performance in practice, capabilities too need to be studied. Where gaps exist between powers and the influence in practice, one needs to look as much at the handling of different capabilities as at their volume.

1.2 Thesis structure

The thesis comprises eight chapters, including this introduction. The second chapter sets out the academic state of the art on the European Parliament and on administrative capacity of legislatures. The reason to focus on administrative capacity is because it is the most common angle from which academic research has approached the question of capabilities of legislatures. This thesis will cover other factors as well, but it is nevertheless useful to highlight the academic debate on administrative organisation. Indeed, Chapter 2 will show that the administrations of the European Commission, and – to a lesser extent – the Council have been covered by recent academic research, but that the European Parliament remains somewhat eclipsed from academic attention. Chapter 2 therefore sets the context and background for the substantive analysis. The third chapter outlines the conceptual framework and presents each factor of analysis. The method of process tracing will be explained, as well as the 'most different case study'-design that is used. The choice to look at three different areas of inter-institutional negotiation not only allows us to make statements about the individual cases, but also about EP performance in general. The following chapters each analyse one of the four capability factors that were identified in the conceptual framework (rights and authorities, resources, expertise and organising capacity). First by defining that capability factor in the context of the European Parliament's activities and functions, and second by looking at its impact on the EP's ability to influence the outcome of negotiations in three case studies. The case studies are the negotiations on the reform of the comitology system, the negotiations on the regulation on novel foods, and those on the annual budget of 2011. The time frame of the study runs from 2008, when the Commission published its proposal on the regulation on novel foods, to 2011, when both the new system of comitology and the 2011 budget entered into force.

The capabilities 'rights and authorities', resources, expertise and organising capacity will thus be discussed separately. The approach to structure the discussion according to factor rather than case per case is a conscious choice. The aim of this thesis is to evaluate each factor's impact in the EP's ability to influence outcome of negotiations and a thesis structure which separates these factors from each other fosters the analytical ability to do so. As will be explained in the analytical framework, factors of course interact with each other. The order of the chapters reflects the most common interactions: rights, rules and authority determine resources, which (partly) determine expertise; finally, both resources and expertise have to be organised as efficiently as possible so that the EP can tap into their full

potential. The chapter on expertise is longer than the other analytical chapters, as it deals with the substantive negotiations on the cases and therefore contains most of the 'thick description' generated by process tracing. The final chapter will draw conclusions on the EP's capabilities to exercise its powers based on the findings for each capability factor and the interaction between the factors. Last but not least, broader lessons learnt for both practice and academia will be presented. The conclusions drawn from this thesis therefore aim not only to further the academic debate on assessing institutional power in general, but also to identify avenues of improvement in the EP's internal organisation of its capabilities.

CHAPTER 2

Powers and Capabilities: The European Parliament in its academic and historical context

The aim of this chapter is to provide the academic backdrop for two key aspects of relevance to the research question: powers and capabilities. The European Parliament has gained competences with every treaty reform and has also informally managed to expand its powers over the decades. The first half of this chapter will therefore outline the academic literature on this subject and link it to existing practices of EU decision-making so as to set the background and context for the next chapter in which the analytical framework is set out.

This thesis examines the capabilities of the European Parliament to exercise these in inter-institutional negotiations. The second half of this chapter will therefore focus on administrative capacity, as this is the angle from which most academic contributions approaches the question of capabilities in legislatures such as the EP.

This chapter will show that as its role has evolved through consecutive treaty reforms, the European Parliament has attracted much academic interest, especially in the past two decades. Yet, the question as to whether the EP is capable of exercising its powers in an inter-institutional context remains largely unanswered. By pointing out this gap in the literature, it becomes clear that we cannot evaluate the EP's role in today's EU decision-making if we have not assessed its capabilities of exercising its powers. The observations in this chapter therefore lay the basis for the formulation of an analytical framework through which capabilities can be studied and prepares the ground for the analysis of negotiations that is necessary to assess the EP's performance in an inter-institutional context.

2.1 The European Parliament : evolution of powers and role

The first part of this section gives a historical overview of the evolution of the Parliament's formal powers. Formal powers alone however do not provide a comprehensive picture of its position in EU decision-making as informal rules and procedures shape processes as well. The second part of this section will therefore look into the informal powers obtained by the Parliament throughout its history.

2.1.1 *Ever evolving formal powers*

The EP has been widely hailed as one of the “winners” of the Lisbon Treaty. It saw its competences extended in over 40 policy areas and is now co-legislator in fields such as agriculture, fisheries, energy, and legal migration. Since the entry into force of the Lisbon Treaty the European Parliament is co-legislator in almost all regulatory fields of the European Union and is seen as being on an equal footing with the Council of Ministers. The European Parliament is described as one of the most powerful legislatures in the world and is often compared to the United States (US) Congress (see for instance Coultrap 1999; Corbett et al. 2011). Indeed, the EP has come a long way since a consultative assembly was established in 1952. Its history and evolution have been analysed in numerous publications (see for instance Rittberger 2003; Corbett et al. 2011; Earnshaw and Judge 2008). This section will therefore be limited to the most important milestones in the institution's history.

The precursor of the European Parliament was a consultative assembly established by the Treaty of the European Coal and Steel Community (ECSC) and composed of delegations from national parliaments. When the Treaties of Rome were negotiated, it was decided that the ECSC, the European Economic Community and Euratom would share this assembly. It was set up in order to supervise the High Authority (the forerunner of the European Commission), which the assembly could dismiss by a two-thirds majority (Corbett et al. 2011: 3).

A first substantial role beyond mere consultation was conferred upon the European Parliament - which carries its name since 1962 - in the budget treaties of 1970 and 1975 when it obtained the power to amend, adopt or reject the budget (ibid.: 4). In 1979 the representatives of national parliaments were replaced with 410 directly elected and fulltime members as the first European Community-wide parliamentary elections were held. The main reason for this fundamental change was to “generate greater democratic legitimacy and more public debate on European issues” (ibid.: 4). Another milestone in the Parliament's evolution came not from treaty revision but from a judgement of the European Court of Justice in 1980. The famous *isoglucose* ruling annulled legislation adopted by the Council, because it had done so before the European Parliament had given its opinion (Judge and Earnshaw 2008: 38-39). “This ruling gave Parliament a de facto delaying

power, which it could use to bargain for amendments” (Corbett et al. 2011: 4). The treaty revisions, which cumulated in the Single European Act, introduced the cooperation procedure which required the Council to send its position to the EP which could then decide to approve, reject or amend it¹. In the case of rejection or where the Council would not accept the amendments made by Parliament, it needed unanimity to overrule the EP and adopt the text. The Single European Act also introduced the assent procedure, which required Parliament to give its approval for the ratification of accession treaties and association agreements (Corbett et al. 2011: 4).

The real breakthrough for Parliament in terms of decision-making powers came with the Treaty of Maastricht in 1993, which introduced the co-decision procedure requiring both Council and the EP to approve (or rather not to reject) legislation (Corbett et al. 2011: 4). The procedure foresaw three readings and a conciliation committee if an agreement had not been reached after two readings, a provision similar to the one established for the budgetary procedure in 1975. It effectively gave Parliament equal rights in the legislative process and “an absolute right of veto over significant areas of EU legislation” (Judge and Earnshaw 2008: 48). The Maastricht Treaty also extended the scope of the cooperation procedure and the assent procedure to more policy areas and in addition, Parliament was given the power to vote on the appointment of the President of the Commission. With the Maastricht Treaty the EU moved from a system in which the European Commission and the Council were the main decision-makers, to a triangular system in which the EP’s positions had to be taken into account.

The 1999 Treaty of Amsterdam further strengthened the Parliament’s role by extending the scope of the co-decision procedure to almost all legislative areas except for inter alia agriculture, energy, fisheries and most justice and home affairs matters. Although the EP had pushed an ambitious agenda of reform during the negotiations on the Nice treaty (see Judge and Earnshaw 2008: 53-54), the extension of its powers in 2001 was rather limited. Where Parliament had demanded that all legislative matters decided by the Council through qualified majority voting were to be adopted by co-decision, the procedure was only extended to a more limited number of areas. However, a major step forward was the general right for the Parliament to challenge the other institutions before the European Court of Justice (Corbett et al. 2011: 5).

Finally, the Lisbon Treaty made the co-decision procedure, now called the ordinary legislative procedure, applicable to almost all areas of EU legislation effectively

¹ The cooperation procedure was applicable for governing rules regarding the multilateral surveillance procedure, the prohibition on privileged access to financial institutions, the prohibition on assuming liability for Member States’ commitments, and measures to harmonise the circulation of coins.

granting Parliament full co-legislator status next to the Council². It also extended the assent procedure, now called consent procedure, to international trade agreements and introduced a new budgetary procedure giving Parliament a say on all EU expenditure, including the budget for the Common Agricultural Policy. The Lisbon Treaty also introduced a new system of supervision on the implementing measures that are adopted by the Commission giving Parliament the right to revoke and oppose these so-called 'delegated acts'. The extension of the co-decision procedure effectively turned the European Union into a bi-cameral system with the Council and the European Parliament perceived as equal co-legislators. The effect of this evolution is not only visible in the EU's decision-making structure, it has transformed it from a traditional intergovernmental organisation to a more pluralistic, transparent and democratic system. The fact that a strong institution has been created over the years to control the Commission and scrutinise legislation has increased the EU's accountability and has taken "the edge off national conflict" (Corbett et al. 2011: 6-7). Indeed, as Parliament is organised in political groups, national interests are often transcended as the most common dividing lines are found to be between different political views.

It is clear that the rationale behind giving more powers to the European Parliament in consecutive treaty reforms was to make the European decision-making process more accountable, more legitimate, and to reduce the so-called democratic deficit the Union is perceived to be suffering from (Laeken Declaration 2001: 5). Looking at the ever declining turn out in European elections (from 63% in 1979 to 43% in 2009) and the rise in euroscepticism during the past decade, one might wonder whether this is the appropriate solution - an issue that will be addressed further down in this chapter. Yet, one thing is very much apparent: more than ever before the European Parliament plays a central role in EU decision-making, a role that needs to be studied and analysed in order to fully understand the implications of the latest treaty changes.

Yet, treaty change alone cannot explain Parliament's position and functioning. Since the Maastricht Treaty and the introduction of the co-decision procedure, many informal rules and procedures have emerged that are both a result and an expression of its power. In the next section the ability of the EP to informally expand its powers will thus be examined.

2.1.2 *Informally gaining power*

Decision-making rules and powers vested in the institutions are based on treaty provisions which are negotiated at intergovernmental conferences (IGCs). However, not all formal treaty rules are the result of negotiations among member

² Areas in which the Council can still act as the sole legislator are i.a. internal market exemptions, competition law or common external tariffs.

state representatives. Some rules stem from earlier bargaining between the institutions. Treaties should in fact be seen as “incomplete contracts” with considerable margin of interpretation on the application of certain articles (Stacey and Rittberger 2003: 859). Ambiguities in formal treaty texts are often the starting point of a bargaining game between the institutions about maximizing competences (Farrell and Héritier 2007: 288). This bargaining produces “informal institutions” which can then be formalised through IGCs. Indeed, both everyday politics and IGCs create institutional rules that reflect and define the balance of power between the institutions. The European Parliament can be defined as a ‘constitutional agenda-setter’ as it has repeatedly – and often successfully – tried to establish informal rules and practices which are then – at a later stage – formalised in the Treaties (Hix 2002b: 259). In the following paragraphs the main developments in terms informal rule making in which Parliament had a hand will be outlined: the appointment of the Commission president and subsequent developments, the introduction of trialogue negotiations, and the rise in the share of first reading agreements. Finally this section will also briefly touch upon the strategic bargaining used by the EP in comitology and in the budget, as these are two of the three cases this thesis will study.

Informal rules may stem from repeated interactions or from inter-institutional battles. A commonly used technique is that of non-cooperation or the threat thereof (Hix 2002b) often in combination with linking different legislative actions. The European Parliament also skilfully uses its different time horizon as opposed to the time-pressured Council Presidency to threaten specific kinds of action (Farrell and Héritier, 2003a: 582-583). Another way the EP has pushed for reform is by taking up informal practices in its Rules of Procedure. Through these techniques the EP has often been able to force Member States to accept the Parliament’s interpretation of procedures. However, one should not misinterpret this process as some changes do not necessarily mean a loss of power for the Council and can even lead to “collective efficiency gains, as a result of simplifying the decision-making procedures” (Hix 2002b: 274, 279).

The most renowned occasion in which Parliament managed to extend its powers beyond the treaty, is the appointment of a new Commission. Parliament managed to obtain a consultative role in the appointment of the Commission president in the 1980s by inviting the president to a debate in plenary. By 1989 this consultative role had evolved into a vote of confidence before the President takes the oath (Westlake 1998). The Maastricht Treaty eventually gave the Parliament further powers in nominating the Commission college as a whole. The MEPs proceeded to use this power to ‘vet’ commissioners-designate put forward by the Member States during hearings organised in the relevant parliamentary committees. Although there was no treaty base for this procedure, it was unthinkable for future commissioners and the Member States to oppose. Although Parliament has no say over individual commissioners, it has not shied away from using the threat of a no-

confidence vote to reject certain candidates. This led in 2004 to the withdrawal of Italian nominee Rocco Buttiglione who was heavily criticised for conservative remarks regarding homosexuality, and the withdrawal of Rumiana Jeleva in 2009 because of controversy about her financial interests and that of her husband, poor language skills, and the lack of expertise in matters of international cooperation, humanitarian aid and crisis response which emerged during the parliamentary hearings (Taylor 2010).

More relevant to the topic of this thesis is the establishment of so-called trialogues, informal negotiations between the representatives of the three institutions in between the formal procedural steps that the treaty prescribes. Since the entry into force of the Maastricht Treaty, Parliament has demanded to be treated on an equal footing with the Council in the legislative decision-making process. When the co-decision procedure was introduced, the Council saw no equally substantial role for Parliament, but just the options of rejection or acceptance of certain proposals. Parliament successfully blocked and slowed down the legislative process in order to increase its negotiating power and be recognised as an equal partner (Farrell and Héritier 2007: 294). It even pushed things further adding to its Rules of Procedure an article that foresaw a plenary veto vote for any proposal submitted by the Council to the plenary after a failed conciliation (Kreppel 2002: 807). Confidence building between the legislators only began with the introduction of trialogues in the mid-90s. These informal meetings increased the information flow and the intensity of negotiations between both legislators in the fields where Parliament had co-decision. Co-decision and the intense exchange of information “may have increased the influence of the EP simply by allowing it to be more strategic in its amendments” (Kreppel 2002: 809). Yet, trialogue negotiations have made the decision-making process less transparent and concerns are raised on the accountability of the negotiators, especially in light of the rise in first reading agreements – an issue that will be addressed in detail under Chapter 7 which deals with the EP’s organising capacity (Farrell and Héritier 2003b).

Indeed, a further testimony of the impact trialogue negotiations have on the decision-making process is the recognition in the Treaty of Amsterdam of the possibility to have first reading agreements (Shackleton and Raunio 2001). This was a formalisation of the informal practice whereby the Council accepts the European Parliament’s opinion in first reading which is in practice a text negotiated between both legislators (Farrell and Héritier 2007: 296).

Another example of Parliament expanding its powers beyond the Treaties is the right of scrutiny it obtained in the comitology procedures. By using its budgetary power in the adoption of the Socrates Programme in 1994 it managed to expand provisions on information sharing on proceedings in the comitology committees (see Kietz and Maurer 2007; Bradley 2008; Spaventa et al. 2007). Héritier (2012: 49; Héritier et al. 2013) even observes a clear strategy insofar that the Parliament used

its veto power under the co-decision procedure by “accepting substantive policies in return for more institutional power under comitology”. The issue of comitology and the role of the European Parliament will be discussed in greater detail when outlining the case study on the establishment of the new comitology system that emerged after the Lisbon Treaty.

Last but not least Lindner (2003) and Lindner and Rittberger (2003) give a detailed overview of how the European Parliament – from the 1970s onwards – managed to expand its role in the EU’s budgetary procedures through the creation of informal institutions. This too will be discussed in greater detail when the case study of the 2011 budget is introduced.

However, not all Parliament’s battles were won: the practice whereby it introduced entirely new amendments during the conciliation phase as a sort of bargaining chip or ‘negotiation fat’ was banned by the Amsterdam Treaty (Farrell and Héritier 2007: 296-297). Equally, not all informal rules that were formalised are perceived to be benefiting the Parliament. The question remains whether the increase in first reading agreements is not reducing Parliament’s visibility and impact on the outcome of legislation since it has less time to debate the subject matter in a detailed way and decision-making power lies with a limited number of MEPs – a point that will be addressed extensively in Chapter 7 (Shackleton and Raunio 2001; Kratsa-Tsagaropoulou et al. 2009; De Clerck-Sachsse and Kaczynski 2009).

It is undoubtedly the case that the European Parliament has gained considerable influence through formal treaty change, strategic action and informal rule interpretation. The EP’s powers, both formal and informal, will therefore function as the baseline against which its performance in practice is assessed as the research question looks into whether Parliament’s capabilities fall short of these powers.

Before framing the research question and the analytical framework it is interesting to see how academia evaluates Parliament’s position in terms of power and whether there are still gaps to be filled or paradoxes to be addressed. The next subsection will therefore look at the literature and make the argument for the added value this thesis aims to provide.

2.2. “Swiss cheese”: an analysis of the relevant academic literature on the European Parliament’s power and the gaps therein

Ever since the Maastricht Treaty considerably strengthened its role, the European Parliament has been a topic that has received much attention in academia. Apart from the above mentioned debate, literature on the European Parliament deals with many other aspects ranging from assessments of its influence as a co-legislator, turnout in European Parliamentary elections, political cleavages inside

the Parliament, analyses of party organisation and cohesion, to the issue of the EU's democratic deficit, to name just a few.

Richard Corbett once stressed that too much work in academia is being done “based on a lack of knowledge of the realities of decision making and has gone off on a tangent” (Crombez et al. 2000: 378). Indeed, a lot of past research has focused on the formal procedures and setting in which the European Parliament operates (see for instance Tsebelis and Anastassios 1999; Kreppel 2002; Dann 2003; Maurer 2003; Kasack 2004; Pinelli 2004). Yet, as Farrell and Héritier (2003a: 577) put it, what happens in practice “bears little resemblance to the assumptions or conclusions of formal modelers”. The modelling of EU decision-making procedures has its limits and often simplifies reality by overlooking important aspects of the process. Moreover, “most models of the Union’s legislative procedures are based on some interpretation of formal procedures as indicated by the (...) Treaty. This perspective on decision making creates a kind of ‘formalistic bias’, which neglects practices and other informal working methods” (Crombez et al. 2000: 370). The black box of decision-making therefore remains to a large extent shut.

A substantial part of the academic research on the European Parliament is of a quantitative nature. The analysis of roll-call votes (see for instance Kreppel and Hix 2003; Hix, Noury and Roland 2005; Hix and Noury 2009), and the comparison (Maurer 2003) between agreements under the cooperation and the co-decision procedures, all have their value in revealing general trends in power and influence of and within the European Parliament, but miss many of the nuances of the decision-making process. For instance, roll-call votes and findings on party cohesion say very little about the decision-making process as such, and almost nothing about the European Parliament’s impact on the negotiations. Moreover, votes in plenary are only cast at the end of a process, and often do not fully reflect the substantive discussions that led to them. Another example of quantitative research is Kreppel’s work (2002) on success rates of amendments. The classification of amendments proposed is a useful tool for quantitative analysis, but by definition simplifies reality and misses certain nuances about the actual power of the European Parliament. As Selck and Steunenbergh (2004: 29) put it, “[a]cceptance of amendments does not shed light on the role of the other legislative players in the EU and the extent to which they shape the outcome”. They also say nothing about the internal processes of decision-making in the Parliament and neglect informal negotiations (Crombez et al. 2000).

Apart from the work of Reh (2008; Reh and Obholzer 2012), Farrell & Héritier (2003a), and Kaeding and Obholzer (2012) the issue of trilogue negotiations has been largely overlooked in academic literature. Yet trilogues are key to understanding the decision-making process and assessing the influence of the different actors. The European Parliament does not operate in a vacuum but in a continuous negotiation game with the Council and the Commission.

There also seems to be a misconception about the role of the Council in the academic literature, which in turn distorts our view of the EP's power and position. By focusing on the formal procedures as written down in the treaties, the Council is often put in a receptive or reactive role (see for instance Kreppel 2002; Kasack 2004). Yet, in reality this position varies from file to file, as it may well be that the Council is the main agenda-setter throughout the negotiations, especially in the case of first reading agreements.

Another set of literature looks into the relative bargaining power of the institutions. It compares different bargaining models on their ability to predict outcomes of decision-making and aims to assess actors' power. Schneider, Finke and Bailer (2010) for instance, found that models which focus on the saliency attached by actors to the issues are most accurate in their predictions. On the relative power of the institutions, Napel and Widgrén (2006) argue that under co-decision, the Council is more influential than the EP because it is biased towards the status quo due to its qualified majority voting rule which makes it more conservative than the EP. On the basis of preference analysis Thomson and Hosli (2006) show that a bargaining model which attributes more power to the Council provides more accurate forecasts than one that favours the European Parliament and the Commission. While political salience, voting procedures, and policy preferences certainly all have an impact on the outcome of decision-making, a systematic analysis of the capabilities or capacity of actors to exercise their power in the EU's inter-institutional context is lacking in this literature.

Apart from inter-institutional negotiations, internal parliamentary processes too are important to understand where power lies and how decisions are made (Bowler and Farrell 1995). Important work in this respect was done by Neuhold (2001), Burns (2006), Settembri and Neuhold (2009), and Marshall (2010). They focus more closely on the role of committees, their internal division of power and their impact on inter-institutional negotiations. As Marshall (2010: 558) puts it, committees are the hot houses of power inside the Parliament and need to be studied in order to have a thorough understanding of the decision-making process.

A last element which has received much academic attention is the issue of legitimacy in decision-making and more specifically the democratic deficit in the European Union. The extension of powers of the Parliament (Goetze and Rittberger 2010), the EP's role in treaty change (Beach 2007), turn out in the Parliamentary elections (Reif and Schmitt 1980, Schmitt and van der Eijk 2001), transparency of decision-making processes (Settembri 2007), the EP's representativeness (Eriksen and Fossum 2010; Kiiver 2010), the implications of the rise in the number of first reading agreements (Shackleton and Raunio 2001; Rasmussen and Shackleton 2005; Farrell and Héritier 2003b) or the institutional role and power of the Parliament (Coultrap 1999; Dann 2003) are all important factors when debating legitimacy and the democratic deficit. Yet, the question as to whether MEPs have

the necessary capabilities to exercise their role is also a key aspect in this debate. Fouilleux, de Maillard and Smith (2005) provide a useful starting point by pointing out the difference between the 'technical legitimacy' the Council is supposed to have as opposed to the 'democratic legitimacy' of the Parliament. Both are equal partners in the decision-making procedure, and should therefore have equal legitimacy. These elements will be addressed in Chapter 6 of this thesis when the role of expertise is discussed.

Now that an overview was given of the Parliament's role and power in today's European Union and the respective academic literature, the following sections will focus on the actual capabilities of exercising these powers by looking at administrative organisation of legislatures in general and by reviewing the (limited) academic debate on the administrative capabilities of the European Parliament in particular.

2.3 A fundamental capability for legislatures to exercise powers: administrative organization

A thorough understanding of the European Parliament's administrative base and of the way in which the institution is organised will be of key importance to assess its capabilities in inter-institutional negotiations. The reason to focus on administrative capacity is because it is the most common angle from which academic research has approached the question of capabilities of legislatures. This thesis will cover a broader range of factors, but it is nevertheless useful to highlight the academic debate on this issue.

Literature on the administrative organisation of the EU in general is rather limited. Scholars tend to focus on different segments of the EU's administrative system: the Commission, the Council Secretariat or the EP's administration. Vanhoonacker and Christiansen (2008) analysed the history and development of the Council Secretariat, while Beach (2004) focused on its role in treaty reform negotiations and explains how its position, expertise and leadership strategies allowed it to play an influential role in the past. Juncos and Pomorska (2010) examined the Council Secretariat's officials' perceptions of their own roles in the context of the Common Foreign and Security Policy. Dijkstra (2009) focused on the forms of cooperation and tensions between the Council Secretariat and the Commission in foreign policy, while Vanhoonacker, Dijkstra and Maurer (2010) looked at the role of bureaucracy in security and defence policy. The literature on the European Commission is much vaster and it would go beyond the scope of this section to be exhaustive. Research goes from analyses of its different tasks and its role in different policy areas (see for example Aktas et al. 2001; Bauer 2006; Tannam 2007), its impact on treaty reforms (Christiansen and Jorgensen 1998), to analyses on the administrative reforms that took place (Kassim 2008; Bauer et al. 2009) and articles on the roles, functions,

perceptions and influence of Commission officials (see for example Trondal 2006; Hooghe 2009).

When looking at the literature on the EU's administrative organisation it is striking that the European Parliament's administrative base seems to be – to a large extent – eclipsed. In recent years however, a debate has started on the role of its secretariat, political group staff and MEPs' assistants which is the subject of the next section. Before addressing this, it is useful to look at the literature on administrative organisation of legislatures in political science in general in order to set out the broader context in which a discussion of the EP's administration is to be seen.

2.3.1 Administrative organisation of legislatures – an American perspective

The following section will focus on the existing literature on administrative organisation of legislatures with a focus on three recurring concepts that are central in this thesis – i.e. the role of an administration, the importance of expertise, and internal organisation. In that light, it is not only interesting to look at the work done in Europe on this topic, but as Burns (2006) points out, insights from the US political system – in particular on the US Congress – too can be usefully applied to the EU. Indeed, according to Coultrap (1999), the EU should not be compared to national parliamentary systems but rather to a pluralist system, i.e. a system with three key actors in the decision-making process, akin to that of the United States. Therefore, in this first section, literature from US political science will be drawn upon before examining the research that falls within the European arena.

The role of an administration in a legislature

Shepsle's statement (1992) that Congress 'is a they not an it' is a characterisation of its political organisation in the sense that there is not one but many members, majorities and coalitions defining Congress' positions. This observation also holds for its administrative organisation. Many officials have an impact on its workings. Indeed, elected officials delegate tasks and competences to unelected administrators (Arnold 1987: 279). In an ideal-type bureaucracy the hierarchical organisation would make sure that civil servants follow pre-set rules and adhere to the principle of neutrality (Dobbels and Neuhold 2013: 376). Yet, ideal-type bureaucracies do not exist as the resources for elected officials to continuously and thoroughly monitor the performance of civil servants are scarce (McCubbins et al. 1987: 243). The risks that civil servants undertake actions that do not comply with the policy preferences of their political masters are therefore real. Price (1971: 335) even divides civil servants in two categories: the professional and the policy entrepreneur. The professional is firmly committed to the principle of neutrality and analyses policy proposals so as to be of service to all members of a committee.

Policy entrepreneurs in contrast, are looking for policy gaps and opportunities to implement their own political preferences.

These are important considerations to keep in mind in the context of this thesis. When studying Parliament it is therefore not only important to look at its members, but also at the role played by officials as they too may have an impact on the Parliament's views, and positions in inter-institutional negotiations. In their study on the US Congress, Salisbury and Shepsle (1987: 395) argue that staffers can indeed play an active role in the legislative process. "One hears constant references in Washington circles to coalitions and settlements being negotiated by staffers in the name of their respective principals, and several observers have expressed alarm at the potential for abuse (...)". As argued above, civil servants should not always be expected to be neutral and objective executors of the tasks conferred up on them. In the next subchapter where the administrative base of the European Parliament is addressed the roles performed by civil servants in the Parliament's Secretariat will be examined more closely.

In describing the active role of civil servants, Shepsle and Salisbury in fact demonstrate that delegation of power to civil servants can go as far as creating "run-away" bureaucracy, giving civil servants too large a say on policy-making questions (Lowi 1979). The margin of discretion at the disposal of civil servants can even be so large that the administrators may take different decisions than their political masters would have taken. The origin of run-away bureaucracy lies in the nature of the relationship between the civil servant and the elected member, which is characterised by asymmetric information. Indeed, as McCubbins et al. put it (1987: 247), "[a] consequence of delegating authority to bureaucrats is that they may become more expert about their policy responsibilities than the elected representatives who created their bureau. Information about cause-effect relations, the details of existing regulations, the pending decision agenda, and the distribution of benefits and costs (...) is costly and time-consuming to acquire". The consequences of this can be so-called 'shirking' where civil servants undersupply their political masters with information, plain 'corruption' where the administration is "selling out to external groups", or even 'oligarchy' where the preferences of the administration override the democratic preferences and thus go against the political overseers (McCubbins et al. 1987: 247, 273).

Different ways in which compliance can be assured or 'administrative derailing' can be avoided are addressed in the literature on principal-agent theory. There is standard political oversight through investigations, budget reviews, legislative sanctions, appointments etc... which can take the form of 'police-patrolling' (i.e. direct intervention by the political masters or 'fire alarm control' whereby third parties check on agency behaviour (Calvert et al. 1989; Weingast and Moran 1983; McCubbins and Schwartz 1984; Lupia and McCubbins 1994). Another way to keep a check on the possibilities of run-away bureaucracy is through administrative

procedures that set the institutional environment in which civil servants make their decisions. This can be done for instance by limiting the range of possible actions for administrators, mitigating the informational disadvantages of the elected politicians vis-à-vis the civil servants, or assuring fairness and legitimacy in their decisions by creating more accountability (McCubbins et. al 1987: 244). Finally, Gailmard and Patty (2007: 886) unveiled a less formal way of minimizing the risks of delegation and runaway bureaucracy. They define the concept of “politicized competence” as giving administrators a considerable margin of decisional discretion “over policy issues they care about”. In this system the informational asymmetry of civil servants vis-à-vis the elected officials is recognised, as is the possibility for civil servants to develop expertise. However, this ‘politicized competence’ is kept in check by an administrative system that is based on merit and discretion setting by the legislature (Gailmard and Patty 2007: 874-875).

These findings and insights from the US political system will be useful when assessing the EP’s internal capabilities as they identify both the opportunities and risks associated with the role of an administration for a legislature.

Internal organisation: the importance of committees

Next to administration, an important capability is organisation. A legislature’s internal organisation is made up of structures and procedures that define tasks, goals and guide action. The core organisational units of a Congress-style parliament are the committees. Committees exist to “investigate, deliberate, apply specialized knowledge, and recommend action” to the parent chamber (Krehbiel 1991: 105). Moreover, the more restrictive procedures are for parent bodies to amend committee proposals, the more committees play an determining role in shaping the legislature’s positions (Gilligan and Krehbiel 1987: 288).

Structures and procedures also assign functions and roles to members. Consequently as Fenno argues (in Gilligan and Krehbiel 1987: *ibid.*), influence is concentrated with members in this committee that hold key positions, which is often combined with specialised knowledge such as the chairman/chairmen of a committee. Holding these functions is thus a strategic asset and even a power tool for members. Chapter 7 on organising capacity will go deeper into the importance of the committee structure and the functions performed by members.

Specialisation of committees and members is – at least in policy-making terms – to the benefit of the legislature as it means positions are well-substantiated and uncertainty on outcomes of policy choices is reduced. However because of specialisation the same principal-agency dynamics as set out above between political masters and civil servants can play inside a committee between members, and inside a legislature between committees and their parent chamber (Malbin 1980: 5). The ‘delegation’ of decision-making powers from the parent chamber to a

committee is as much a “concession to expertise” as the delegation from elected official to a civil servant (Gailmard 2002: 536). Specialisation and expertise can thus be described as the ‘raison d’être’ of committees, but holds risks as well.

The importance of expertise in an administrative context

While the issue of expertise will be more elaborately addressed in Chapters 3 and 6, in the context of this section it is useful to look at the implications of expertise for the administrative system, because it connects the issue of delegation and the related risks to the core tasks of parliamentary committees: legislative action. Indeed, the challenge in terms of both legislative and administrative organisation is “to capture the gains from specialization while minimizing the degree to which enacted policies deviate from the majority-preferred outcomes” (Krehbiel 1991: 5). Rules and procedures should provide both the incentive for members to develop expertise, and to share it with members who have competing interests. “A well-designed legislature is a producer, consumer and repository for policy expertise (...)” (Krehbiel 1991: 62). Due to the increase in technicality of policy-making, elected members cannot rely solely on themselves or their colleagues for advice on policy-making tasks and are forced to turn to unelected experts (DeGregorio 1988: 460). These may be in-house experts such as civil servants of the administration or personal staffers, but members also turn to external experts working for interest groups or for other governmental actors. DeGregorio (ibid.) continues: “[w]ith this increased staff involvement, legislators become more detached from each other and, more importantly, more detached from the constituents whose interests the members are elected to protect”. The trend to delegate more and more policy-making tasks to unelected specialists and the increased importance of specialisation plays into the information asymmetry mentioned above and raises the possibility of “opportunistic uses of expertise” (Krehbiel 2004: 113). It is almost like a catch-22, exemplified by Malbin’s description of the US Congress (1980: 4): “members cannot begin to control the workload that their staffs collectively help to generate. Yet, Congress could not function in today’s world without the staff on which it has come to depend”.

It is in this administrative context that Congress-style parliamentary decision- and policy-making takes place. First, one has to realise that this is a system in which delegation of tasks is normal and necessary – on both the macro level between the parent body and the committees and the micro level between elected officials and civil servants. Second, as with every delegation there are risks of run-away bureaucracy in which unelected officials perform tasks that go beyond their original role. Third, increased workload and complexity of regulatory policies amplifies the trend to delegate, and elected representatives are confronted with the challenge to keep a check on this delegation whilst suffering from informational asymmetries. These characteristics of the administrative organization of a Congress-style parliament will have to be taken into consideration when analysing the role of the

European Parliament in inter-institutional negotiations because, like Congress, the EP is not an 'it', but a 'they' with many actors and a need for expertise.

In the following section the recent though limited academic research on the European Parliament's administrative base will be outlined.

2.4 Literature on the administrative capabilities of the European Parliament

The analysis of the administrative capabilities of the European Parliament is a topic that has only recently begun to receive academic attention. Neunreither (2006) was the first to undertake an in-depth historical study of the European Parliament's administrative base. After that, other scholars followed looking in more detail at the EP's administrative organisation, the role of civil servants, parliamentary assistants, political group staff and at capacity in terms of resources and expertise. In the following sections the facts and figures of the EP's administration will be outlined after which the tasks and roles of the main administrative actors will be discussed. This section will therefore also serve as the background for Chapter 5 in which staff as a resource is discussed.

2.3.1 The European Parliament's administrative system: who, what and how many?

The European Parliament's organisational system reflects, as Egeberg et al. put it (2011: 2) three different principles of specialisation and assistance that MEPs can call upon: "ideological, sectorial/functional, and territorial". Although there are – to a certain extent – overlaps, personal assistants would fall into the last category, while political group staff can be defined as ideological and civil servants from the secretariat can be categorised sectorally or functionally. In his pioneering article, Neunreither (2006) explains how assistance from the secretariat's staff was predominant until the mid-90ies. This was largely because of their considerable institutional experience and low internal mobility. When both Parliament's competences and the number of parliamentarians and political group staff expanded considerably, the importance of group staffers and (to a lesser extent) that of the personal assistants increased.

The secretariat is headed by a Secretary General (from 2009 onwards the German Klaus Welle) and organised into directorates-general (DGs) and a legal service. It is mainly the legal service and two DGs in particular that provide policy-making assistance to the members: the DG that is responsible for anything to do with legislation (DG Internal Policies) and the DG for External Policies (i.e trade, human rights, security and defence, etc...) (Neunreither 2006; Egeberg et al. 2011). These DGs assign staff to the different committees of the Parliament for direct assistance and coordination, but also have civil servants working on long-term studies and background briefings. Apart from the DGs and the legal service, the European

Parliament also has STOA (the Science and Technology Options Assessment unit), an organ that seeks out expert advice on technological and scientific aspects of legislation through external bodies such as research institutions, consultancies and universities (Costa 2003).

While the European Parliament’s resources will be analysed in more detail in Chapter 5 of this thesis, in order to set the context for the main analysis it is useful to briefly look at the administrative system in terms of numbers. 2011 figures show that 6,135 or 15% of the officials employed by the EU as a whole work at the parliament, while in 1952 there were only 37 civil servants (Corbett et al. 2011, 226). Corbett et al. (2011) remark that the figure nowadays is much higher than that of national parliaments. Yet, it is important to note that 1,350 of them are translators and interpreters, while less than a quarter, or 1,150 are administrators (Corbett et al. 2011: 220). In addition, the rise in number of MEPs from 78 to 751, the rise in working languages to 24, the rise in nationalities to 28, the expansion of competences and the geographical dispersion between Strasbourg, Brussels and Luxemburg all account for this figure.

Table 2.1: Number of civil servants working at the EP

Year	Number of Civil Servants (including political group staff)
1952	37
1970	532
1979	1,995
1984	2,966
2010	6,135

Sources: Egeberg et al. 2011: 3; Corbett et al. 2007: 193; Corbett et al. 2011: 219, 226; Westlake 1994: 196

Apart from secretariat officials, every member has a number of assistants at his or her disposal. On average one in the constituency of the member and two that are Brussels based (Reck 2003). Currently more than 2,400 parliamentary assistants are accredited, which is still in stark contrast with the average of 20 to 30 deputies each member of the US Congress has at his or her disposal (Corbett et al. 2011: 220). The staff of the political groups account for about 862 officials (Corbett et al. 2011: 219). Each group has two administrators with an extra two posts per 30 MEPs. Additional posts are allowed if more than five languages are used, yet the total number of staff may never exceed that of the MEPs in the group (Reck 2003: 53).

2.3.2 *Tasks and roles*

Due to the increase in competences and workload, the technical nature of EU legislation, the many daily contacts with other MEPs, political groups, the other institutions and the many interest groups that seek access to the EP, MEPs rely heavily on assistance for their day-to-day work.

As noted above, the role of secretariat officials declined during the past two decades. In the early nineties an internal study found that more than 80% of the secretariat's officials working for the committees assisted their members beyond technical and procedural questions (Neunreither 2006: 49). Recent research shows that their impact on the policy-making process should not be underestimated (see Neuhold and Radulova 2006; Dobbels and Neuhold 2013; Egeberg et al. 2011; Egeberg et al. 2013; Romanyshyn and Neuhold 2013). According to the results of a survey published in 2011, the main tasks of EP secretariat officials working for the committees consist of drafting documents for MEPs, providing them with background information and scientific, technical and legal advice (Egeberg et al. 2011). Yet, the same tasks featured high in the ranking for political group staff. So, the question is how substantial is their role?

Winzen (2011: 32-37) and Costa (2003: 144, 157) stress that EP secretariat officials operate under strict hierarchical constraints and that their administrative autonomy is very limited. They influence policy-making only by shaping the informational foundations by dispersing information among members and providing background notes (Winzen 2011). Another factor of (limited) influence is setting the committee agenda with the chair, which usually reflects the committee's priorities. All other tasks Winzen describes are secretarial in the strict sense of the term: drafting committee reports based on input from the members, preparing voting lists, taking minutes of committee meetings, reporting on hearings, etc... Their most political task is assisting rapporteurs in drafting legislative reports, but according to Winzen they act under strict supervision of their political masters and have close to no autonomy. This description comes very close to what Neunreither (2006: 54) called a notary office: putting amendments together for voting, assisting the chairman, and seeing that no contradictory texts are adopted. It has to be noted however, that Winzen's research only focused on the INTA (International Trade) and AFET (External Relations) committees of the Parliament, two committees that do not deal with legislation. Yet, there is evidence in the literature that administrators take up much more substantive roles and often assist members in finding compromises or are directly involved in the negotiations (Neuhold and Radulova 2006). Dobbels and Neuhold (2013) who did qualitative research on the LIBE (Civil Liberties, Justice and Home Affairs) and the PECH (Fisheries) committees come indeed to a different conclusion. They argue that civil servants from the Parliament's secretariat sometimes perform tasks that go beyond that of a notary office and take up a 'steering role' influencing negotiations

on legislative files beyond the mandate given by the rapporteur. Several factors such as the type of procedure, the political importance of the file and field in question, the 'politicized competence' of civil servants in the European Parliament, and the legislative entrepreneurship of the rapporteur are identified as key for allowing such a steering role.

Yet, other actors in the administrative system of the EP also take on substantive tasks. With the extension of co-decision, political groups began to organise themselves better in order to follow-up and coordinate the work carried out in the committees on legislative files and thus effectively took over tasks that were performed by the secretariat (Neunreither 2006). Their role in theory is not to give direct assistance to rapporteurs or MEPs, but rather to coordinate the position of their political group (Reck 2003: 53-54). They add a party political dimension to the background files from the secretariat, draft speeches for the group's leaders, draft reports and filter external information sources (Neunreither 2006: 50-51). Their role is obviously far more political in the sense that they have to help in negotiating a common position within the group, sell that position inside and outside the group, prepare the group's amendments before the plenary vote, facilitate compromises and maintain contacts with other actors in the institutions that share their ideology (Winzen 2011: 38; Neuhold 2002: 7; Reck 2003: 53-54; Egeberg 2011). The MEPs personal assistants seem to perform both the political group staff's and the secretariat's roles: information filtering, maintaining contacts with external actors, briefing their members on meetings and hearings – or as Reck (2003: 57) describes it "being the "eyes and ears"" – drafting amendments and to a lesser extent reports, but they also do constituency work and write personal speeches (Busby 2011; Winzen 2011: 38-39). In practice, assistants' roles vary and really depend on the tasks given to them by their MEPs. Finally, hardly anything has been written on the legal service of the European Parliament. Reck (2003) describes its contribution to the policy-making process as limited because much of its time is put into the handling of legal cases on behalf of the Parliament. Yet, their role in providing assistance should not be underestimated as they are always present during the many trialogue meetings with the Council and the Commission, directly assisting the chief negotiator of the Parliament.

All actors discussed above seem to have their place in the policy-making process, although there are most certainly overlaps and even clashes between the different categories of staff in the EP's administrative system. With the workload increasing and regulation getting more and more complex MEPs have come to rely heavily on their staff for assistance. The question is then, is the current administrative system well structured and equipped for the European Parliament to perform its role as co-legislator in the decision-making process? Or in other words, is the EP armed against the pitfalls of administrative organisation described above? Reck (2003: 13) argued in 2003 that the Parliament had not fundamentally reformed its internal structure since the Maastricht Treaty entered into force and that the "EP's internal

capacities of expertise and support are still organised along the needs of the pre-Maastricht era". According to Reck (2003: 14) there was insufficient in-house capacity which makes MEPs highly dependent on expertise from external actors. This makes the problem of oversight and control described in the second part of this chapter even more complex. "One civil servant (...) works on approximately ten legislative dossiers (...) at the same time and one rapporteur has in most cases several reports to work on at the same time" (Reck 2003: 65). This is deemed insufficient to perform on an equal footing as compared to the Council. In the meantime, the Parliament has made reforms to its administration in order to provide better service to the members. However, as indicated above, few scholars have looked into this subject and as Egeberg et. al (2011: 3-4) put it, "little research has so far addressed the question of the internal organisation of the EP (...) and the literature on its administrative apparatus remains even sparser (...). The study of the influence of the EP from an inter-institutional perspective, for instance, calls to the attention how the EP's institutional resources affect its capacity to exert influence over policy". Chapter 5 on resources will address this question in detail. It will be argued that it is not just the number of staff and other resources that hamper the European Parliament in exercising its powers, but more the way in which these are handled which plays a decisive role in the Parliament's ability to influence the outcome of inter-institutional negotiations.

2.5 Concluding remarks

This chapter did not only give a historical overview of the EP's evolution in terms of powers and capabilities but also gave a review of the state of play in the academic literature on the European Parliament. It shows indeed that extensive research has been done into the evolution of powers, role and influence of the European Parliament in EU decision-making. It also sets out the inter-institutional context in which the EP has to operate as co-legislator and defines the key actors inside the Parliament. Yet apart from setting the scene, this chapter also revealed gaps in the literature. First, informal processes have – until recently – escaped academic attention, which has impeded a comprehensive assessment of the EP's powers. Second, the way in which Parliament exercises its powers (both formal and informal) and the function and role of its administration as an important capability factor have also largely been overlooked. By pointing out these gaps, it becomes clear that we cannot evaluate the EP's role in today's EU decision-making if we have not assessed its capabilities to exercise its powers in practice.

This chapter therefore has set the scene for the actual analysis of this thesis. It paints a picture of a powerful and "power-hungry" institution that does not shy away from using the levers it has at its disposal to establish itself as an important player in EU decision-making. It can be seen as an institutional player pushing the borders of its competences. However, powers need to be exercised and there is little academic literature on the EP's capabilities to do so. Most contributions that

do examine this question have looked at administrative capacity and organisation. Combined with insights from the US political system, this literature has however identified several elements connected to the concept of 'capabilities'. Elements that go further than purely administrative aspects and that should be explored further in order to fully assess the EP's role in inter-institutional negotiations.

The distinction between powers on the one hand and the capabilities to exercise them in practice on the other, will also be reflected in the analytical framework. The observations made in this chapter have led to the development of an analytical framework based on a typology proposed by March and Olsen (1995: 92). This typology identifies four factors that cover the elements raised above: rights, expertise, resources and organising capacity. Indeed, next to the formal and informal powers the EP has, three other aspects that have an impact on a legislature's capabilities have emerged. First, its resources, namely the number and function of the administrators to whom tasks are delegated. Second, the specialisation and expertise of both Members and officials, which is crucial in a context in which technical regulatory policies are negotiated. Third, the way a legislature is organised: the literature identifies the committee system as being central in the decision-making of legislatures such as the EP. The discussion above has also shown that all of these aspects hold similar risks: delegation that of runaway bureaucracy and power concentration, specialisation and expertise that of power concentration and lack of representativeness, and a committee system that of representativeness and inclusiveness.

These elements that have emerged from observations made in this chapter will now be further elaborated upon by setting out a more comprehensive analytical framework based on March and Olsen's typology which will enable a thorough analysis of the EP's capabilities of exercising its powers in inter-institutional negotiations.

CHAPTER 3

Measuring the capability to exercise powers: an analytical framework tailored for inter-institutional negotiations

Based on the elements and insights of the previous chapter which outlined the historical and academic context in which this thesis situates itself, this chapter will set out the conceptual framework and the methods used to tackle the research question.

First, the research question itself will be presented and the second part of this chapter will explain the concepts based on the work by March and Olsen that will steer the analysis. Part three will go deeper into the concrete operationalisation of these concepts and elaborate on the method of process tracing that is central to this project. Finally, the case study design will be outlined and the cases will be introduced briefly. This chapter will thus be the foundation on which the actual analyses will be made in the subsequent chapters.

3.1 Central research question

Since the entry into force of the Lisbon Treaty the European Parliament is a co-legislator in almost all regulatory fields of the European Union and is seen as being on an equal footing with the Council of Ministers. The EP is often described as one of the most powerful parliaments in the world (Hix et al. 2003: 192) and it is clear that – more than ever before – it will play a central role in EU decision-making in the years to come. As demonstrated in the previous chapter, ever since the Maastricht Treaty much has been published on the role of the European Parliament in EU decision-making. Scholars have for example looked into its growing powers (e.g. Rittberger 2003), the European Parliamentary elections (e.g. Stockemer 2012), left-right cleavages (e.g. Hix et al. 2005), party organisation and cohesion (e.g. Hix 2002a), voting behaviour of its members (e.g. Carrubba et al. 2008), etc... They have compared the different decision-making procedures (e.g. Kreppel 2002), analysed the functioning of its committees (e.g. Neuhold 2001), and assessed the Parliament's accountability and democratic legitimacy to name just a few issues (e.g. Börzel and Sprungk 2009). However, the extent to which the European Parliament is actually capable of exercising the powers it has obtained through the various treaty reforms remains under-researched (Hix et al. 2003). Yet, here we find a very interesting lacuna: more powers and competences have been transferred to an institution with the aim of making the decision-making system more democratic, accountable and legitimate, but so far no one has examined whether the EP actually has the capabilities to exercise these powers. As Hix, Raunio and Scully (2003: 196) observed: "What has Parliament done with the powers it has? The substantial body of research on the powers of the EP must surely be developed further. Work in this area concerns the EP's most direct impact on the EU, and important issues regarding the parliament's use of its powers remain understudied". The question of a potential imbalance between its powers and the capability to exercise them in negotiations with the other institutions not only deserves further research in order to fully assess the EP's actual power, but also to understand the EU's inter-institutional dynamics as a whole. Finally, in light of the many treaty changes that have empowered the Parliament in order to strengthen the Union's democratic legitimacy, it is vital to know whether the EP fulfils its role professionally. The legitimacy of the EU as a whole depends on the trust in its institutions. The Parliament therefore has to live up to its role if it is to be accepted by the citizens as a vital player in shaping European society.

A brief look at the EU's decision-making system indicates that the 'potential imbalance' referred to above is something that deserves further study. Members of European Parliament have to deal with a vast range of different issues that are often of a technical nature when negotiating with the Council and the Commission. EU legislation for instance deals with setting CO2 emission rules for cars and vans, technical standards for building products, harmonising rules for the protection of consumers, creating a patent with uniform protection, setting rules for food

products containing nanomaterials, harmonising maternity leave, extending copyright protection, or setting entry conditions for migrant workers from third countries. Hagemann (2011) therefore no longer expects the debate on the European Parliament to be on its institutional powers and competences, but rather on its expertise within each of the policy areas and how this affects the legislative negotiations with the Council. Michael Elliot (2011), MEP for West London between 1984 and 1999 and involved in one of the first files ever negotiated under co-decision argued that the procedure indeed is “tricky business” for the EP. MEPs are mostly facing government officials during negotiations with the Council who have “endless time at their disposal, and support. As a Member of Parliament with accountability to constituents and other commitments, I found it very difficult to work” (Elliot 2011). Indeed, as indicated in the previous chapter, factors such as resources, expertise, and the capacity to organise itself have become crucial for the role of the European Parliament as a co-legislator in the decision-making process.

Can we safely assume that institutions are fully capable of exercising the powers they have in practice, or is it possible that there is a gap between the European Parliament’s powers (i.e. both the formal and informal) and its capacity to exercise them in practice? A lack of capacity could have a negative impact on the political weight of the European Parliament in negotiations with the Council and the Commission. The main research question therefore is: **Under what conditions are the European Parliament’s capabilities to influence the outcome of inter-institutional negotiations falling short of its powers?** Assessing Parliament’s capabilities will therefore show whether there is a gap between its powers and its capacity or whether it is able to fully exercise the powers it has in practice.

The focus of this thesis will therefore be Parliament’s own capacity to exercise its powers. The context in which its influence can be assessed best is that of inter-institutional negotiations where Parliament is on an equal footing with the Council. Therefore, in order to answer the research question the ‘capabilities’ need to be further defined in the context of negotiations between the EP and the Council. This will be done in the form of a conceptual framework which will be elaborated in the next section of this chapter. This conceptual framework will address the link between administrative organisation and the issue of expertise in parliamentary decision-making. An outline of the methodology will show how the capabilities will be operationalized and how their impact on the outcome of inter-institutional negotiations will be assessed. Finally, the three different case studies that have been undertaken to answer the research question will be outlined.

3.2 March and Olsen’s capabilities: a conceptual framework to assess the ability to exercise powers

In order to answer the question “Under what conditions are the European Parliament’s capabilities to influence the outcome of inter-institutional

negotiations falling short of its powers?”, the relevant ‘capabilities’ need to be defined. According to Selck and Steunenberg (2004: 42), the capabilities of a political actor determine its performance in the legislative process. “Officials need authority, resources, [knowledge], and organizational capabilities in order to be effective” (March and Olsen 1995: 134). March and Olsen (1995: 92) thus provide a suitable typology corresponding to the findings of the last chapter by defining four sets of capabilities relevant to governance and political action: “rights and authorities, political resources, political competencies [and knowledge], and organizing capacity”. In the following sub-sections these four capabilities will be elaborated in general terms – a more detailed definition of these factors embedded in the academic literature and applied to the specific context in which the EP carries out its activities will be given at the beginning of each thematic chapter. Finally, the methodological part will explain how these capabilities will be made operational in order to lay the foundations for the case studies.

3.2.1 *Capability factor 1: Rights and Authorities*

Rights and authorities empower institutions and their officials as they provide “discretion over resources and actions” (March and Olsen 1995: 92). It is the possibility – or in some cases the duty – to take certain decisions and undertake certain types of action. Rights and authorities “grant general competences to actors and have a substantial effect on their ability credibly to threaten specific kinds of action” (Farrell and Héritier 2003a: 582). For the purpose of this thesis rights are thus defined as entitlements to perform or not to perform certain actions. They give sovereignty, the possibility to defend or further one’s interests and the *authority* to use or even demand enforcement of these rights. Authority is the power derived from these rights. Institutions and officials are thus empowered but also conditioned by the rights by which they operate. In concrete terms, rights grant powers – such as co-decision for the EP – but they also structure the procedures and behavioural norms for officials to use these powers (i.e. co-decision is not only a form of power but also prescribes a binding procedure). In addition, rights also determine the substance of the rules and laws an institution makes. Granting the European Parliament co-legislatorship therefore not only has an impact on the decision-making, but – almost by definition – also a substantial impact on the decisions themselves. Indeed, research has shown that giving the EP more powers in decision-making process has had a considerable impact on the substance of legislation (see for instance Crombez et al. 2000; Kreppel 2002; Maurer 2003).

Rights are often enshrined by way of formal rules and procedures. They can come in the form of treaties, inter-institutional agreements, laws, executive decisions, rules of procedure, to name just some examples. The rights of the European Parliament enshrined in the Treaties, inter-institutional agreements, gentlemen’s agreements and its own rules of procedure thus determine its power. Yet, even

though rules are formally written down, they are not always easy to put in practice or uphold in the practical political process. In addition, formal institutions alone often fail to fully explain the outcome of decision-making (Aspinwall & Schneider 1998). Indeed, formal rights are subject to informal interpretation. These interpretations are very often the basis for further development, negotiations or renegotiation of existing rules and procedures into new ones (March and Olsen 1995: 92-93). As explained above, the European Parliament has been able to increase its rights informally often by pushing the boundaries of formal rules and going beyond what the Treaty prescribed (see Farrell and Héritier 2003, 2007; Hix 2002b; Kreppel 2002; Lindner 2003; Stacey 2003; Stacey and Rittberger 2003). This practice of informally increasing its rights further empowered the EP and increased its authority.

Being a full-fledged co-legislator in most policy fields and an equal branch of the budgetary authority, and taking account of the research already done in the field, it is clear that in terms of power (both formal and informal) the European Parliament has the necessary capabilities to play its role in the EU's decision-making system. The research question is therefore phrased as such that the powers of the European Parliament are taken as a 'baseline', an element that will not vary. As explained above, it is evident that the EP is a powerful player in EU decision-making having an equal status as compared to the Council. However, the question whether the EP is getting the most out of these formal and informal powers in its performance in inter-institutional negotiations, depends on other factors as well.

3.2.2 *Capability factor 2: Resources*

The resources available to the officials and the institution are another factor subject to analysis in this thesis. Rights are one aspect, but as Rokkan puts it "votes count, but resources decide" (Rokkan in Olsen 2007: 16). In the context of this thesis, resources should be understood as "assets that make it possible for individuals to do (or be) things" (March and Olsen 1995: 93). Resources thus enable an institution to exercise its rights and establish its authority. Therefore resources have an indirect impact on the ability of an institution to influence the outcome of negotiations. Influence is related to the size of and access to resources as they limit or facilitate the capacity to act (Egeberg 2006). Types of resources of relevance include budget, time, information and staff. Without going into the operationalisation of the concepts – a topic that will be dealt with further on in this chapter – these types have to be defined in order to fully understand what is meant with the capability factor 'resources'.

Budget here is to be understood in terms of the money available to the institution to exercise its functions. This includes among others budget for administration, the hiring of (assisting) staff, ordering studies, organising hearings with stakeholders and experts. Time is another type of resource; yet the temporal component of

decision-making is often neglected, but shapes the process, determines the control of actors on that process and has an impact on its outcome (Ekengren 2002). “Time becomes scarce (...) it necessitates limitations and terminations, as well as agenda setting” (Luhmann in Ekengren 2002: 4). Time should therefore not only be seen as the pace of decision-making procedures – for instance the deadlines in second reading or the limited time available in the conciliation stage – but also as the individual time available to the officials of an institution. This last aspect of time should be seen as more subjective, ‘social fact’, rather than a ‘brute’ material fact that is given, such as the first (Ekengren 2002: 19). Indeed, the three plus one month limit in second reading is of a different nature from the time available and effectively spent by MEPs and their assistants on the preparation of legislative work and inter-institutional negotiations. The former is fixed and cannot be deviated from, the latter is open to a more personal choice of allocating time as a resource. In addition to time, the priority given to certain tasks or files can further substantiate the assessment of this component. Indeed, not only the time dedicated to a file is important to look at, but also its position on the list of priorities is.

Information is another important component of the ‘resources’-capability factor. It can come under different forms: political information about which outcomes various political actors want and technical information or policy information about the outcome of certain policy choices (Krehbiel 1991: 67). As already briefly touched upon in the previous chapter, expertise is a key asset in regulatory policy-making (see 3.2.3 on expertise). Expertise in legislative decision-making is however based on information available to the legislators. “Policies are the object of legislative choice”, and that choice is based on information which in most cases is incomplete as to the outcome a certain policy will produce or as to the preferences of other actors (Krehbiel 1991: 66). The access to information is thus a valuable resource for officials. It is important in this respect to distinguish the different channels of information. Is the information coming from in-house administration, or from external sources? The channel through which information is received determines its quality and its bias or neutrality.

Finally, not only budget to hire staff is an important resource for an institution, but also the staff itself. Next to the elected officials, the number of staff at their disposal to support the workings of the institution and assist the members in exercising their functions is an important component to look at.

Busby’s (2011) and Reck’s (2003) research showed that the EP is suffering from an overload of work and information partly due to its limited resources, in form of time and staff. The EP has less staff than the Member States’ administrations and the Commission, but more staff than most national parliaments. Compared to legislatures similar in terms of power and size, it has only half of the support staff the German Bundestag has (Deutscher Bundestag 2013) and a third of the US

Congress (Open Congress 2013). It is not the purpose of this thesis to make a comparison with other legislatures, but it puts the EP's resources into context. *Based on this and past academic research the assumption is that this factor – or at least some aspects of it such as staff and time – could limit the EP's capability to influence the outcome of inter-institutional negotiations and account for it falling short of its powers.*

3.2.3 Capability factor 3: Expertise

The third type of capability is defined by March and Olsen (1995) as 'knowledge'. The capacity and effectiveness of an individual or an institution to act in a governance context is partly determined by the knowledge and competencies it possesses (March and Olsen 1995: 94). Knowledge of decision-making procedures and of policy substance is a defining factor for effectiveness in a political setting. It is of course connected to information, but at the same time also distinct from it. March and Olsen (ibid.) understand knowledge in terms of training and experience, but the complexity of today's public policies require a considerable degree of specialization as well, therefore the term expertise seems more appropriate. As Krehbiel (1991: 62) puts it, "[a] well-designed legislature is a producer, consumer and repository for policy expertise". The importance of knowledge or expertise is even more outspoken in the EU context where the emphasis lies on regulatory policies (Majone 1996). As Radaelli (1999) argues, there is a certain technocratic bias in the EU's public policy, in the sense that expertise is a firm basis for authority, persuasiveness and thus power. Experts have indeed a pivotal position in defining the EU's regulatory policies (Majone 1996). "Knowledge, rather than budget, is the critical resource in regulatory policy-making" (Radaelli, 1999: 759). It is necessary to clearly distinguish expertise from resources such as staff and information as discussed above. Where the latter deals with *which* and *how many* sources of information are available to MEPs, this factor focuses on *how* that information is translated in the amendments. Where resources say something about *how many* staff members were involved in a given file and what their different *roles* are, this factor focuses on the *quality* of that staff and the MEPs involved by looking at their background, recruitment, and experience. Finally, in order to be complete, and especially in the context of inter-institutional negotiations it is vital to point out that apart from expertise on the substance of the files, procedural expertise is an important factor to take into account as well. Knowing the 'tricks of the trade' can be as important during negotiations as substantive expertise. Again, experience and seniority will be crucial in this respect.

The expansion of the EP in size and in terms of competences has on the one hand led to a higher demand for expertise, and on the other led to more specialisation of individual policy makers (Christiansen 2001: 750). The issue of expertise therefore raises two important questions one in relation to the EP's structure and one in relation to its members and staff. The question on structure relates to how the EP

deals with expertise internally. The structure of parliaments in general with committees organised according to policy areas recognises the need for specialisation and expertise (see infra under 3.2.4 on organising capacity). However, “[i]n most legislatures, expertise is universally needed, but not uniformly distributed” (Krehbiel 1991: 68), leading to information asymmetry. As explained in the previous chapter, asymmetry can occur between the members themselves, or between the elected members and their non-elected assistants. This can lead to bureaucratic dominance or even what has become to be known as “run-away bureaucracy” (Lowi 1979). Such evolutions have always raised questions in terms of transparency, inclusiveness and accountability (Krehbiel 1991). So far however, none were raised about the ability to influence the outcome of negotiations.

Secondly a higher demand for expertise raises the question whether both members and staff have the necessary background and experience to carry out their functions. Background, experience or seniority are important indicators for MEP’s or their staff’s expertise in a specific field (Bowler and Farrell 1995; Neunreither 2006). Past research (Egeberg et al. 2012, Costa 2003) has found that most EP staffers are generalists, rather than policy specialists. In addition, the turnover rate of members of around 50% has shown to limit the capacity to build up expertise or specialise (Perez 2012).

Given its competences and the nature of the decision-making expertise is an important capability factor for the European Parliament. *Based on past research on background and seniority of members and staff the assumption is that a presumed lack of expertise could have a negative impact on the EP’s ability influence on the outcome of inter-institutional negotiations. The questions as to whether asymmetries in expertise have a negative impact on this ability, remains open.*

One of the biggest challenges of this thesis is to assess expertise and the extent to which it has an impact on the EP’s ability to affect the outcome of inter-institutional negotiations. The operationalisation as set out in part 3.3 of this chapter will therefore be crucial.

3.2.4 Capability factor 4: Organising Capacity

The fourth type of capability March and Olsen (1995: 95) define is the “organizing capacity that allows effective utilization of formal rights and authority, resources, and [knowledge]”. Indeed, the use and effectiveness of the three other capabilities are in part defined by how the institution and its actors in question are organising, coordinating and using them in day-to-day practice. In the context of this thesis, the capacity to organise itself and its assets determines the institution’s impact on the outcome of inter-institutional negotiations. Organising capacity is therefore defined here as both the way in which the institution is *structured* and the *processes* it uses to ‘act’ (i.e. the processes or procedures to prepare for inter-

institutional negotiations). Structure “defines organizational tasks, goals and means, shapes participants’ view of the world, and thus guides action” (Egeberg 2006: 6). Processes are here defined as the way in which actions and interactions are regulated – both inside the institution as with outside partners. They can be formal or informal.

As every other institution, the European Parliament is not a monolith. In terms of structure, it is not very centrally organised; and especially the coordination of its relations with the other institutions is fragmented (Farrell and Héritier 2004: 1195; Shackleton 2000). It is clear from looking at its general setup that the committees are the primary loci of activity, and the literature confirms indeed that they are the ‘legislative backbone’ (Westlake 1994, Bowler and Farrell 1995; Neuhold 2001). Another component of the EP’s organizational features is its political groups. Each committee has a Member appointed as group coordinator to ensure group cohesion within the group and in plenary to counter-balance the fragmentation and the independence of the committees. A second overarching structure is the general secretariat of the EP, which has a supportive, subsidiary role that primarily consists of promoting coherence and continuity (Costa 2003).

Structure in itself however, does not *determine* action but defines tasks, goals and *guides* action (Egeberg 2007: 6). Indeed procedures have been set up inside these structures to enable the institution to formulate positions and, important for this thesis, to prepare and handle inter-institutional negotiations. The EP has great autonomy to determine these processes, and as Gungor (2009: 4) argues, the way it has done so reflects the “decision-making difficulties of the inter-institutional context within which the European Parliament has operated”.

The way in which these structures and procedures are used by the actors inside the EP will be the focus of analysis. In terms of operationalisation it will therefore be important to look at the ways in which the necessary processes have been created inside the structure to prepare for inter-institutional negotiations. How are positions – both formally and informally – coordinated and communicated, how is conflict dealt with, and what are the roles and functions of the key actors in these processes (i.e. the president, the vice-presidents, the group leaders, the committee chairmen, the group coordinators, the rapporteurs and shadow-rapporteurs, the personal assistants, the political group staff and the staff of the general secretariat)? Structure and processes are therefore key to negotiations, as they determine whether or not the Parliament is able to go with a united front into negotiations with the Council as this has an impact on its ability to weigh on the outcome (Burns 2005: 485).

The assumption derived from the literature touched upon above and in the previous chapter, is that organisationally the European Parliament is well-equipped for inter-institutional negotiations and that this capability factor will not limit its

ability to influence the outcome of negotiations. With the committee-based structure which forms the backbone of its organisation and additional layers of coordinating fora (political groups itself, conference of presidents, rules of procedures, etc...), it is well equipped in terms of organisation to be a solid and coherent player in negotiations with the other institutions.

All of the four capabilities as defined by March and Olsen have now been described in general terms. They will each be elaborately discussed in the separate chapters and applied to the case studies. Before discussing the operationalization and the methodology that is applied to assess them, it is important to highlight their interconnectedness and the way in which they have an impact on each other.

3.2.5 Interconnectedness and interaction between capabilities

It is already clear from explaining the different factors that none of them stands on its own. They are indeed closely related to – and even intertwined with each other. Rights and authority for instance have an impact on the organizing capacity of the institution as they define the decision-making game in which it has to play. The co-decision procedure as formally written down in the treaties as well as the informal practices of triologue negotiations established outside the treaty are the context in which the EP has to define its own structures and processes to play the role the treaty prescribes. The steep rise in first reading agreements over the past decade (see section 4.2.2 in Chapter 4 for a more elaborate analysis), for instance has not only had an impact on the component of time as it has made the first reading considerably longer (Kratsa-Tsagaropoulou et al. 2009), but it has also meant that rapporteurs have gained power to the detriment of ‘ordinary’ committee members and committee chairs because agreements are made in informal meetings with the Council and the Commission with a limited attendance (Farrell and Héritier 2007). The EP therefore decided to adapt its own internal procedures in order to increase accountability and transparency inside the committee.

Organizing capacity in turn has an impact on knowledge and expertise. Committees create and stimulate specialisation for their members. In addition to that, the system of designating a rapporteur and shadow-rapporteurs allows for further expertise to be developed inside a committee. Expertise for its part is of course also determined by the institution’s resources. Both in terms of budget (e.g. budget to hire expert staff or call upon outside expertise) as in terms of the information itself. There can be enough or even an overload of information, but how this information is handled and used to the benefit of the organisation is almost as important as its volume. The same point can be made about staff: the number of staff is important, but their qualities are even more so. For the European Parliament in particular this is a pressing question as both the Commission and the Member States in the Council have strong administrations of experts. The EP is more limited and has to rely on the experience and expertise of its members and

its support staff – which is considerably smaller in numbers than that of the Member States and the Commission. In short, it is not only quantity but also quality that counts. One can travel light and still have a considerable impact.

Visually the conceptual framework of this thesis can thus be presented as shown below in figure 3.1. A baseline factor and three capabilities; an arrow showing their interconnectedness, and the assumptions that follow from them.

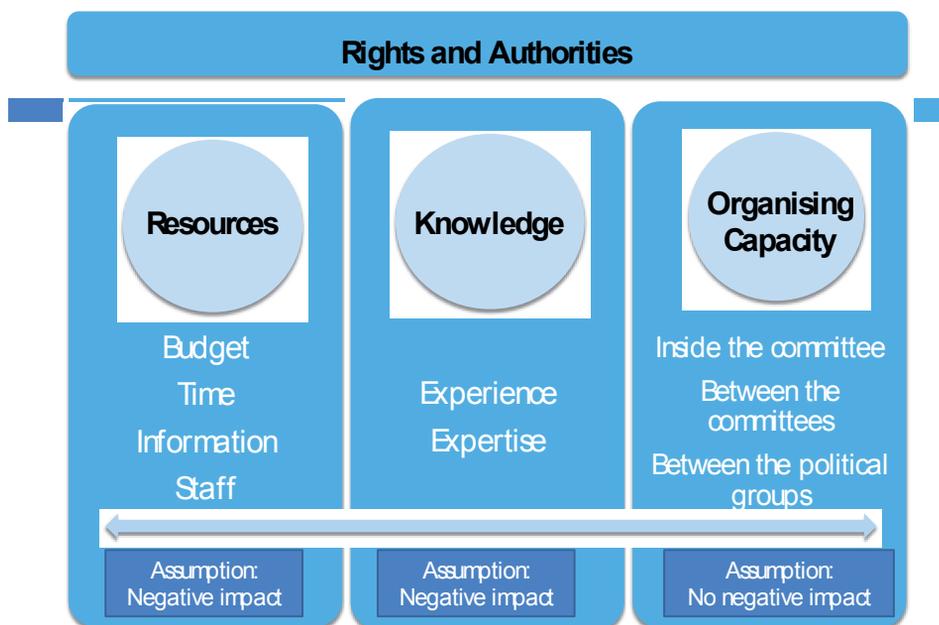
Being a full-fledged co-legislator in nearly all policy fields and an equal branch of the budgetary authority, it is clear that formally speaking the European Parliament has the necessary capabilities in terms of rights and authority to play its role in the EU's decision-making system. The factor 'rights and authorities' is therefore taken as a 'baseline' factor, an element that will not vary.

For the other capability factors three assumptions have been formulated which will be explored in the case studies:

- **Resources:** past research into the EP's resources led to the assumption that a lack of resources such as staff and time could limit the EP's capability to influence the outcome of inter-institutional negotiations.
- **Expertise:** past research on the background and seniority of members and staff led to the assumption that a lack of expertise could have a negative impact on the EP's ability to influence the outcome of inter-institutional negotiations.
- **Organising capacity:** the analysis of existing literature into the EP's organising capacity led to the assumption that the EP is well-equipped in organisational terms in order to be a solid and coherent player in inter-institutional negotiations and that this capability factor would not limit its ability to influence the outcome of negotiations.

Strong performance in one of the capabilities has an impact on the ability to influence the outcome of inter-institutional negotiations. Similarly drawbacks in the capabilities will have a negative impact on the ability to influence the outcome.

Figure 3.1: Capabilities of the EP to influence the outcome of inter-institutional negotiations



Now that the capabilities and their interaction have been discussed, the conceptual framework will be operationalised in order to establish the basis for the actual analysis of the cases. The next part will also focus on explaining the method of process-tracing that will be used to carry out the case studies.

3.3 Methodology and operationalization: assessing the four capabilities

One of the biggest challenges when attempting to analyse political processes is to make abstract concepts operational and to apply a suitable methodological approach. This section will explain the method of process tracing that is central to this thesis, elaborate on the in-depth qualitative interviews used to gather part of the data and concretely operationalize the capabilities that were set out above.

3.3.1 How to assess influence on outcomes comprehensively: process tracing as the catch-all method

Studying the European Parliament has always been a challenge. Coming back to Corbett’s observation (in Crombez et al. 2000: 378) that “a large amount of academic work is based on a lack of knowledge of the realities of decision taking and has gone off at a tangent”. Formal models that attempt to explain the EU’s

decision-making process are often based on a too narrow reading of the Treaty (ibid.: 370). As was shown in the second chapter of this thesis, informal procedures are almost as important as formal ones. More empirical work is necessary to open up this “black box” of decision-making in order to fully comprehend the operation of EU law-making and explain the actors’ impact on the outcome of inter-institutional negotiations (Stacey and Rittberger 2003: 359). Qualitative research facilitates detailed and comprehensive analysis of a limited number of cases and enables the researcher to explore a multitude of explanations. By carrying out three in-depth case studies this project aims to contribute to the growing, but still limited qualitative empirical work on the European Parliament.

Assessing the EP’s influence

A crucial challenge inherent to the research question – “Under what conditions are the European Parliament’s capabilities to influence the outcome of inter-institutional negotiations falling short of its powers?” – is to be able to assess the influence of the European Parliament on the outcome of inter-institutional negotiations. Drawing valid causal inferences is – given the numerous internal and external variables that have an impact on the outcome in EU decision-making – never easy (Scully 1997: 234). Scully (ibid.) defines influence of the EP as the ability to “amend, delay or even reject legislation proposed by the executive”. One way to start is thus to look at the formal communication of EP positions in draft reports, adopted positions in first or second reading in the committee and in plenary and compare them to the final outcome. In addition, political agreements (formerly known as common positions) and ‘general approaches’ of the Council and the Commission’s official position on amendments need to be taken into account to assess the other players’ roles as well (Maurer 2003). Due to the fact that – as Beach (2007: 1274) observes – “mere correlation [between the EP’s position and the final outcome] does not prove influence, as it could have been pure luck or because the EP anticipated plausible outcomes and strategically chose positions close to the final outcome”. Indeed, decisiveness – or the influence an actor has on the outcome – is a combined result of the position of that actor and its capabilities, whereas luck is the mere coincidence of the outcome with the actor’s position (Selck and Steunenberg 2004: 26).

Measuring the success rate of amendments is a more thorough method if the amendments are also qualified in terms of substance and take account of the relative political weight attributed to them. The substance and objective of amendments will have an impact on their success (Kreppel 1999: 523). But even then, one has to be careful in drawing conclusions from that, since some amendments might be ‘propagandistic’ without expectation of them being included in the final text as opposed to ‘substantive’ or ‘realistic’ amendments (Maurer 2003: 241-242). In the past too many studies have not taken account of these nuances, but provide us with useful insights. Tsebelis and Kalandrakis (1999:

131) distinguish between insignificant, significant and highly significant amendments. Insignificant amendments are those which only ensure clarity or do not have substantive legal implications; significant amendments have legal implications but do not alter the scope of the legislative initiative, whereas highly significant amendments for example modify the scope, or introduce additional costs, or change important time limits. Kreppel (1999; 2002) and Burns (2005) took this method a step further by specifying more concretely what “significance” means in the context of legislative negotiations³ and by introducing the nuance that success rate can also be related to an amendment not being controversial (though therefore not necessarily technical) inside the Parliament. Also, Kreppel (2002: 796) makes the observation that clarifications – branded by Tsebelis and Kalandrakis (1999) as insignificant – can still be contentious and thus significant.

These insights can be usefully applied to frame data gathering and enable qualifying the data gathered by using process tracing. Process tracing furthermore makes it possible to address above-mentioned concerns such as distinguishing “luck” from influence, and propagandistic or tactical use of amendments from substantive amendments.

Process tracing

Qualitative research methods enable in-depth analysis of complex questions and can be especially useful in exploring new areas of research, as is here the case with the EP’s capabilities. It “can convey a richness and intensity of detail in a way that quantitative research can not”, and such methods “allow for much more detailed investigation of issues” such as inductively identifying the factors involved in a process and their impact on the outcome of that process (Nicholls 2011: 3).

Process tracing is a qualitative method where empirical research plays a central role. In the case of legislation this means tracing the decision-making process from the initial proposal (independent variable) to the final outcome (outcome of the dependent variables). Guided by a conceptual framework process tracing tries to identify the intermediate steps and uncover causal mechanisms in a context of multiple interconnected and interdependent interactions. In the words of George and Bennett (2005: 332) process tracing “attempts to identify the intervening causal process – the causal chain and causal mechanism – between an independent variable (or variables) and the outcome of the dependent variable”. Tracing a process also helps to limit potential explanations by forcing the researcher to

³ Kreppel (1999; 2002) looks at where amendments are made (i.e. in the body of the text or in the recitals), at which stage they are made (i.e. from less important to most important: first, second reading or conciliation), and by qualifying the way significant amendments alter the scope (i.e. do they just broaden the existing scope or are new policy areas added to it). Burns (2005) looks at whether provisions are new, the degree to which they alter the scope and the consequences of amendments in terms of costs and benefits.

consider and map out different explanations through which an outcome may have occurred. This can lead to a “repertoire of causal paths that lead to a given outcome and the conditions under which they occur” which in combination with a case study design could eventually lead to inductively derived generalised (or even theoretical) explanations or hypotheses on the study in question (ibid.: 333). Through qualitative empirical analysis, this thesis aims to inductively generate a general and testable hypothesis on the conditions under which there is a gap between powers on the one hand and influence in practice on the other.

As opposed to most case studies which aim to explain variance in the dependent variable, process tracing enables the researcher to assess the causality of a particular factor (an independent variable) and make it possible to identify the conditions under which similarity or variance in that independent variable leads to different outcomes (ibid.: 360). One could argue that too many factors or variables vary in this type of research, but it is exactly this set up and method that makes it possible to unveil general explanations in a ‘most different case study design’ (see section 3.4 on case studies).

In operational terms, the first step is to map the decision-making process by establishing a trail (or a ‘narrative’), which – as the structural basis to start the analysis – can take the form of a document or paper trail. Such a paper trail includes the legislative proposal, as well as intermediate documents such as draft reports, opinions and voted positions, and of course the final text. This qualitative data has to be supplemented with additional information derived from more informal documents, such as internal briefing notes, background documents or position papers, as well as press accounts or interviews (see *infra*). On the basis of the total data-set (see table 3.1 for an overview) the researcher then has to establish the extent to which this process was influenced by the independent variables he defined, and whether or not there are other variables at play. By tracing the complete process, the focus of the research lies on “questions of how and interactions” (Checkel 2005: 6). Traditionally processes in politics or international relations are characterised by complex causality whereby the outcome is caused by a “convergence of several conditions, independent [or in more complex cases interdependent] variables or causal chains” (George and Bennet 2005: 347). The different nature of the data and their sources also make it possible to counterfactually check and even double-check findings from one source with another. “This step-wise procedure (...) constantly push[es] the researcher to think hard about the connection (or lack thereof) between theoretically expected patterns and what the data say” (ibid: 15). By leaving no stone unturned – or in this case no path uncovered – process tracing also makes it possible to explore contradictory or alternative explanations (George and Bennet 2005: 357).

At the same time, one has to be conscious of the weaknesses of this method. One of the greatest challenges of process tracing is evidently the amount of data and

the time it requires (Checkel 2005: 6). Also, the access to different sources of data may be not be easy and researchers may be confronted with incomplete evidence or an interrupted causal path (George and Bennet 2005: 358, 367). Another challenge for the researcher consists of assessing the weight of different factors that caused a certain outcome in a complex causal context. For the sake of this thesis and in order to avoid a thick description, the case studies will focus the narrative on key stages and key elements in the negotiations in order to keep the right balance between breadth and depth of the analysis.

The risks described above have been neutralised to a degree through my own experience. Between September 2009 and September 2011, I worked as an intern and as a contractual civil servant at the Belgian Permanent Representation to the EU. This stay, which extended during the research phase of this thesis, allowed me to build out a network in the institutions which helped in getting access to a variety of actors and information that are normally less accessible for outsiders.

Table 3.1: Types and use of data in this thesis' process tracing

Type of data	Use
Official (formal) documents	Structural basis of the process
Press reports	Set context and provide additional information on actors' positions
Informal documents	Give insight into actors' preferences and strategies
Interviews	Supplement data with additional information on actors' preferences, inform about behaviour, strategies and further substantiate data on the 'capabilities'

Finally, it is important to connect the method of process tracing with the observations made at the outset of this section on measuring influence. Indeed, in concrete terms, a detailed account of the EP's position and the definition thereof needs to be established. As Kasack (2004: 246) argues, only looking at votes is not enough as they are mostly taken on the entire report and not on individual amendments. And still, only looking at amendments will not be enough either to determine how they came about, who influenced their adoption and how they were defended in the inter-institutional negotiations. By investigating the actual interventions of the MEPs, it is possible to unveil the missing part of the explanation to determine their influence on the outcomes of negotiations (Beach 2007: 1274). The work of Chopin and Lépinay (2010) show that looking at committee minutes is one way to gain insight beyond what is adopted by laying bare part of the (formal) internal committee negotiations. Yet, this still leaves the informal aspects of the negotiations largely uncovered. Qualitative interviews with key players involved (rapporteurs, shadow rapporteurs, the committee chair, their

assistants, the EP secretariat, actors of the other institutions) will give further insight into the interventions and negotiations “behind the scene”. A total of 54 in-depth interviews were carried out from winter 2010 until spring 2013⁴. Interviewees included MEPs, MEP assistants and EP civil servants, as well as officials of the European Commission and the Council Secretariat, and representatives of several Member States. In addition, where appropriate, external people were interviewed as well, such as lobbyists or representatives of third countries. This broad range of actors who were all directly involved in the files under study, allowed for the triangulation and double-checking of information.

Even though it is impossible to repeat negotiations and to establish the EP’s influence with full certainty, it is nevertheless possible by using process tracing and qualitative interviews to argue “with reasonable certitude that the EP influenced the outcome in specific issues” and how it did so or did not do (Beach 2007: 1274).

3.3.2 *How to assess the capabilities of the EP: concrete operationalization of the four capabilities*

The method of process tracing produces large volumes of data and information for the researcher to analyse. The conceptual framework provides the necessary focus, therefore it is vital that the defined concepts are made operational and measurable in concrete terms. This section will go deeper into each factor and define the elements in the data that will provide for their operationalisation (see table 3.2 for an overview).

The actual analysis will be made factor by factor. Because ‘rights and authority’ is taken as a baseline factor as explained above (see section 3.2.1), the corresponding chapter will be shorter and more of a general institutional nature as compared to the other three. The rights and authority of the European Parliament have already been widely discussed in the academic literature. A focused overview of the treaty, the rules of procedure, the academic literature and more recent developments will suffice to set the general context and the baseline against which to assess the EP’s performance in inter-institutional negotiations. Next to the formal rights and procedures by which the Parliament operates in negotiations (e.g. the ordinary legislative procedure or the budget procedure), the quasi-formal and informal rules and procedures (i.e. trilogue negotiations) will be addressed as well in order to have a comprehensive picture. Taking account of the informalities of EU decision-making is crucial because the “profusion of semiformal, quasiformal and informal procedures [that have] sprung up around the codecision process (...) seem to have important effects” (Farrell & Héritier 2003: 577). Indeed, as we have seen in the

⁴ All interviewees have been *anonymised* at their own request. Some are referred to with a link to their respective institution or organisation, others who did not want the link to appear in the references are referred to as officials of one of the EU institutions.

previous chapter these procedures shape the outcome of the decision-making process as much as the formal treaty texts (Crombez et al. 2000: 370).

Resources, which will be discussed in Chapter 5, are defined as budget, information, time and staff. First, the general budget dedicated to substantive tasks will be examined. This means the budget to hire personnel and political group related staff, the budget for running and staffing the two DGs responsible for assistance to MEPs, and the budget to carry out or order studies and organise hearings. To the extent possible and where appropriate, this analysis will also be made for each separate case study (for instance the possibility to order studies or organise hearings will be more relevant in the context of the novel foods regulation than in the case of the comitology reform which is largely of an institutional nature). In terms of information, the different sources – both in-house (personal assistants, political groups, secretariat) and external (European Commission, national governments, interest groups) – will be identified and for each case study the way they have been used will be analysed. This will show on what type of information MEPs base their positions. Time available to MEPs in general, time spent on a given file by the MEPs and their assisting staff and the priority given to that file is arguably the hardest component to assess. Here, a general analysis of the MEPs' background, different positions, tasks, and mandates will be used in order to get a general idea of their activities, after which the interviews with them and with their staff will seek to further substantiate the findings. It is not the purpose of this project to establish exactly how many hours, days and meetings were spent on a given file. A general and crude assessment of this factor alone will already give a reasonably clear idea of its impact on this capability factor. Finally, the last component, i.e. the staff available to the EP in general and to individual MEPs in the different cases is not hard to assess. Information on numbers of staff is readily available on the European Parliament's website or in the academic literature, and the interviews with the key players involved will further substantiate the figures for each case.

Resources have to be qualified, and as apparent from the conceptual framework based on March and Olsen's work, expertise is crucial in that respect. Defining expertise in operational terms so that it can somehow be assessed is a challenging question. The system of rapporteurship and shadow-rapporteurship is already a form of specialisation and presumes a certain level of expertise or at least interest of the people holding these positions. Nils Ringe's (2010) work shows that members' perception of expertise too plays a role as they tend to follow those members with whom they consider they share policy preferences; but as Gilligan (1997: 367) argued, perception is still only perception. In order to come to a more concrete and factual assessment of expertise, other things need to be examined. Background, experience or seniority are for instance important indicators for MEP's or their staff's expertise in a specific field (Bowler and Farrell 1995; Neunreither 2006). For the staff, the criteria or procedure according to which they were

recruited are additional aspects that can tell us more. Some political groups recruit their staff more on the basis of expertise, while others put more emphasis on political colour and party political experience. The recruitment for the secretariat through the so-called *concours* can also take different forms: either the general recruitment open to all, or calls for *concours* focused on a specific profile (e.g. engineers, lawyers, ...). Seniority can easily be assessed by looking at the turnover rate of MEPs and staff, but also by looking at the rules for the staff's internal mobility. Some general data is already available in the work of Egeberg and others (Egeberg et al. 2012) and Costa (2003). The MEPs' webpages and the interviews will provide the necessary information for the case studies. Knowledge and expertise will also have to be made operational through the actual analysis of the negotiations in the different case studies. Which MEP submits which amendment and can the informational basis of the most contentious amendments in the negotiations be identified? The qualitative interviews also aim to shed light on the strategy and tactics used by the European Parliament during the negotiations to defend its position.

As apparent from the conceptual framework, the way the European Parliament organises itself has an impact on its influence. The internal organisation, which will be discussed in Chapter 7, determines how an institution can capitalise on its formal powers. More concretely, it is not only about how many resources one has but also what one does with them. Here, the difference in organisational set-up with the Council is an important factor to examine in order to set the context. Indeed, the Council has certain procedures to make sure it speaks with one voice by way of the rotating Presidency. The European Parliament, where committees are the central bodies in decision-making and political groups have an overarching coordinating function has a completely different set-up, and is more horizontally organised. The way in which trialogues are prepared in general and the way in which the EP is represented *during* trialogues need to be examined. This can be deduced from the rules of procedure of the European Parliament, but also from the respective academic debate. It will be especially important to look at the practices and informal rules in cases where there was a first reading agreement. Indeed, whereas second reading, and certainly the conciliation procedure are heavily regulated in terms of procedures and time-frames, the rules and practices in first reading agreements are less clear. An analysis of these internal rules should shed light on the procedures established to coordinate positions inside the committee, among the political groups and between the committees in preparation for dialogue negotiations. This will be supplemented by analyses of the minutes of committee meetings – where available – (for a recent example see Chopin and Lépinay 2010) press reports, and qualitative interviews with the key players inside the Parliament in order to get the specific details for each case study. This will shed light on how the EP organised itself and how this affected the outcome of negotiations. Finally for each case study the timeline of the file and the qualitative interviews will also be examined. Indeed, also the fact whether the EP was first in

reaching a position or whether the Council had already approved a ‘general approach’ before the EP is important for its internal organisation because it determines whether one is reactive or proactive in taking positions.

Table 3.2 gives an overview of the operationalisation of capabilities. The factors, which – in line with the conceptual framework – are assumed to have the greatest impact on the EP’s ability to influence the outcome of negotiations are more elaborately operationalised.

Table 3.2: Operationalization of capabilities

Capability	Concrete operational factors	Assessment
Rights and Authorities (baseline factor)	Formal and informal rights, rules and procedures - Treaty - Inter-institutional agreements - Rules of Procedure - Academic Literature- Time line	Treaty text, literature analysis and timeline analysis, supplemented with qualitative interviews
Resources	Budget - Hiring personal and group staff - Running the Secretariat - Ordering studies - Organising hearings	Official budget figures of the European Parliament
	Information - In-house capacity - National governments - The European Commission - Interest groups	Qualitative interviews with MEPs, their personal assistants, group staff, staff of the secretariat, Council and Commission officials, and where appropriate and possible organisations of interest representation
	Time	General analysis of MEPs’ backgrounds, supplemented with qualitative interviews with MEPs and their personal assistants
	Staff	Official European Parliament figures, supplemented with qualitative interviews with MEPs, their personal assistants and the secretariat for each case study
Expertise	Background (MEPs and staff)	Studies of Egeberg (2012) and Costa (2003), personal webpages of the MEPs, information from qualitative interviews with MEPs and their staffs

Capability	Concrete operational factors	Assessment
		Official European Parliament figures
	Seniority (MEPs and staff)	Webpages of the political groups supplemented with information from qualitative interviews with group staff
	Recruitment (staff)	Calls for tender of the EP for training sessions to be organised, qualitative interviews with training institutes
	Training (MEPs and staff)	Analysis of submitted amendments ⁵
	Submitted amendments	Qualitative interviews with MEPs, EP staff, Council and Commission officials
	Strategy and tactics during negotiations	idem
Organising Capacity	Organisational set-up in general	Comparison Council-EP through an analysis of the impact of the way in which both institutions are structured
	Preparation of trialogues - inter-committee - intra-committee	Analysis of rules of procedure, literature on informal rule making, supplemented by qualitative interviews, where possible analysis of internal documents and committee meeting minutes for the specifics on the cases

As explained above, all four factors will be discussed in separate chapters. Chapter 4 will deal with the “baseline factor” ‘Rights and Authorities’, 5 with Resources, 6 with Knowledge and Expertise and 7 with Organising Capacity. The central aim of this thesis is to assess the impact of these capabilities on the outcome of inter-institutional negotiations. The objective is not to compare the EP with the Council or with other legislatures. Arguing for instance that equality in terms of resources will make the Council and the European Parliament truly equal co-legislators is misguided. The European Parliament does not necessarily have to mirror the Council to be on an equal footing.

As explained in the introductory chapter of this thesis, the analysis of the factors will be made for three different cases of inter-institutional negotiations. The next

⁵ Both the committee and plenary stage will be looked at. At the committee stage this includes: the rapporteur’s first draft report, the amendments put forward by committee members, and the final committee report as well as the voting results. At the plenary stage, this includes amendments put forward by political groups, committees or at least 40 MEPs.

section will outline the case study design and give the necessary background needed to start the analysis.

3.4 Case studies

It is not the purpose of this section to elaborately discuss the merits and risks of different types of case study research. Rather it will focus on the justification of the choice of cases, potential risks linked to that choice and provide a general factual background for each case in order to embed the dossiers under discussion in their wider political context and history.

3.4.1 Justification of cases

Case studies in combination with process tracing make it possible to determine the sequence of events that led to the outcome, rather than just focussing on the outcome as an event (Peters 1998). They have the potential of achieving high conceptual validity, foster the development of new hypotheses, and are useful to establish causal mechanisms whilst taking account of causal complexity (Bennett and George 2005: 48). Cases can be defined in terms of most-likely, least-likely or crucial for theory (ibid.: 62). This thesis uses a least-likely case study design, or a 'most different cases' design. Such a design presupposes that the expected outcome in the different cases is similar, and that the researcher has an idea of what the possible explanatory variables are and which of these should be controlled for. This also means that there is an assumption of the potential common cause of the outcome. The variables were identified above in form of the different capabilities. One of which, the so-called 'baseline factor', rights and authorities, is controlled for as it will not change in the course of the analysis. The EP is on equal footing with the Council in terms of the powers it has according to the treaty and the decision-making procedures. The cases in this thesis have been selected to see whether the findings are indeed similar across different policy areas where the EP has full powers. The aim is to draw general conclusions on the European Parliament's capabilities in inter-institutional negotiations and generate a testable hypothesis on the impact of capabilities on influence.

One of the limitations of qualitative case studies is that it is difficult to generalise from their findings. Indeed, a selection of a limited number of cases can never be fully representative of the wider population they belong to (ibid.: 74-75). The case studies in this thesis should therefore be seen as 'indicative' rather than as 'representative' of the category they fall into. Indeed, a small number of cases can be used to advance the debate on a specific issue and can be the basis for further "analytical generalization" and "facilitate analytical precision and theory development" (Burns 2005, p. 494).

The three selected cases fall into to Lowi's categories of constitutive (i.e. setting out new rules and procedures), distributive and regulatory policy fields (Lowi 1972). It is not the aim of this thesis to test Lowi's argument that the type of policy determines the distribution of costs and benefits and the way in which this leads to mobilisation of actors and different types of conflict constellations. Rather, Lowi's typology was chosen to come to a more comprehensive understanding of the Parliament's capabilities in inter-institutional negotiations and to see whether findings are similar in contrasting policy fields with different types of procedure. Indeed, the choice to look at three different areas of inter-institutional negotiation not only allows one to make statements about the individual cases, but also about EP performance in general.

The case study design is thus 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 areas. 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 biggest challenge with this type of design is to isolate the factors that "appear to produce (or at least are strongly associated with) changes in the dependent variable" (Peters 1998: 29). There are risks of extraneous variance⁶ that need to be controlled as much as possible. This is where the conceptual framework defined above plays an important guiding role. The typology of capabilities helps defining the right control variables. A 'most different cases' design combined with the right conceptual framework can reveal relationships of variables in a different setting and makes sure that there are no other unmeasured variables confounding our research in order to isolate the pattern of relationships that explains similar outcomes.

The three cases falling into Lowi's categories are the following. For the category of constitutive policy, 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 (TFEU) (i.e. the system formerly known as comitology) was taken. As the co-legislators defined the new rules and procedures for the use of delegated and implementing acts, it is clearly a constitutive case. For regulatory policy the negotiations on the new regulation for novel foods was chosen as it is a typical European legislative file. In the category of distributive policy, the budget 2011 negotiations will be analysed, the first annual budget negotiated under the Lisbon Treaty rules. This design will enable the identification

⁶ Extraneous variance occurs when there are one or more variables that have a systematic relationship with the dependent variable, and possibly with the independent variable as well.

of more general conditions under which there is a gap between the EP's powers and the capabilities it has in practice across different policy areas.

Because both the comitology system and the novel foods regulation are based on previous regulations and decisions, and because the budgetary policy is a field in which the EP has long-standing powers, it is important to embed the cases in their political and historical context, which is the purpose of the next section.

Figure 3.2: The three case studies and their respective categories



3.4.2 Background on cases

As the following chapters will each focus on one capability factor and how that factor plays out in each case, it is necessary to briefly outline the background the cases before starting the analysis.

The post-Lisbon comitology reform

The European Union has its own system of conferring powers of implementation from the legislative institutions, i.e. 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. This committee system is referred to as 'comitology'.

Comitology was first used in the 1960s to address changing economic and societal circumstances without having to go through the normal legislative procedures (see Bergström 2005). Although it had no Treaty base, the European Court of Justice confirmed its viability in 1970.⁷ The system further developed into more policy areas in the 1970s before it was entrenched in the Single European Act. Two Council decisions followed which laid down the rules for member state control over the Commission. Decision 87/373 identified seven procedures the Commission had to follow in consulting committees composed of member state representatives. After pressure from the European Parliament, this system was reformed and streamlined to four procedures in the 1999/468 Council Decision. It granted the European Parliament a non-binding right of scrutiny on co-decision measures and

⁷ See Case Law C-25/70 Köster (1970)

included provisions that increased the transparency of the system through the setting up of a comitology register, the publication of a yearly report and a list of all comitology committees. The main procedures were the advisory procedure, where Member States could give a non-binding opinion on the measure proposed by the Commission by simple majority. The regulatory and management procedures, used for the most important cases such as the implementation of provisions relating to the safety of humans, plants and animals (including genetically modified organisms (GMOs)), or the implementation of financial programmes and agricultural measures, required a qualified majority of Member States against the Commission proposal in order to stop it from being adopted. In certain cases, for instance when the Committee did not manage to come to an opinion (i.e. there was no qualified majority for or against a measure), the matter was referred to the Council who had the opportunity to take a different decision. A fifth procedure was added in 2006 to meet the European Parliament's concerns over its limited involvement in comitology, namely the regulatory procedure with scrutiny. It gave the European Parliament a veto over 'quasi-legislative' acts that arise from co-decided regulations. It provides the possibility for both the Council and the European Parliament to block the adoption of a measure even if it received a positive opinion in the comitology committee.

The Lisbon Treaty finally provides for another reform making the distinction between delegated acts (acts which supplement or amend non-essential elements of the legislative act) and implementing acts (for acts requiring uniform conditions for implementation). For the former category (article 290 TFEU) the Treaty provides ex-post control by the Council and the European Parliament who can revoke the delegation or oppose delegated acts proposed by the Commission. For the implementation of the implementing acts article (article 291 TFEU) the treaty requires that regulations are adopted under the ordinary legislative procedure. It is the implementation of both these articles that is the subject of one of the three case studies : the negotiations on the new regulation based on article 291 TFEU and the practical arrangements agreed by the three institutions on implementing article 290 TFEU.

The European Parliament has been critical of the comitology system since its inception and has tried to get a grip on this process often by forcing the Council and the Commission to reform the procedures (Kietz & Maurer 2007). With a yearly output of over 2500 decisions, it is not surprising that the EP wants to have a say in comitology, a system dominated by the Commission and the Member States. A lot has been published on comitology in the past two decades, and again it would go beyond the scope of this section to be exhaustive. The following overview will therefore only focus on the EP's role in the development of the comitology system⁸.

⁸ For a more elaborate overview see Kietz and Maurer 2007: 27-40 or Maurer 2011: 9-16

Neuhold (2008: 5) gives three main reasons why the EP has been critical of the comitology system in the past: (1) it is considered an non-transparent process that brings national interests into an implementation process of community law, (2) it is seen as a strategy of the Council to bypass the EP by reaching agreements in the implementation phase, (3) it is undermining the EP's role of holding the executive accountable since it has no say in it. Indeed, as Ballman et al. (2002: 556) put it, the EP sees comitology as a system that is blurring the separation of powers and undermining its rights to control. Especially since the entry into force of the Maastricht Treaty and the introduction of the co-decision procedure, the EP has tried to use tactics of blocking and stalling legislation from being adopted to get more of a grip and a role in the comitology system. In the mid-nineties the EP delayed several co-decision files leading to a break down of inter-institutional cooperation over comitology (Bergström 2005: 33; Kietz and Maurer 2007: 33). This is in line with the EP's before-mentioned strategy of using its veto power in co-decision and linking files in which it can hold the Council "hostage" to obtain institutional change to its advantage (Héritier 2012: 49; Héritier et al. 2013). The EP wanted to limit the influence of the Council in the process by demanding that only the advisory and the management procedure be used. Finally, a 'Modus Vivendi' was agreed between the three institutions resulting in more transparency and information from the Commission to the European Parliament on the comitology proceedings (Spaventa et al. 2008: 71-72). During the negotiations on the Amsterdam Treaty, the EP asked for equal rights with the Council in comitology, but the IGC considered secondary legislation as a sufficient enough instrument to deal with the necessary reforms. As explained above, in the 1999 decision the EP obtained a non-binding right of scrutiny over co-decided acts and more information rights, but still no equal role as compared to the Council. The constitutional treaty finally foresaw the distinction between delegated and implementing acts and gave both Parliament and Council a right of control over the former. However when the ratification of the Constitutional Treaty failed, the EP used its tactics of delaying legislation to force through the 2006 reform via the Lamfalussy process⁹ (Bradley 2008: 852).

Finally, apart from comitology being a source of procedural discussions between the institutions, it is also a bone of contention in day-to-day law making. Blom-Hansen (2011: 3) shows how both legislators are seeking to use comitology provisions in regulations to increase their control over delegated decision-making. "They will press for comitology rules that ensure efficient institutional control positions for themselves and inefficient control positions for their opponents". Héritier and Moury (2011: 159-162) confirm this in their quantitative analysis showing that the Council increasingly favoured delegation as opposed to legislation

⁹ The Lamfalussy process has been used to adopt and implement some acts in the financial services sector, and it was characterized by a more structured use of comitology and a major role for the European Parliament. See Vaccari 2005 : 803-821

without delegation once the EP was established as a co-legislator. The EP on the other hand was found not to be opposed to delegation through comitology, but systematically tries to limit its scope.

This short overview demonstrates the relevance of the comitology system as a case study. The reform entrenched in the Lisbon Treaty was not only a victory for the European Parliament, but also presented it with the opportunity to further shape the procedures and rules in the implementation phase. After the entry into force of the Lisbon Treaty the European Commission put forward its proposal for a regulation on article 291 TFEU in March 2010 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 early in 2011. It is the negotiations on these two instruments that constitute the subject of this case study.

The first post-Lisbon annual budget: the 2011 budget

The EU budget amounts to around 120 billion euro per year which is around 1.05% of the EU GDP, smaller than the budget of medium-sized Member States such as Austria and Belgium. Nowadays the budget is set in so-called multi-annual financial frameworks (MFF) for seven years. The MFF for 2014-2020 will amount to a budget of around 960 billion euro. The MFFs set out the EU's spending priorities by laying down ceilings for each heading of expenditure. The headings with the largest budgets are the cohesion funds for deprived and less developed areas (35%) and agriculture and fisheries (around 40%). Based on the MFF and its budget guidelines, each year the Commission proposes an annual budget which is to be adopted by the Council and the European Parliament. The Lisbon Treaty gives the EP equal powers as compared to the Council, where previously the Council had the last say on so-called 'compulsory expenditure' which included the common agriculture policy budget. Article 310 TFEU and subsequent articles lay down the annual budgetary procedure. In brief, based on estimates made up by each of the EU institutions, the Commission proposes a draft budget by 1 September at the latest of the year before the budget is to be implemented. Before 1 October the Council can amend the proposal and has to send its position to the European Parliament. The EP has then 42 days to make its own amendments on the basis of the Council's text. The Council has then 10 days to either accept or reject the budget. The Lisbon Treaty cuts the procedure short by one reading, meaning that if the Council does not accept the EP's version, the text is sent to a conciliation committee. This committee composed of an equal number of representatives of both institutions operates by strict deadlines¹⁰.

¹⁰ The Committee has 21 days to negotiate a common text. If this fails, the Commission has to come up with a new draft budget. Once a text is agreed by the Conciliation committee both Council and Parliament have 14 days to approve or reject it. If by the 1 January, the first day of the budgetary year,

The EU budget has been a long-standing area of parliamentary power. Yet, as explained above it was not until the Lisbon Treaty abolished the distinction between compulsory and non-compulsory expenditure that Parliament obtained equal budgetary powers as compared to the Council. The evolution of budgetary decision-making shows it was a process of informal agreements and practices supplementing the treaties, characterised by “almost insurmountable tensions among the Community Member States regarding the role of the European Parliament” (Lindner and Rittberger 2003: 447). A budgetary treaty adopted in 1970 introduced partial co-responsibility for the EP, but gave rise to many different interpretations both on the side of the Council and on the side of the EP. Each year the EP used ‘unilateral interpretations’ to strengthen its role in budgetary decision-making, but the Council resisted lasting changes in the institutional budgetary set-up (see Lindner 2003: 921-923). It was not until the early 1980s that an inter-institutional agreement was concluded which introduced triologue negotiations¹¹. This did not stop the EP from unilaterally interpreting the 1970 treaty, which led the Council to go to the Court over the 1986 budget. In its ruling the Court sided with the Council on the specific provisions but did not solve the overarching institutional problems. In the subsequent years the EP did not have enough leverage to force the Council to review the institutional set-up. It was not until the early nineties that the EP managed to review the existing inter-institutional agreement: it demanded large concessions in exchange for accepting the multi-annual frameworks, instead of working with annual budgets (Lindner 2003: 926). After the EP had challenged the binding nature of the budgetary ceilings in 1998 and the Council took the EP successfully to Court in 1995 over the fact that the EP did not recognise the agriculture expenditure as compulsory, a new inter-institutional agreement was negotiated in 1999. The EP obtained a number of institutional concessions in exchange for the approval of the ceilings in the financial perspective the Member States had set (Lindner 2003: 926-927). As explained above, it was not until more than ten years later with the entry into force of the Lisbon Treaty that the Parliament obtained full budgetary powers.

This brief history of the evolution of the budgetary powers in the EU is another interesting example of ‘unintended consequences’ of treaty reform and shows that the link between the creation of formal institutions, implementation and informal procedures is important to take into account when studying institutional change (Lindner and Rittberger 2003: 447).

the budget has not been approved, the Union works with 1/12 each month of the budget of the previous year.

¹¹ This agreement of 1982 was titled the ‘Joint Declaration on Various Measures to Improve the Budgetary Procedure’.

The budget of 2011 is thus the second case study. It was the first budget to be negotiated under the shortened Lisbon procedure and consequently it was the first time the EP was on an equal footing with the Council. Negotiations were successfully concluded in December 2010 after a failed conciliation and a new proposal put forward by the Commission.

The second regulation on novel foods

Due to the limited academic literature on novel foods as compared to the previous two cases, this section will limit itself to introducing the topic, briefly highlighting the legislative trajectory of the file and addressing the main issues of the regulation.

The revision of the regulation on novel food is part of a field that was not affected by the entry into force of the Lisbon Treaty and constitutes an area where the European Parliament has had co-decision for years. The original regulation 258/97 EC 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 also created an EU-wide approval system for such foods before they enter the market which reduced the cost for approval considerably. In addition, foods in the scope of the regulation may not present a danger for the consumer or mislead the consumer in the sense that the original food is nutritionally more advantageous for the consumer than the new food by which it is replaced. The Commission proposal of 2008 (European Commission 2008) for a revision of the 1997 regulation addressed certain gaps in the old regulation and aimed to formulate an answer to the ever-changing technology in food industry. The Commission proposed to set-up a simplified and centralised authorisation system for the authorisation of novel foods under the responsibility of the European Food Safety Authority (EFSA). After an assessment by EFSA the Commission can give market authorisation, if it is deemed safe. The proposal also included a simplified procedure for traditional food coming from third countries and provisions on foods modified by nanotechnology¹². Important to know is that the controversial issue of genetically modified (GM) derived food is regulated by regulation 1829/2003.

The European Commission introduced its proposal in January 2008, the European Parliament voted its first reading report in December 2008 and the Council adopted

¹² Nanotechnology makes it possible to manipulate structures at nanometre scale (one billionth of a metre). In the food industry, nanotechnology can 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, nano technology 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 – the principal reason why it remains controversial (Mahony 2011).

its common position in March 2010. The European Parliament and the Council did not come to an agreement in second reading, which led to the conciliation phase. Negotiations ended in failure on 29 March 2011, the first time since the working time directive, the only file that did not survive conciliation negotiations since the Treaty of Amsterdam of 1999. The main reason for the failure were the provisions on food derived from offspring (first and second generation) of cloned animals. While food derived directly from cloned animals fell within the scope of the 1997 regulation, food from offspring did not. Both Council and Parliament agreed on banning the use of cloning for commercial purposes, and banning comestibles from cloned animals, but the European Parliament, inspired by the European Board on Ethics and a Special Flash Eurobarometer poll¹³, demanded a ban on products from offspring to be brought on the market for reasons of ethics and animal welfare (Euractiv 2011; 2010a; 2008). A majority of Member States in the Council and the Commission argued that there were no proven health risks since offspring is reproduced through normal breeding techniques and that a ban or a system to label that food was impossible to implement since no system for tracing offspring in the food chain exists. Finally such provisions could cause trade retaliation in the light of possible infringements of WTO (World Trade Organisation) rules (Willis 2011).

The case of novel foods is interesting for several reasons. First, it is a piece of EU legislation showing how very technical provisions can become politicised and can shape the debate that divides the institutions. It will also be interesting to see how unified the European Parliament was during the negotiations with the Council. Second, it is also a classic case in terms of actors involved: the three institutions, lobby groups from the industry and consumer organisations, and expert groups such as the EFSA and the Ethics Board. Third, the outcome is remarkable since it is only the second time conciliation negotiations failed to lead to an agreement between the Council and the EP. It will therefore be important to see which factors have influenced the EP's performance in the negotiations and to what extent this had an impact on the outcome.

3.4.3 *Concluding remarks*

The concrete operationalisation of the capability factors in combination with the method of process tracing will allow to establish how negotiations in the different cases developed, why and how the texts were changed and by whom they were changed. This way, it will be possible to identify the European Parliament's positions, strategies and impact on the outcome of the negotiations. An analysis of these findings framed by the conceptual framework will thus make it possible to formulate an answer to the research question.

¹³ The Eurobarometer survey found that only 15% of the EU citizens support animal cloning from food (Eurobarometer 2010).

The following chapters will each deal with one specific factor beginning with 'Rights and Authorities'. The structure of these chapters will be as follows: the capability factor will be explained in more concrete terms and in the context of Parliament's activities, after that an empirical analysis of the factor follows in each case study.

CHAPTER 4

The Baseline: The European Parliament's rights in the ordinary legislative procedure, the budget procedure and comitology

4.1 Introduction

The aim of this chapter is to set out the rules and procedures according to which the negotiations under study are organised. The rules and procedures the institutions operate by are defined as rights and authorities by March and Olsen (1995). These provide the “discretion over resources and actions” (March and Olsen 1995: 92). In the case of the EU, they are fixed by the treaties, inter-institutional agreements and the rules of procedure of each institution. As it is presumed that there is little scope to change them in the course of the negotiations of the files under study, they are taken as a “baseline factor” for further analysis. By focusing on the question whether the EP's performance in inter-institutional negotiations is matching up to the powers it obtained in the treaty the research question (“Under what conditions are the European Parliament's capabilities to influence the outcome of inter-institutional negotiations falling short of its powers?”) takes rights and authorities as a given, not as a variable.

It is important to briefly focus on rights and authorities as they are closely connected to the other factors (resources, expertise and organising capacity). The procedures as formally written down in the treaties are the framework within which the European Parliament has to operate and structure its own internal decision-making procedures. Rights and authorities thus determine partly – and indirectly – the organising capacity of the European Parliament, which is the focus of the last chapter of this thesis. The deadlines set by the treaty in second reading and conciliation for example also have an impact on the resources of the EP, as the time available to negotiate is limited.

In the following sections the rules and procedures according to which the cases are decided will be discussed. The structure of the chapter is therefore somewhat different from the other chapters in that it does not discuss the factor case by case, but rather procedure by procedure. This approach is chosen because the procedure in some cases is the same (for instance the novel foods regulation and the new comitology regulation were both decided through the ordinary legislative

procedure), and also in order to identify the impact of rights and authorities on the other capability factors.

In the first section, the ordinary legislative procedure will be discussed. This will be followed by outlining the budget procedure as established by the treaty of Lisbon and the inter-institutional agreement on budgetary discipline and sound financial management of 2006. In a third section, the basic procedures for implementing and delegated acts as defined by the Lisbon treaty will be introduced. Each procedure will also be linked to the applicable cases, so as to set the background for further analysis. Finally, in each section the impact of the “baseline factor” on the other capability factors will be addressed as well. Where applicable, the quasi-formal and informal rules and procedures, such as trialogue negotiations and other informal contacts, will be addressed as well in order to have a comprehensive picture of the procedures. Even though they are not part of the formal rights and authorities, they are important to mention as they too are part of the framework within which the EP acts. Chapter 7 will go deeper into the different ways in which MEPs and staff use these informal procedures when the EP’s organising capacity is discussed.

4.2 The ordinary legislative procedure: EP and Council on an equal footing

4.2.1 The ordinary legislative procedure according to the treaty

The ordinary legislative procedure as shown in figure 4.1 is laid down in article 294 TFEU. On paper it looks rather like a game of table tennis between both legislators with the European Commission as a referee. The Commission has the right to propose legislation and thus initiates the procedure by sending over its proposal to the European Parliament and the Council¹⁴. During the first reading there are no deadlines and formally speaking it is the European Parliament that has to define its position first. It can either do so by adopting the proposal as such or by amending the text in its position in first reading. Once that position is adopted, it is up to the Council to either approve the European Parliament’s position, which would conclude an agreement in first reading, or to adopt its own position in a political agreement¹⁵. In case no agreement is found, the second reading starts with deadlines of three months (extendable by one month) for each institution to determine its position. There is an early second reading agreement when the European Parliament does not act within the time limits or adopts the Council’s position in first reading without further amendments. The procedure ends when Parliament rejects the act, or continues if it decides to make amendments in its

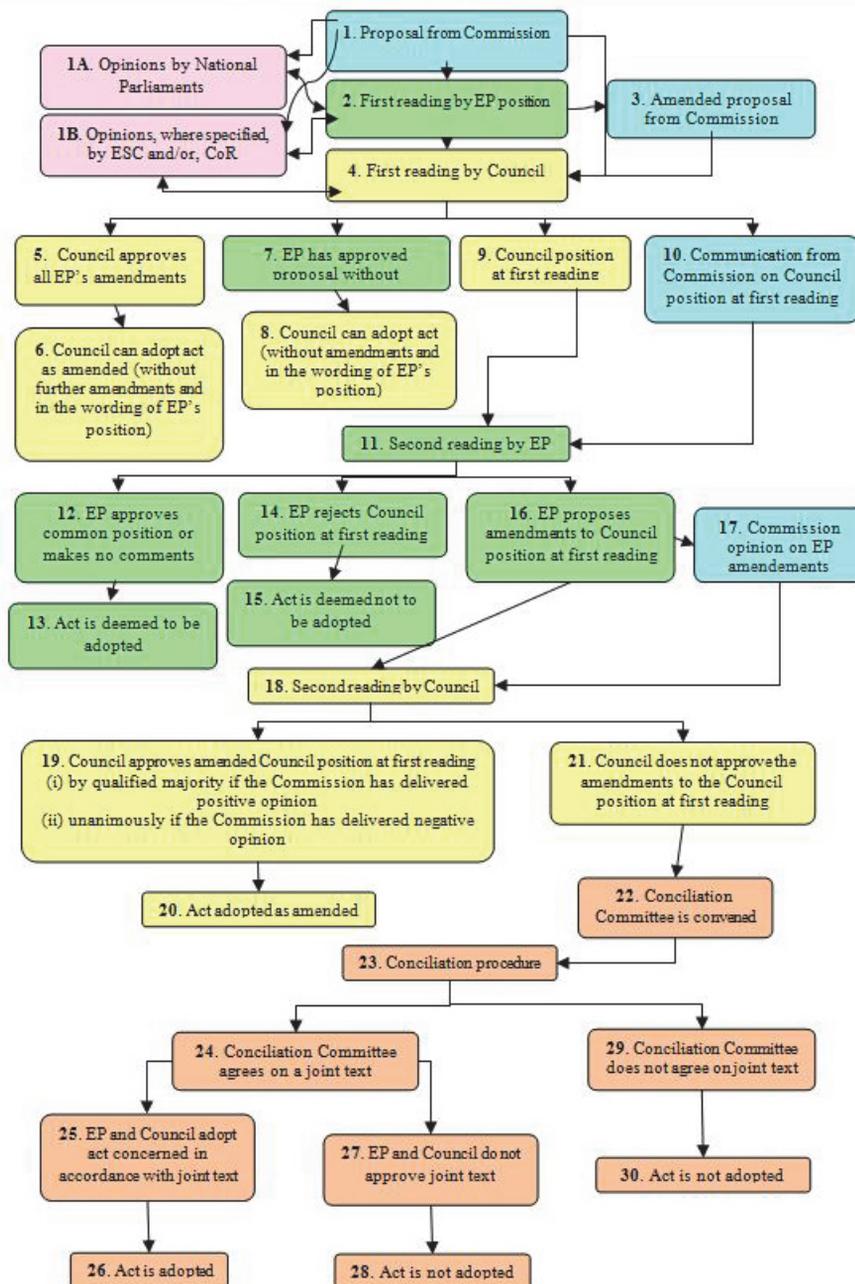
¹⁴ It has to be noted that national parliaments can perform a subsidiarity check and that in some cases the Committee of the Regions and the Economic and Social Committee can adopt a non-binding opinion.

¹⁵ It has to be noted that the Council can adopt its own position before the European Parliament does so, this position is then called a “general approach”.

second reading position. The Council then has three plus one month to either approve all of the EP's amendments and conclude an agreement in second reading or not to do so and end the second reading without an agreement. It is important to note that in first and second reading the Commission has an important role. It can amend its proposal after the European Parliament's first reading, give its opinion on the Council's first reading and on the European Parliament's second reading. This is important because in case of a negative opinion the Council needs to adopt its text by unanimity instead of qualified majority. Also important to note is that the European Parliament's voting thresholds are higher in second reading, when an absolute majority is needed (i.e. half plus one of the total number of members) to adopt amendments and approve its position, whereas in first reading a simple majority of those members present in the vote suffices.

If no agreement is reached in second reading, a third and last reading starts whereby a conciliation committee is convened. This committee is composed of an equal number of representatives of the Member States in the Council and MEPs. They have six weeks, extendable by two weeks, to reach an agreement on a common text, which is then submitted to the Council and the European Parliament for approval, respectively by qualified majority and simple majority. If no agreement is reached within that time limit or if either the Council or the European Parliament does not approve the text, the procedure lapses and the act is not adopted. The Commission has an important brokering role during the conciliation stage to reconcile the positions of both co-legislators, and no longer formally adopts opinions on positions taken.

Figure 4.1: Graphic presentation of the ordinary legislative procedure



Source: Institute for Environmental Policy (2012)

4.2.2 *The ordinary legislative procedure in practice*

A formalistic reading of article 294 TFEU shows that both legislators are on an equal footing. No agreement is possible without the consent of both institutions. The procedure also presents the EP as the first mover and Parliament would thus have “first-mover advantages” in adopting the first reaction to the Commission’s proposals thereby setting the agenda for further discussions. However, as pointed out in the second chapter of this thesis, a formalistic reading of the treaty does not fully reflect the inter-institutional practices that have evolved over time (Aspinwall & Schneider 1998). A plethora of informal practices have sprung up since the introduction of the co-decision procedure in the Maastricht Treaty. Practical procedures stem not only from the treaties, but also from everyday decision-making practice (Farrell and Héritier 2007). The treaty thus provides for the formal framework and procedural steps required to be taken, but in between, and within the boundaries of the treaty there is ample room to set up informal mechanisms of decision-making.

Table 4.1 presents the number of co-decision files concluded during the past two legislatures shows two remarkable trends that are relevant for this chapter: a rise in first reading agreements to 72% of all agreements, and a steep decline in the number of conciliations.

Table 4.1: Number of co-decision files concluded

Year	1st Reading	2nd Reading	Conciliation	Total
1999-2004	113	202	88	403
2004-2005	18	8	0	26
2005-2006	45	17	7	69
2006- 2007	48	30	4	82
2007-2008	74	20	6	100
2008-2009	142	29	6	177
2009-2012	203	43 (of which 19 in early 7 second reading)		253

Sources: Kratsa-Tsagaropoulou et al. 2009: 10, Conciliations and Codecision (2012)

The vast number of first reading agreements can be explained by several factors: the general willingness of the institutions to cooperate and to be efficient, the increasing familiarity with the ordinary legislative procedure, the lower voting threshold at first reading, a higher number of uncontroversial proposals, a sense of political urgency to adopt proposals more quickly, a better preparation of the proposals by the Commission, and eagerness on the side of the Council presidencies to conclude as many files as possible during their six months in office (Kratsa-Tsagaropoulou et al. 2009: 6, 11). The numbers are however, first and foremost a proof of the intense use of early informal contacts and dialogue

negotiations between the institutions whereby the first reading position of the European Parliament is negotiated with the Council (Kratsa-Tsagaropoulou et al. 2009: 11). A rise in early second reading agreements whereby the position of the Council in first reading is negotiated with the European Parliament and confirmed by the EP in second reading is a proof of the same trend (ibid.: 25). This evolution however, does give rise to concerns and criticism with regards to the democratic nature and transparency of the process inside the European Parliament (Shackleton and Huber 2013). Indeed, first because proposals are virtually only discussed in the committees as the plenary is asked to vote on a “pre“-negotiated agreement. Second, the fact that first reading agreements are negotiated in small circles and then submitted to the committee and plenary for approval means that the rapporteur and the shadow rapporteurs have gained in terms of power to the detriment of other MEPs (Hagemann 2011; Farrell and Héritier 2007). Even though a joint declaration of the European Parliament, the Council and the Commission of 2007 (European Parliament 2012a: 243) promotes the adoption of acts at “an early stage of the procedure” and recognised the effectiveness of trilogue negotiations, the above mentioned concerns caused the President of the European Parliament in the second half of the 7th legislature, Martin Schulz, to call for a rethinking of first reading agreements in the light of Parliament’s visibility and the attention paid to its positions (Schulz 2012; Shackleton and Huber 2013).

The increasing *informalisation* of the process and the rise in first reading agreements have had an impact on the organising capacity, the resources and expertise inside the European Parliament. Indeed, with power more and more concentrated in the hands of rapporteurs and with agreements negotiated before the usual – formal – steps are passed, the EP felt it has had to adapt its internal procedures not only to increase transparency and accountability, but also ensure it has the capacity in terms of organisation to assure legitimate representation in informal negotiations. As a reaction to these concerns the EP has amended its rules of procedure several times over the past decade, and adopted guidelines and codes which will be discussed in more detail in Chapter 7 on Organising Capacity (Kratsa-Tsagaropoulou et al. 2009: 24-25). The measures taken by the Parliament to adapt its internal organisation to these developments have also had an impact on the division of resources inside the EP. Indeed, with the majority of negotiations taking place during the first reading, administrative support and assistance has to be guaranteed and resources have to be provided in order to organise and prepare the many trilogue negotiations that take place (ibid: 26). These resources include not only translation and available rooms, but also more training, legal advice, and expertise (ibid.: 28). The creation of a Directorate General for internal policies (DG IPOL) and one for external policies (DG EXPOL) and a policy department for each DG is definitely to be seen in the light of a greater demand for expertise and improved drafting assistance – something that will be addressed in detail in Chapter 5 on Resources.

The second trend reflected in table 4.1, namely the steep decline in the number of conciliations, indicates that conciliation negotiations have become more of an exception. Yet here too, there is a well-established practice of preparing conciliation committees extensively during trilogue meetings rather than negotiating the in the actual committee meetings. During the 6th legislature, the EP judged the conciliation procedure to work well and considered that the EP is generally successful as rapporteurs reported that they obtained a better result in conciliation than they had obtained in earlier stages of the procedure. This led the activity report to make the following assessment:

It seems to be that the way in which Parliament is organised in 3rd reading gives it a competitive advantage over Council in that phase of the procedure. As it was put by one rapporteur: "The conciliation procedure gives to the Parliament a lot of 'bargaining power' due to the stability of the Delegation leadership versus the rotating leadership of the Council Delegation." To this can be added the system of a small but representative negotiating team (including the Vice-President responsible, the chair of the committee and the rapporteur) which regularly informs the full delegation and is mandated by it. (Kratsa-Tsagaropoulou et al. 2009: 26).

Indeed, the conciliation phase has its own system of organisation and representation, an issue that will be addressed in detail in Chapter 7 on Organising Capacity and more specifically in the novel foods case and when discussing the case of the 2011 budget. Apart from its effect on the EP's organizing capacity, conciliation obviously also has an impact on resources and expertise. The EP's delegation in conciliation is composed of members of different committees and headed by one of the three vice-presidents appointed for this task. This does not mean that the experience and expertise of the rapporteur and shadow rapporteurs are lost, as they are (usually) part of the EP's delegation, but it also means that other MEPs, with a different background, committee affiliation, perspective, and knowledge of the file become involved in the negotiations. In terms of resources, conciliation is an intensive procedure requiring not only a considerable logistical effort, but also intensified administrative preparation and support as time limits are tight and the EP's delegation is different in terms of composition and much larger as compared to the negotiating teams in first reading and second reading.

Each case will be now looked at from the perspective of the procedures by which it is negotiated.

4.2.3 *The ordinary legislative procedure in the case of comitology and the regulation on novel foods*

Comitology – Implementing and Delegated Acts

As explained in the previous chapter, articles 290 and 291 TFEU deal with delegated and implementing acts, i.e. what was known before the Lisbon Treaty as the system of comitology. Article 290 TFEU on delegated acts stands on its own and does not formally require any additional measure to be adopted for its application. Article 291 TFEU on the other hand requires a regulation to be adopted in accordance with the ordinary legislative procedure where the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers are fixed. The analysis in this and the subsequent chapters will show that on article 290 TFEU, although not formally necessary, the three institutions also negotiated a Common Understanding, which can best be described as a non-legally binding "gentlemen's agreement" on the practical arrangements regarding the implementation of article 290 TFEU.

Without going into the substance of the negotiations, which will be dealt with in the subsequent chapters, it is important to evaluate the negotiations in the light of the "baseline factor" Rights and Authorities so as to set the scene and context for further analysis.

The regulation was agreed in first reading only nine months after the Commission had presented its proposal. An analysis of the available documents as well as information gathered from the interviews gives us the following detailed timeline of the evolution of the negotiations.

Table 4.2: *Evolution of the proposal for a regulation on implementing acts (art. 291 TFEU)*

02/03/2010	EP: draft opinion Rapporteur
09/03/2010	Commission: legislative proposal published
24/03/2010	EP: committee referral announced in Parliament
March-May	Council: 8 meetings of the Friends of Presidency Working group
May-June	EP: 12 associated committees send their opinions
20/05/2010	Council: first Coreper meeting (attempt for a general approach)
20/05/2010	EP: draft report by Szajer
23/06/2010	Council: second Coreper meeting (attempt for a general approach)
23/06/2010	EP: JURI committee meeting with Commissioner Sevcovic
05/07/2010	EP: rapporteur presents working paper
September- November	Council: Meetings of the Mertens group and Coreper (attempt for a mandate for trialogue negotiations)
18/10/2010	EP: progress report in JURI committee
12/11/2010	Council: Coreper (partial) mandate for trialogue
15/11/2010	Technical trialogue
17/11/2010	Political trialogue
22/11/2010	Council: debriefing in Coreper and new mandate EP: debriefing in JURI committee
26/11/2010	Technical trialogue
30/11/2010	Political trialogue (agreement)
01/12/2010	Council: Coreper political agreement confirmed
01/12/2010	EP: vote in committee, 1st reading
06/12/2010	EP: JURI committee report tabled for plenary, 1st reading
16/12/2010	EP: decision by Parliament, 1st reading
16/02/2011	Final act signed
28/02/2011	Final act published in Official Journal

Sources: *Oeil (Comitology) 2011; PreLex (Comitology) 2011*

Table 4.2 shows the ‘classical pattern’ of a first reading agreement: both the EP and the Council working in parallel on the proposal of the Commission and establishing their position as a basis for negotiations with the other co-legislator. Once this has been achieved, trialogue negotiations are organised in which the institutions work towards a common text. As usual after each trialogue, the representatives of the Council and the European Parliament go back to their respective institutions to report and if necessary, adapt the mandate. If an agreement is found, it has to be

confirmed in both the Council and the European Parliament and later published in the Official Journal.

Analysis of the negotiations in previous academic contributions has shown that the Council was much quicker in establishing its position on large parts of the proposal and that the European Parliament came relatively late into the negotiations (see Christiansen and Dobbels 2012). This finding puts the formalistic reading of the ordinary legislative procedure into perspective. Just because the European Parliament is formally the first institution to adopt its position does not mean it necessarily has the ‘agenda-setting power’ that comes with it, especially when both institutions are working towards a first reading agreement. The analysis in the subsequent chapters will show that the Council indeed had a “first mover advantage” by having started work much earlier and in more detail.

The table shows another interesting finding, namely that in this particular case we observed two types of dialogues: political dialogues¹⁶ and technical dialogues¹⁷. The latter are organised to deal with the more technical issues of a proposal which can be agreed between the institutions at technical level (and later confirmed at political level) and to prepare the agenda of the former. Chapters 5 on Resources and 7 on Organising Capacity will deal in more detail with the organisation of these dialogues and the actors present in them. Here it suffices to know that they took place, and that the observations confirm the literature on the importance of informal procedures in the ordinary legislative procedure.

Table 4.3 shows a similar pattern for the negotiations on the Common Understanding. Although a ‘Common Understanding’ does not formally exist as an instrument of the European Union, the gentlemen’s agreement was negotiated along the same lines as a first reading agreement under the ordinary legislative procedure, albeit mainly at ‘technical’ level. Again, the composition and organisation of these dialogues will be discussed in Chapters 5 on Resources and 7 on Organising Capacity. The table also shows several related events that had an impact on the negotiations: the regulations on non-commercial movement of pet animals and on transport of organs as well as a Danish-United Kingdom-German non paper presented in Coreper, the committee of permanent representatives (or their deputies) of the Member States in the Council. Chapter 6 on Expertise will go deeper into these events when the substance of these negotiations is discussed.

¹⁶ In this case ‘political level’ means at the level of MEPs, director generals of the Commission and Coreper ambassadors.

¹⁷ In this case ‘technical level’ means the desk officer or head of unit of the Commission, the assistant of the rapporteur, the EP’s committee secretariat, and the expert of the Council Presidency along with the Council secretariat

Table 4.3: *Evolution of the negotiations regarding the Common Understanding (art. 290 TFEU)*

November 2009	Commission: draft Communication
Nov.-Dec. 2009	Council: Mertens Meetings
09/12/2009	Commission: publication of Communication
09/03/2010	Regulation on non-commercial movement of pet animals
19/05/2010	Regulation on the transport of organs
06/06/2010	Technical Trialogue
23/06/2010	EP: JURI committee meets Commissioner for inter-institutional relations Maros Sefcovic
25/06/2010	Technical Trialogue
02/07/2010	Technical Trialogue
22/10/2010	Council: DK-UK-DE non-paper
01/12/2010	Council: Coreper: confirmation of the Common Understanding
March 2011	Council: second Coreper: confirmation of the Common Understanding
March 2011	EP: Conference of Presidents: confirmation of the Common Understanding

Source: own compilation based on interviews and meetings

Regulation on novel foods

As with the regulation on implementing acts, the novel foods regulation fell under the ordinary legislative procedure. The pattern followed in first reading was similar to that foreseen in the treaties: both institutions worked and voted on their positions separately. Information from the interviews confirms however that already at this stage there were informal contacts between the Council Presidency and the rapporteur (Kartika Liotard of the European United Left – Nordic Green Left group) where it was agreed that both institutions would first conclude their first reading and would then try and work towards a second reading agreement (interview 4). The second reading however, shows some remarkable events: the EP votes its second reading less than two months after the Council published its position, thus not making fully use of the three plus one month timeframe. This still left the possibility to negotiate the Council's position in second reading, which could then be confirmed by the EP in a third reading agreement without having to go through conciliation negotiations. Yet, the fact that only two trialogues were organised at technical level in May 2010 seems to suggest there was no belief this could be done, or at least that preparatory meetings did not produce the necessary conditions for a third reading agreement. A last effort was made late into the Council's second reading with two political trialogues, which did not lead to an agreement, causing the Council to reject the EP's amendments in second reading, thereby making conciliation unavoidable.

What follows is even more remarkable: three conciliation meetings and a high number of political trialogues in between them. Usually one conciliation meeting is enough to find an agreement. Here, three were organised within the six plus two weeks time limit, after which it was concluded no deal could be found, causing only the second failure during conciliation negotiations since the Amsterdam Treaty.

During the conciliation stage we also see an additional type of triologue taking place at high political level. This so-called 'formal triologue' prepares the conciliation committee. In this triologue the vice-president of the European Parliament is chief negotiator for the EP, for the rotating presidency it is the responsible minister who negotiates and for the commission the relevant commissioner. Thus, apart from the technical level trialogues where it is predominantly attachés and experts who are present, and the political level trialogues with MEPs, director generals and ambassadors, there is a higher political level at which negotiations take place during the night of the conciliation. Table 6 gives an overview of the different types of trialogues and informal contacts observed in the cases. How these sessions are organized and who is delegated to be present will be addressed in Chapter 7 on Organising Capacity.

Table 4.4: Evolution of the proposal for a regulation regarding Novel Foods

14/01/2008	Legislative proposal published
17/01/2008	EP: Committee referral announced in Parliament
27/05/2008	EP: First discussion in ENVI Committee
14/07/2008	EP: Second discussion in ENVI Committee
14/07/2008	EP: Report adopted in AGRI
07/10/2008	EP: Report adopted in IMCO
06/11/2008	EP: Third discussion in ENVI Committee
02/12/2008	EP: Vote in committee, 1st reading
18/12/2008	EP: Committee report tabled for plenary, 1st reading
24/03/2009	EP: Debate in Parliament
25/03/2009	EP: Decision by Parliament, 1st reading
22/06/2009	Council: Common Position reached
15/03/2010	Council: Council position published
25/03/2010	EP: Committee referral announced in Parliament, 2nd reading
04/05/2010	EP: Vote in committee, 2nd reading
10/05/2010	EP: Committee recommendation tabled for plenary, 2nd reading
May 2010	2 Technical trialogues
06/07/2010	EP: Debate in Parliament
07/07/2010	EP: Decision by Parliament, 2nd reading
08/10/2010	Council: Coreper position
October 2010	2 Political trialogues
06/12/2010	Council: Parliament's amendments rejected by Council
12/01/2011	Council: Partial mandate for trialogue
18/01/2011	Political trialogue
19/01/2011	EP: delegation of conciliation meeting
01/02/2011	CONC: Formal first meeting of Conciliation Committee High Political trialogues in preparation of the Committee meeting
15/02/2011	Political trialogue (technical amendments only)
23/02/2011	Council: mandate discussed in Coreper
01/03/2011	Political trialogue
09/03/2011	EP: delegation of conciliation meeting
11/03/2011	Council: mandate discussed in Coreper
16/03/2011	CONC: Formal second meeting of the Conciliation Committee High Political trialogues in preparation of the Committee meeting
23/03/2011	EP: delegation of conciliation meeting
25/03/2011	Council: mandate discussed in Coreper
28/03/2011	CONC: Formal third meeting of the Conciliation Committee High Political trialogues in preparation of the Committee meeting
29/03/2011	CONC: Final decision by Conciliation Committee (no agreement)
11/05/2011	EP: Debate in Parliament

Sources: *Oeil (Novel Foods) 2011; PreLex (Novel Foods) 2011*

4.3 The budgetary procedure after Lisbon

4.3.1 *The legal base of the budgetary procedure*

The budgetary procedure is set out in a number of legal texts of which article 314 TFEU is the procedure's treaty base. Apart from the treaty, additional rules and practical arrangements are set out in the financial regulation applicable to the general budget of the EU (European Commission 2010a), the inter-institutional agreement on budgetary discipline and sound financial management (European Commission 2010b) and the rules of procedure of each institution.

Article 314 TFEU foresees four stages with time limits to be respected by the institutions. Since 1977 a 'pragmatic timetable' has been established. On the basis of article 314 TFEU and the time limits used in practice, the annual budgetary procedure is as follows:

- **Stage 1:** presentation of the draft budget by the Commission by 1 September at the latest (in practical terms by the end of April or at the beginning of May). The Commission is allowed to amend the draft budget in order to take account of new data or developments during the procedure and before it enters the conciliation stage.
- **Stage 2:** adoption by the Council of its position on the draft budget which is to be sent alongside with its motivation to the European Parliament by 1 October at the latest (in practical terms this happens already by the end of July).
- **Stage 3:** adoption by the European Parliament of its position – no later than forty-two days after it receives the Council's position. The EP can either approve the Council's position or not adopt a position in which case the budget is deemed adopted. It can also adopt amendments, in which case its position is then sent to the Council and the Commission and a Conciliation Committee is convened by the President of the European Parliament in agreement with the President of the Council.
- **Stage 4:** once the Conciliation Committee is convened it has twenty-one days to negotiate a common text. As with the Conciliation Committee in the ordinary legislative procedure, it is composed of representatives of all Member States and an equal number of MEPs. The Commission has a mediating role. If an agreement is found both the European Parliament and the Council have fourteen days to approve the joint text.

Important to note is that, if the Conciliation Committee fails to find an agreement within that time limit, the Commission must submit a new draft budget. In case no agreement has been reached by the beginning of the financial year, the EU has to work on a monthly budget of a maximum of one twelfth of the budget appropriations for each budget line of the preceding financial year.

As explained in the introduction to the case studies in Chapter 3, the procedure as amended by the Lisbon Treaty places the European Parliament on an equal footing by having eliminated the distinction between compulsory and non-compulsory expenditure and giving it a say on all expenditure¹⁸. In theory, the EP even has a stronger position than the Council in that it could impose a budget against the will of the Council if the Council did not approve the joint text negotiated in Conciliation and the EP confirms its previous amendments by a majority of its members and three fifths of the votes cast (Javelle, Schneider and Werner 2010: 3-4). It is however highly unlikely that the representatives of the Council – usually Coreper ambassadors – would agree to something in conciliation which their ministers in the Council would not approve.

The inter-institutional agreement on budgetary discipline of 1988, which was amended in 1993, 1999 and 2006, sets up a ‘reference framework’ for the annual budgetary procedures (Javelle, Schneider and Werner 2010: 4). An important issue in this agreement is that it formalises the triologue negotiations at the different stages of the procedure (European Parliament, Council, Commission 2006: 11). This is in contrast to the ordinary legislative procedure, where trialogues are still considered to be informal, except for those organised during the evening when the Conciliation Committee convenes. Yet, even those are not referred to in the treaties.

Now that the formal steps of the budgetary procedure have been introduced, the course of the negotiations of the first ever annual budget to be decided under the new Lisbon Treaty rules will be outlined.

4.3.2 The annual budget negotiations in practice – the 2011 case

Tables 4.5a and 4.5b show that the institutions needed two attempts to come to an agreement on the annual budget for 2011. All procedural steps were taken in the first round of negotiations but no agreement was found during the conciliation stage. In that case the treaty requires the Commission to submit a new draft budget to the budgetary authority, which it did eleven days after the failure in conciliation. It then took another two weeks of negotiations to find an agreement.

When looking at the timetable it is immediately clear that although some of the informal practices of organising triologue meetings have been formalised through the inter-institutional agreement, there is still a vast circuit of informal negotiations in between the formal trialogues. Seven formal trialogues were organised, of which three took place during the conciliation and one, on 6 December, which led to a political agreement “ad referendum” (Saarilahti 2011: 176). A first triologue is

¹⁸ Before the entry into force of the Lisbon Treaty the European Parliament had the final say on non-compulsory expenditure and the right to reject the budget as a whole.

rganised before the Commission formally submits its proposal where both branches of the budgetary authority set out their priorities for the next year. A second and third are organised to clarify the respective positions of the Council and the EP, after which the actual negotiations start. As in the novel foods case, here too, in conciliation we see high level political dialogues taking place. In this case the President of the European Parliament was the chief negotiator. The dialogues that took place in between can be seen as a preparation for the political dialogues.

Table 4.5a: First round of negotiations of the Annual Budget 2011

25/03/2010	Formal dialogue: priorities for 2011
27/04/2010	Commission draft budget published
30/06/2010	Formal dialogue: position of the Council explained
12/08/2010	Council position on draft budget published
20/09/2010	Committee referral announced in Parliament, 1st reading
07/10/2010	Vote in committee, 1st reading
11/10/2010	Formal dialogue: amendments of Parliament explained Budgetary report tabled for plenary, 1st reading
19/10/2010	Debate in Parliament
20/10/2010	Decision by Parliament, 1st reading
25/10/2010	Parliament's amendments rejected by Council
26/10/2010	Start of budgetary conciliation (Parliament and Council)
27/10/2010	Formal dialogue First meeting of the conciliation committee
04/11/2010	Formal dialogue
08/11/2010	Formal dialogue
11/11/2010	Second meeting of the conciliation committee
15/11/2010	Third meeting of the conciliation committee: no agreement

Sources: Oeil (Budget1) 2010, Saarilahti (2011: 178)

Table 4.5b: Second round of negotiations on the Annual Budget 2011

26/11/2010	Commission new draft budget published
06/12/2010	Formal dialogue: agreement found 'ad referendum'
08/12/2010	Vote in committee, 1st reading/single reading
10/12/2010	Council position on draft budget published
10/12/2010	Budgetary report tabled for plenary, 1st reading
14/12/2010	Debate in Parliament
15/12/2010	Decision by Parliament, 1st reading/single reading
15/03/2011	Final act published in Official Journal

Source: Oeil (Budget2) 2011, Saarilahti (2011: 178)

It is clear from these insights that both the formal and informal procedures of the budgetary procedure are similar to those of the ordinary legislative procedure. Both institutions are on an equal footing, which confirms the choice of taking Rights and Authorities as a “baseline factor”. Observations also confirm that apart from the formal treaty based procedure, there is recourse to informal contacts and negotiations.

Table 4.6 summarises the types of contacts observed in the cases.

Table 4.6: Types of informal contacts between the co-legislators

Informal bilateral contacts

Informal contacts at technical level between the co-legislators
(either with or without the Commission present)

Technical informal dialogues

Political informal dialogues

High Political formal dialogue

Before going into the analysis of the three other factors (resources, expertise and organising capacity), it is important to briefly explain the specific Rights and Authorities for the comitology case. This case is categorised under Lowi’s ‘constitutive policy’ field, which means that negotiations were held on new procedures according to which future comitology decisions would be taken. It is therefore useful to outline the limits and principles set by the treaty within which these procedures can be shaped.

4.4 Comitology after Lisbon: what role for the EP?

As explained in Chapter 3, the European Parliament has a lengthy history of trying to obtain a substantial role in the comitology system. After the 2006 reform which introduced the regulatory procedure with scrutiny, the Lisbon Treaty constitutes another major step forwards by introducing delegated acts in article 290 TFEU and distinguishing it from implementing acts in article 291 TFEU:

Article 290

1. A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.

2. Legislative acts shall explicitly lay down the conditions to which the delegation is subject; these conditions may be as follows:

(a) the European Parliament or the Council may decide to revoke the delegation;

(b) the delegated act may enter into force only if no objection has been expressed by

- the European Parliament or the Council within a period set by the legislative act.
For the purposes of (a) and (b), the European Parliament shall act by a majority of its component members, and the Council by a qualified majority.*
3. *The adjective "delegated" shall be inserted in the title of delegated acts.*

Article 291

1. *Member States shall adopt all measures of national law necessary to implement legally binding Union acts.*
2. *Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.*
3. *For the purposes of paragraph 2, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.*
4. *The word "implementing" shall be inserted in the title of implementing acts.*

Source: European Union (2010b: 172-173)

It is clear from reading article 290 TFEU that the treaty provides a post-hoc controlling role for the European Parliament and the Council for delegated acts adopted by the European Commission. These acts are of "general application" and supplement or amend "non-essential" elements of the legislative act. The concrete means of control listed by the treaty are the right to revoke the delegation and the right of opposition to a specific delegated act adopted by the Commission. Article 291 TFEU on the other hand, clearly puts the right to implement legislation in the hands of the Member States. However, where there are uniform conditions for implementation, the implementation is conferred to the Commission. Neither the Council nor the European Parliament has the right to control the Commission's exercise of these implementing powers. It is the Member States that have to exercise this control. This is an important innovation of the Lisbon Treaty, as under the previous regime the Council still had a role when certain thresholds were not met in the committee that exercised control on the proposed act¹⁹.

¹⁹ In the *management procedure*, which was mainly used for the implementation of agricultural measures and financial support programmes, the Commission could adopt the implementing measure only if there was no qualified majority against the proposal. In case this threshold was met, the matter was to be referred to the Council, which had the opportunity of adopting a different decision. Under the *regulatory procedure*, on the other hand, measures could only be adopted by the Commission if a qualified majority of Member States was in favor. Otherwise, the act had to be forwarded to the Council which could ultimately adopt the act. This procedure, used for all implementing measures having a 'legislative impact', especially in the field of health and safety of persons, foresaw also the possibility for the EP to exercise its right of scrutiny in case of the lack of a positive opinion within the Committee.

It is also apparent from the two articles that although the Commission has stated repeatedly the two instruments do not overlap (European Commission (Comitology) 2009: 3; European Commission (Comitology) 2011b: 9) the treaty does not actually bring about a clear-cut distinction between delegated and implementing acts. Both instruments are being provided without explicit guidance on when either instrument ought to be applied. As Hofmann (2009: 496) pointed out, *“both [articles] have very different wording and do not seem to be written in the same style and approach”*. Indeed, the criteria of 290 and 291 are not mutually exclusive: the provisions on delegated acts are clearly formulated in terms of scope and consequences while the implementing acts article is defined on the basis of the rationale behind it, i.e. the necessity for uniform conditions to apply. As will be explained in the subsequent chapters, a discussion arose as to whether or not the regulation providing for the mechanisms of control for the adoption of implementing acts should spell out the difference in the use of these instruments.

In conclusion we could say that the case of comitology provides an interesting starting point for further analysis in the light of the European Parliament’s rights and authorities in constitutive policy. The EP obtained a formal treaty based role in the control of delegated acts and is co-legislator to set the mechanisms for control in the regulation on implementing acts. At the same time, articles 290 and 291 are phrased in such a way that they are not clearly delineated and provide margin for interpretation which has given rise to inter-institutional tensions and conflict (see Christiansen and Dobbels 2012), because the involvement of the European Parliament (and the Council) is not the same for both instruments. Here, as with the ordinary legislative procedure and the budgetary procedure, Council and Parliament are formally speaking on an equal footing.

The analysis in the subsequent chapters will show that the above mentioned tensions did effectively shape the EP’s position and had an impact on the negotiations.

4.5 Conclusion

As the treaty grants certain powers or competences to the legislators and the budgetary authority, it is up to each institution to organise itself to employ these powers. The central research question of this thesis aims to identify the conditions under which there is a mismatch between the European Parliament’s formal and informal powers and its capabilities to exercise them in inter-institutional negotiations.

This chapter has not only confirmed that the EP’s powers are extensive, it has also shown that the choice to take ‘rights and authorities’ as a “baseline factor” for further analysis is justified. In both the ordinary legislative procedure and the budgetary procedure, the European Parliament and the Council of ministers are

procedurally on an equal footing. The articles which set the framework for the new system of comitology also provides for equal rights for both institutions. In addition, analysis of the informal procedures and practices that have emerged since the mid-nineties, with triilogue negotiations and a vast number of first reading agreements as prime examples, does not suggest that Parliament is structurally disadvantaged. Indeed, chapter 2 showed that triilogue negotiations emerged in the mid-nineties after pressure from the European Parliament itself calling for more coordination and information exchange between the institutions. An inter-institutional declaration of 2007 (European Parliament 2012a: 243) judged triilogue negotiations as an efficient tool to negotiate agreements and even promoted their use. In addition, this chapter gave indications that the European Parliament has taken initiatives to meet concerns on resources, organising capacity and expertise that were raised in the light of the steep rise in first reading agreements. The content and effects of these initiatives will be analysed in the subsequent chapters.

Now that the background, conceptual framework and procedural baseline for the analysis has been set, each of the following chapters will focus on one of the remaining capability factors. First a more concrete explanation of each factor will be given, after which each case will be studied from the perspective of that factor with the aim of identifying its impact on the European Parliament's performance in inter-institutional negotiations.

CHAPTER 5

Resources

Rights and authorities are one thing, but as Rokkan puts it “votes count, but resources decide” (Rokkan in Olsen 2007: 16). March and Olsen (1995: 93) define resources as the “assets that make it possible for individuals to do (or be) things” (March and Olsen 1995: 93). The analytical framework set out in Chapter 3 linked resources with the ability of an institution to influence the outcome of negotiations. Influence is related to the size of - and access to resources as they limit or facilitate the capacity to act (Egeberg 2006). It is however important to keep in mind that, as explained in Chapter 3, resources alone do not determine what an institution can accomplish as the organisation, distribution and mobilisation of these resources is an important factor too (Olsen 2007: 15-16). These elements will be addressed in the next chapter on Organising Capacity. Also, resources have to be qualified: not only the number of staff or MEPs counts, but perhaps even more so their background, level of expertise and experience – issues that will be addressed in Chapter 6.

As set out in the analytical framework the focus in this chapter will lie on resources as such: the time and budget spent on a given file, as well as the staff and sources of information involved in the process. The assumption formulated in Chapter 3 stated that because of an overload of work and information and limited resources in terms of time and staff, the capability factor ‘resources’ would have a negative impact on the European Parliament’s capability to influence the outcome of inter-institutional negotiations and account for it falling short of its powers. In the subsequent sections these four types of resources will be defined elaborately in the context of the European Parliament’s activities, and their impact will be assessed in each case.

5.1 The importance of the EP's financial resources

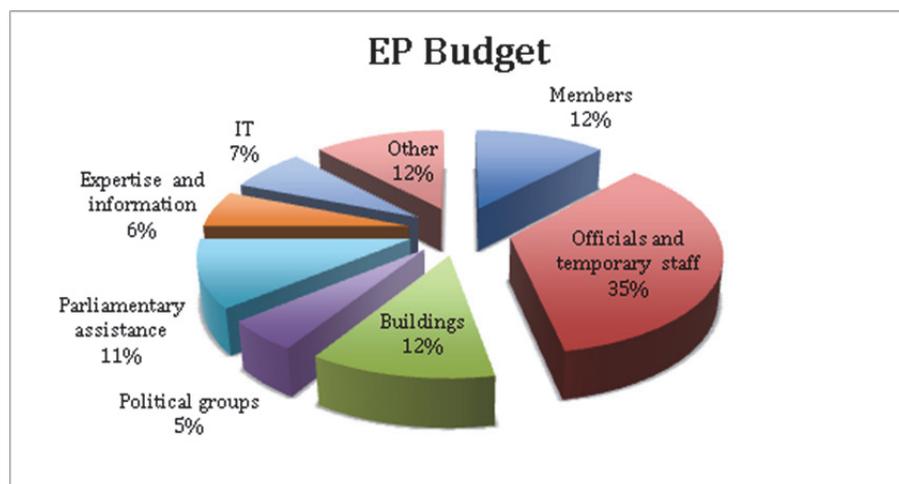
5.1.1 Budget as a resource in the context of the EP's activities

In terms of budget, the elements most important for the EP's capabilities in the context of this thesis are its budget for staff and the budget earmarked for input into the policy process, such as carrying out studies or organising hearings. Supporting staff, and the information available to MEPs have a direct impact on the formulation of the EP's position in inter-institutional negotiations. Other expenses such as translation services, interpretation, and the maintenance of the buildings are unlikely to have an effect on the EP's performance in these negotiations and are thus not included in this analysis. In what follows, the relevant elements of the EP's budget will be filtered out, quantified and qualified. In this way, the general concept of 'budget' as an element of the EP's capabilities will be defined more clearly before it is analysed in each of the three cases.

The budget of the European Parliament makes up about 1% of the total budget of the EU and one fifth of all administrative expenditure of the EU institutions (European Parliament 2012b). From 2008 until 2011, the years during which the cases in this study were negotiated this meant 1.453 billion euros in 2008 (Staes 2010), 1.529 in 2009 (European Parliament 2010a: 3), 1.616 in 2010 (European Parliament 2011: 3) and 1.686 billion in 2011 (European Parliament 2012b: 3). The EP's budget has of course significantly risen over time (from 775.6 ECU for all the European Communities' administrative expenditure in 1979 to almost 1.7 billion euros for the EP alone now). This is partly because of enlargement, the expansion of its competencies and increased recruitment of personal assistants and group staff (Michon 2008, Neunreither 2006).

In general terms there are seven major headings in the EP's budget as shown in figure 1. Around 35% of the budget goes to staff expenses for the more than 6,000 people working in the General Secretariat or in any of the EP's Political Groups (European Parliament 2012b: 14). This heading however also covers interpretation costs, translations and staff mission expenses. 12% of the budget is dedicated to the maintenance, rental and purchase of the EP's buildings in Brussels, Luxemburg and Strasbourg and its information offices in all 28 Member States. 11% goes to parliamentary assistance and 5% goes to the political groups, parties and foundations. 7% goes to IT (Information Technology) and 6% is earmarked for 'expertise and information'. This leaves about 12% for MEPs' expenses including their salaries, travel costs, offices and personal assistants.

Figure 5.1: Chart of the EP's budget



Source: European Parliament 2012b

It is the budgetary resources earmarked for officials and temporary staff (group staffers and civil servants from DG Internal Policies and DG External Policies), the budget for the heading 'expertise and information', and that for parliamentary assistance which are the key elements for the capabilities defined in this research. Before going into the substance of these headings, the table below shows the qualitative evolution of these headings for the years during which the cases were under negotiation.

Table 5.1: EP budget related to resources as a capability factor (2008-2011)

Year	Officials & temporary staff			Expertise & information			Parliamentary assistance		
	Amount in euros	Percentage in overall EP budget	Rise or drop from year before	Amount in euros	Percentage in overall EP budget	Rise or drop from year before	Amount in euros	Percentage in overall EP budget	Rise or drop from year before
2008	483,919,957	35%	+6%	100,405,636	7%	+38%	154,301,747	11%	+8%
2009	502,188,864	35%	+4%	93,647,680	7%	-7%	153,358,430	11%	-1%
2010	532,628,082	34%	+6%	97,821,308	6%	+4%	153,418,841	10%	+0.04%
2011	540,454,419	35%	+1%	92,058,312	6%	-6%	170,564,354	11%	+11%

Sources: European Parliament 2009: 11-12; European Parliament 2010a: 11-12; European Parliament 2011: 12; European Parliament 2012b: 12

The overall picture that emerges is one of an increase in the budget for officials, temporary staff and parliamentary assistance on the one hand, and a declining budget for expertise on the other.

The increase in the category 'officials and temporary staff' can be explained by the recruitment and remuneration of a total of 283 extra civil servants²⁰, promotions, and the pre-set indexation mechanism which aligns salaries with inflation (European Parliament 2009: 12; European Parliament 2010a: 13; European Parliament 2012b: 16).

The increase in the budget for parliamentary assistance stems mainly from the extra 1.000 euros per month received by MEPs in 2008 for parliamentary assistance (European Parliament 2009: 18) and the additional 1,500 euros per month added to the MEPs' budgets in 2010 (European Parliament 2011: 25). Both this last increase and the additional recruitment mentioned above were argued to be necessary due to the entry into force of the Lisbon Treaty and the expansion of the EP's competencies and legislative work.

The bulk of the budget on expertise and information goes to information, publication and participation in public events (between 15 and 30%), the organisation and the reception of groups (around 30%), audio-visual information (around 15%) and Parliament's webtv (around 10%) (European Parliament 2009: 17; European Parliament 2010a: 18; European Parliament 2011: 19-20; European Parliament 2012b: 20). The significant rise in the budget of 2008 was due to the preparation for the 2009 European parliamentary elections. By contrast, the entry into force of the Lisbon Treaty does not seem to have had an effect on the budget for expertise. The percentage reserved for the actual 'acquisition of expertise' remained stable around 7 or 8% of this heading or 0.3% of the total budget²¹. 'Acquisition of expertise' includes ordering studies, organising hearings and workshops with external experts and the activities of the two units falling under the Directorate of Impact Assessments, namely the unit for Impact Assessments itself and the unit European Added value. Both directorates combined have a budget of 1 million euros at their disposal (interview 36). The functions of these units will be discussed in more detail below.

Not included in the table, but still important to mention is the EP's budget for its own library and documentation centre which is responsible for briefings to individual members. Its function will be discussed in the section on information, for now it suffices to know that due to reforms its budget rose substantially from 3,565,980 euros in 2008 to 4,593,826 in 2011 (European Parliament 2009: 30; European Parliament 2012b: 40).

Also not included in the table is the budget for 'further training' for officials of the EP. 'Further training' includes training for improving staff skills (e.g. financial, ICT and administrative formations) and the performance and efficiency of the

²⁰ of which 75% were assigned to the General Secretariat and the rest recruited by the political groups

²¹ In 2012 this amounted to 8.5 million euros

institution. The EP provides both in-house training on procedures and exchanges of experiences among civil servants and more thematic trainings which are often organised by an external partner such as EIPA (European Institute of Public Administration) in Maastricht or ENA (Ecole nationale d'administration) in Paris. It was difficult to determine the exact amount for each year as this item was transferred from one heading to another. At 3,680,850 euros in 2010 this amounted to 0.23% of the EP's budget (European Parliament 2010a).

It is clear that in order to qualify these percentages and figures, the number and level of the supporting staff carrying out policy-making tasks, the number, types and the quality of briefings, studies and trainings are important in order to make a comprehensive assessment of these budgetary figures. These elements will be discussed in the following sections after an analysis of the role played by budgetary resources in the three cases, starting with the comitology case.

5.1.2 The role of budgetary resources in the case of comitology

In the comitology case no budget was used to order studies, organise hearings or workshops, or hire extra staff by members, groups or the secretariat. The nature of the comitology case meant that little external expertise was required. Being an institutional file in which the main purpose was to defend and implement the rights of the European Parliament in relation to articles 290 TFEU and 291 TFEU, the EP relied first and foremost on its own in-house sources of information as will be explained below. No studies or outside expertise was deemed necessary.

The fact that no budget was used for extra staff or external expertise does not seem to have affected the EP's performance in this case. Further analysis will show that its weaknesses can be explained by other factors.

5.1.3 The role of budgetary resources in the case of novel foods

Budget did play a role in the novel foods case. The policy department of the ENVI committee organised a workshop in September 2008 after the rapporteur had submitted her draft report and before the committee vote that was scheduled for December 2008. This workshop was held to get input on different aspects of the novel foods regulation, a point that will be addressed in the section on information below. Six outside experts were invited: the CEO of the institute on nanotechnology (IoN), a representative of the European Food Safety Organisation (EFSA), a professor from the department of food science of the University of Bologna, a representative from the European Consumers' Organisation BEUC (Bureau européen des unions de Consommateurs), a representative from Group Danone, and one from the Centre for Economic and Social Aspects of Genomics (CESAGEN) of Cardiff University. Contributions were made on issues such as nanotechnology, market monitoring, labelling and cloning. However, the workshop was

not seen as very valuable because the independent experts that made interventions merely gave background information on their different fields. The only substantive interventions directly related to the proposed regulation were made by the interest organisations, BEUC and Danone Group. One interviewee described the workshop as a missed opportunity to get independent advice and input and concluded that it only contributed in giving interest groups a forum to present their views (interview 16). Others complained that the selection of experts was biased as it did not include any farmers organisation or representative from the cloning industry to speak about the impact on trade and the feasibility of a potential ban (interviews 17 and 18). This confirms Neunreither's earlier findings (2006: 52) that the attraction of hearings and workshops is severely diminished because of their limited impact or usefulness.

The budget for acquisition of external expertise thus played a role, but seems to have produced a biased, or at least incomplete input into the policy-process. This finding is directly related to the need to get independent and neutral information, which is addressed in the section on information (see 5.3).

5.1.4 The role of budgetary resources in the case of the 2011 budget

The BUDG (Budgets) committee too has a budget available for studies. The studies ordered in 2010 in the run-up to the annual budget of 2011 included the misuse of EU funds by organised crime, financing NGOs (non governmental organisations) from the EU budget and the streamlining of rules for participation in EU research funding (European Parliament 2013a) which were unrelated to any of the issues that were at stake during the negotiations on the annual budget for 2011. Several interviewees denounced this as a structural problem and described the handling of the budget for studies as *"a waste"* (interviews 30, 39 and 40). *"It basically boils down to a shopping list of what MEPs find interesting. It would be better if the secretariat said no from time to time and actually tied the ordering of budgets to the annual budgetary discussions so that we have some real input"* (interview 30). The call for a more neutral selection of studies seems evident (interviews 39 and 40). In addition, the quality of the majority of the studies is questioned. Studies carried out by the policy department themselves are said to be summaries of existing literature, rather than looking forward (interview 30). Studies that are outsourced, on the other hand, are often poorly circumscribed, take too long to be delivered and do not deliver the desired results. This confirms Neunreither's earlier findings (2006: 52) that studies take too long or are misdirected so that they have no impact on running debates over legislation.

It is thus fair to say that there is a problem with the handling of the budget for studies in the BUDG committee. However, whether this really weakened the EP's position in inter-institutional negotiations is questionable. Studies can be used to back up arguments and positions. The analysis in the next chapter will show that by

having established an extensive coordination system in which all opinion-giving committees give bottom-up input to the BUDG committee, already a lot of expertise is tapped into. In addition, the next chapter will show that a well-substantiated position often does not matter in budget negotiations with the Council. Member States approach the budget from the perspective of their ministries of finance and mainly see it as both a financial burden and source to draw money from for national projects. Even though the BUDG committee's budget could be handled better, it is therefore doubtful whether it would really strengthen the EP's negotiating position.

5.1.5 Conclusions

It can be argued on the basis of this analysis that budgetary resources only play a minor role in the day-to-day inter-institutional negotiations. In two of the three cases – the budget case and the comitology case – it had virtually no impact. It could be argued that this has to do with the nature of these cases, one being distributive and the other being constitutive. Indeed, the novel foods case pointed out that there is a need and demand for independent input into the policy process for regulatory policy, a finding which corresponds to that of Marshall (2010) and Fouilleux, de Maillard and Smith (2005). This need can be addressed by a budget for the acquisition of expertise, but the governance of that budget does not seem to deliver the desired results. First, the general analysis indicated that most of the budget under the heading of expertise goes to communication. Second, the novel foods and the budget case showed that the budget available for committees is not directed to deliver input that can be used in negotiations. One of the reasons is that it is the group coordinators that decide on how to use the budget after having collected requests from individual MEPs. This leads to a “shopping list” of studies or workshops that is either not related to the issues at stake or biased in the results it produces. In conclusion, it is fair to say that, even though its potential impact on the EP's position in inter-institutional negotiations is limited, the budget at the disposal of committees is not used to its full potential.

5.2 The importance of time in the EP: work overload in a three-day-work-week

5.2.1 Time as a resource in the context of the EP's activities

Perhaps even more than budgetary resources, time is a key resource in negotiations. The temporal component of decision-making is often neglected, but shapes the process, determines the control of actors on that process and has an impact on its outcome (Ekengren 2002). When “[t]ime becomes scarce (...) it necessitates limitations and terminations, as well as agenda setting” (Luhmann in Nowotny 1992: 494).

Time is not only to be understood as the pace of decision-making procedures – for instance the deadlines in second reading or the limited time available in the conciliation stage – but also as the individual time available to the officials dealing with the file and as the actual time spent on a file. This last aspect is something subjective, a ‘social fact’, rather than a ‘brute’ material fact that is given (Ekengren 2002: 19). Indeed, as demonstrated below, the formal ‘three plus one month’ limit in second reading is of a different nature than the time spent by MEPs and their assistants on the preparation of a file. Also, formal deadlines are not always the best indicators for the actual time spent on a file by the institution as a whole. As explained in the previous chapter, the first reading has no deadlines, whereas second and third reading have strict time constraints. There is no escaping the extreme pressure during the conciliation phase, and a first reading agreement may take as much time or even longer than a second reading agreement (Rasmussen 2012). Yet, it is also necessary to look beyond the formal deadlines, identify the overall time spent on a file and come to an assessment of individual time management by the officials involved. Certain time limits are fixed and cannot be deviated from, but within these boundaries other factors such as workload, position in the list of priorities, as well as personal choice determine the allocation of time as a resource. In the following sub-sections these three components will be briefly elaborated: the formal deadlines in the ordinary legislative procedure and the budgetary procedure, the allocation of time within these boundaries and individual time management within the EP.

Time constraints imposed by the procedure

As already discussed in Chapter 4 on Rights and Authorities (see sections 4.2 and 4.3), the ordinary legislative procedure has no time limits in first reading, “the main limitation being the level of enthusiasm of a particular Presidency to conclude a dossier during its six months and the readiness of Parliament to match that enthusiasm” (Rasmussen and Shackleton 2005: 13). In second reading the time limits are more constrained leaving twice three to four months for the institutions to negotiate a deal or establish their positions. In conciliation, time constraints are even stricter with six to eight weeks for the co-legislators to find an agreement.

As explained in Chapter 4, the time limits in the budgetary procedure are enshrined in the treaty as well:

- **Stage 1:** presentation of the draft budget by the Commission by 1 September.
- **Stage 2:** adoption by the Council of its position on the draft budget by 1 October.
- **Stage 3:** adoption by the European Parliament of its position – no later than forty-two days after it received the Council’s position.

- **Stage 4:** the conciliation committee has twenty-one days to negotiate a common text. If an agreement is found both the European Parliament and the Council have fourteen days to approve the joint text.

Formal time limits are however only the boundaries within which negotiations take place and time is allocated by the players. Both the dynamics that affect time within these boundaries and the personal time available to members and officials are addressed in the following sections.

Time allocation within the procedures

As we will see in Chapter 7 on Organising Capacity, the internal coordination of the EP has its own preparation mechanisms and therefore also its own deadlines. This is a classic feature of any legislature. In general terms for the EP the following applies:

- **Draft deadline:** After an initial exchange of views in the committee responsible for the file, a deadline is set by which the rapporteur needs to produce his or her draft report.
- **Amendment deadline:** Once the draft report is out, a discussion is held and a new deadline is set for amendments to the draft report.
- **Opinion-giving committee deadline:** In addition, there may also be deadlines for opinion-giving committees to give input to the main committee responsible for the file.
- **Plenary deadline:** The time between the committee finalising its opinion and the discussion in plenary is important to allow all members to study the text and possibly submit amendments.
- **Translation deadline:** Finally there are the deadlines necessary to translate documents before they are put to vote and jurist-linguist review (Code de Multilinguisme).

In addition, each procedure has its own implications on time. Rasmussen and Toshkov (2011) for instance, showed how co-decision (now the ordinary legislative procedure) is much more time consuming than for instance the consultation procedure. This is partly because members allocate more time to areas of competence where the EP's power is greater, but also because of the highly detailed work required by co-decision. Indeed, a member involved in a co-decision file not only has to know the details and implications of the legislation under negotiation, but also needs the time to discover the preferences of all other actors involved – both in- and outside the EP. Finally, time is needed to negotiate

internally on the EP's position and inter-institutionally with the Commission and the Council to come to an agreement (Rasmussen and Toskhov 2011: 77). With an increasing number of domains falling under the Ordinary Legislative Procedure and thus an increasing workload, the pressure for efficiency enhancing measures has become high.

The time-consuming nature of co-decision and the high workload resulted in the emergence of informal circuits of negotiations that reduced the internal deadlines of the EP to mere formalities. As discussed in the previous chapter, the establishment of triologue negotiations and the revision of the co-decision procedure in the Treaty of Amsterdam resulted in a steep rise in the numbers of first reading agreements over the last decade (see table 4.1). In recent years, this trend met with fierce criticism inside the EP. For reasons of transparency, accountability, and inclusiveness, members are demanding more time for deliberation and control. As a result, the first reading is becoming more and more formalised (Rasmussen 2012: 3-6, 9; Maurer 2003: 236-237; Rasmussen and Shackleton 2005: 13-14) – an issue that will be dealt with in more detail in Chapter 7 on Organising Capacity.

Where the initial reason for working towards first reading agreements was to bypass the formalities of the two other stages, we are observing a rebalancing in terms of time spent on first readings in recent years. More time is taken for political discussion at this early stage, especially when salient issues are on the table and where there is a level of disagreement between the co-legislators (Rasmussen 2012: 17). The result is that first reading agreements now take on average longer than files concluded in second reading. In addition, the EP has introduced a “cooling-off period” of at least one month between the first reading vote in committee and the vote in plenary in order to “facilitate deliberations within the political groups on legislative reports” (Kratsa-Tsagaropoulou et al. 2009: 25). This rule is however, not consistently applied.

What was stressed regarding first readings, can also be said for the second reading and conciliation: formal deadlines only tell half the story. First, there are the so-called “early second reading agreements” in which the EP has voted its opinion in first reading, but where the first reading position of the Council is negotiated and confirmed by the EP early in the second reading. Second, the deadline of three plus one month during second reading is – at least for the EP – much shorter in reality because of the need to vote in plenary (Rasmussen and Shackleton 2005: 13). As the amendments or report voted in the committee, whether negotiated with the Council or not, still need the endorsement of the plenary within the time limits set by the second reading, the time period for the EP to negotiate is – in reality – reduced by one month. For the conciliation stage, it is the other way around, as the strict time frame of six to eight weeks is less rigid in reality. It is often already clear before the rejection of the EP amendments by the Council that conciliation will be

necessary, giving extra time to prepare the ground for negotiations. In addition, the time foreseen to convene the actual conciliation committee – also a period of six to eight weeks – is often used for informal negotiations. In contrast to what the formal deadlines suggest, conciliation thus offers a relatively long and focused period for negotiations.

Not only does the ordinary legislative procedure have its own dynamics, the budgetary procedure too has its own timing within the boundaries set by the treaty. An informal calendar has emerged, giving more time for negotiations by letting the procedure start three months before the time limits stipulated in the treaty. The emergence of an informal calendar in the budgetary procedure was designed to give the institutions enough time to form their position and come to an agreement more easily. The fact that the whole procedure is brought forward also means that the country assuming the Council's rotating presidency in the second half of the year, already starts presiding working party discussions on the budget well before the start of their presidency. The following calendar has consequently emerged:

- **Stage 1:** presentation of the draft budget by the Commission by 1 September at the latest (**in reality by the end of April or in the beginning of May**).
- **Stage 2:** adoption by the Council of its position on the draft budget by 1 October at the latest (**in reality by the end of July**).
- **Stage 3:** adoption by the European Parliament of its position – no later than forty-two days after it has received the Council's position.
- **Stage 4:** Conciliation Committee which has twenty-one days to negotiate a common text. If an agreement is found both the European Parliament and the Council have fourteen days to approve the joint text.

As demonstrated, each procedure and phase in the negotiations has its different dynamics in terms of time. The time limits on paper are not those in reality. First reading agreements were made possible for reasons of efficiency, but increasing pressure to formalise them inside the EP is making them on average longer than agreements reached in second reading. The budgetary procedure is much longer than stipulated by the treaty and second reading of the ordinary legislative procedure in reality much shorter because of the necessity of intra-institutional coordination.

Between the boundaries set by the treaty and the time allocation within each procedure stands the individual MEP or official with his or her own time management as the final element of time as a type of resource.

Individual time allocation

Time is a precious resource for a person working inside the EP, as is stressed in the academic discourse (see Rasmussen and Shackleton 2005; Rasmussen and Toshkov 2011; Busby 2011; Busby and Belkacem 2013). Amy Busby (2011: 3) identifies three characteristics of EP-office life: limited time, information overload and technicality. Information as a type of resource will be discussed in the next sub-section, and technicality will be dealt with in Chapter 6 on Expertise. Here the focus lies on the time available to the individual member or official.

The rhythm of work in the European Parliament is defined by different types of weeks. There is the week in which the committees meet, the week during which the political groups meet, the plenary week (in Strasbourg, except for mini-plenaries which are held in Brussels) and the week during which time is spent on external activities, known as the 'green week' because of its colour on the calendar. As Busby (2011: 7) writes, "this system formally institutionalises the priorities for the MEPs and ensures time is allocated to be spent on these activities". Indeed, the different weeks reflect MEPs' tasks: in-depth legislative work is done during the committee week, after which political groups meet to further define and coordinate their position and make sure everyone is on the same page, voting is done during plenary sessions and constituency work and study trips are done during green weeks.

Apart from every week having a different focus, it is important to know that MEPs are only present from Monday (usually in the afternoon) to Thursday. Friday is – at least in theory – spent in their constituencies (Busby 2011: 7). Taking account of travelling, the time actually spent in the EP by most members is usually about three days a week "lead[ing] to a feeling that there is never enough time (...) and time is a precious commodity for MEPs" (ibid.: 8).

Also important to note, is that not all time is spent on legislative work. Everyone visiting the EP is struck by the plethora of events organised at its premises. From lobby events or campaigns by interest organisations, over concerts and film festivals, to hearings and press conferences, the EP seems like a never-ending circus of events. On an individual level MEPs thus receive hundreds of requests a year to attend such events, to grant interviews – both from the media and academics –, to have meetings with lobby groups, to take part in debates, to host visitors, to be a guest at a festival, etc... These events take up much time of an MEP's day and often interferes with his or her work.

The time when an MEP's agenda is most overloaded is during the conciliation stage. As one interviewee put it: "unfortunately life does not stop during conciliation" (interview 14). Indeed, during a conciliation MEPs are forced to dedicate more of their time to a given file allowing them to dive into a subject that

lies not necessarily in their field of expertise. At the same time their committee, group, constituency and other parliamentary work does not come to a halt. Time management is thus a constant juggling of priorities. Indeed, apart from actual time that is available, the priority given to certain tasks or files further substantiates the assessment of individual time as a resource. The time dedicated to a file is often dictated by its position on the list of priorities.

As Rasmussen and Shackleton (2005: 13) stated: “It is extremely difficult to assess in general terms whether the length of time available for negotiation as the procedure moves along has an impact on the extent to which negotiators can influence policy results”. By using the method of process tracing and by looking both at the time constraints and dynamics related to the procedure on the one hand, and personal time management on the other, it is the aim of the following sections to assess the impact of time on the outcome of the negotiations for each of the three cases.

5.2.2 *The role of time in the case of comitology*

Time related to the procedure and negotiation dynamics

The proposal for a regulation laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (hereafter the comitology regulation) falls under the ordinary legislative procedure. As explained in Chapter 3, the negotiations on this regulation ran in parallel with negotiations on a Common Understanding defining practical arrangements for the use of delegated acts. Being a gentlemen’s agreement, there was no predefined procedure and therefore no formal time limits for negotiating the Common Understanding. Tables 4.2 and 4.3 in Chapter 4 showed the timing of the intermediate steps between the submission of the Commission proposal for a regulation and the adoption of both instruments.

The comitology regulation was adopted in first reading, only nine months after the Commission had submitted its proposal and entered into force three months later. This is remarkable given the importance attributed to the file by all three institutions (see Chapter 3 section 3.4.2). The questions that are to be raised are: how did Parliament influence the timing? And did the timing have an impact on the outcome of the negotiations?

First, it is necessary to know that the treaty does not mention a transitional period between the entry into force of the treaty and that of a new comitology regulation. In the event, the initial ‘No’ in the first Irish referendum on the Lisbon Treaty created a high degree of uncertainty and, more importantly, made practical preparations anticipating the ultimate coming into force of the treaty impossible. The subsequent objections raised by the Presidents of Poland and the Czech

Republic had a similar effect. The impact of these developments was that, in the end, once the final agreement on the Lisbon Treaty had been reached and preparations could start in earnest, less than two months remained until it entered into force. Therefore, policy-makers had to face the fact that in the period immediately after the treaty coming into force, transitional arrangements had to be made ad hoc. In the case of comitology this meant that in December 2009 the three institutions adopted a joint declaration stating that they:

undertake to endeavour to achieve speedy agreement on the new regulation, with a view to its entry into force already during the Spanish Presidency. In the meantime, Council Decision 1999/468/EC of 28 June 1999 continues to apply, with the exception of the regulatory procedure with scrutiny, which is not applicable. (European Parliament, Council and Commission, 2009)

The declaration was later adapted to read: “have agreed to continue using, where appropriate and for a period which should not exceed one year, Council Decision 1999/468/EC of 28 June 1999 (...)”. The three institutions had thus set themselves first an ambitious deadline of six months, then of one year to conclude the negotiations on a new comitology regulation.

This is remarkable given that this was the most fundamental overhaul of the regulatory framework since 1987, and a reform which for the first time had to be negotiated according to the ordinary legislative procedure. Yet, it is even more remarkable that just nine months after the Commission’s proposal was published, Coreper effectively concluded the file by 1 December 2010 and the European Parliament, subsequently approved it during the plenary session of 16 December 2010. The swift adoption of the comitology regulation hides the fact that negotiations were difficult – especially inside the Council; something that will be addressed in detail in Chapter 6. The willingness of all three institutions to work towards a deal in first reading and the awareness of the legal vacuum in which decisions were taken between the entry into force of the Lisbon Treaty and the entry into force of the regulation explain the short time lag for adopting the regulation. In addition, the ambitions of both the Spanish and Belgian Council presidencies attributed greatly to the short time frame in which the negotiations took place.

Looking at the European Parliament’s role in the timing of the negotiations, it is important to point out that it came late into the actual negotiations. Even though the rapporteur (Jozsef Szajer of the European People’s Party) had already adopted an opinion on the future of comitology before the Commission had submitted its proposal, the first draft report was only adopted by the end of May 2010. This was mainly because twelve other committees wanted to give their (non-binding) opinion. By the time most of these committees had submitted their reports, the Council had already held eight meetings of their Friends of Presidency working

group and was trying to find a 'general approach' at Coreper level. Important in this respect, is to point out that this general approach had been checked and informally negotiated with the Commission. Indeed, while Parliament's rapporteur was waiting for the reports of twelve associated committees, the Council was already negotiating with the Commission on an amended text. Even though the Commission only formally gives its views once a political agreement is found in the Council, the fact that the general approach was informally negotiated between the two institutions should not be underestimated. Indeed, some of the elements in the amended text, such as the introduction of an appeal committee, were already considered '*acquis*' by both the Council and the Commission (for a discussion on the substance of the negotiations see Chapter 6 section 6.2.2). By the end of May 2010 the amended text was deviating so much from the original proposal, that some of the amendments Parliament was considering had become redundant or outdated. It had also become clear that the Council would not accept any more changes to the compromises it found on the two most political problems of trade and voting arrangements (again see section 6.2.2), which left very little for the Parliament to fight for. In the end, the final agreement was reached in only a couple of trilogue meetings, giving the correct impression that negotiations between the Council and the Parliament had been relatively unproblematic.

The time pressure generated by the entry into force of the Lisbon Treaty and the deadline agreed upon by all three institutions thus worked to Parliament's disadvantage. Coming late into the negotiations, because of its own internal processes, it found the Council and the Commission in advanced stages of their bilateral negotiations, meaning that some amendments were already 'cemented'. This in combination with the commitment of all three institutions to go for a first reading agreement, gave Parliament very little time and scope to influence the further outcome of the negotiations, as will be shown in Chapter 6.

A further proof of the fact that time played against the European Parliament is the date of adoption of the Common Understanding. Originally, the European Parliament had linked the adoption of the Common Understanding to that of the comitology regulation. The Common Understanding was negotiated at the request of the EP, even though the treaty required no further measures to implement article 290 TFEU on delegated acts (Christiansen and Dobbels 2012). Being the main institution demanding a Common Understanding, to make the link with the comitology regulation was important to ensure that it would definitely be adopted. However, in the end, the EP was forced to give up this link as negotiations on the regulation were concluded before the Common Understanding had been thoroughly discussed in the EP (see Chapter 7 section 7.2.1 for more details). The rapporteur tried to apply the EP's internal rule on the cooling-off period, but in the end could not resist the pressure of the two other institutions to proceed with the adoption of the regulation before the Common Understanding was adopted.

Individual time management

As explained above, individual time allocation is often related to the position or function one has and the priority given to the file. Whether a file is high on the priority list and whether it is so for a number of MEPs tells us something about the degree to which it is politicised. The concept of politicisation will be further substantiated in the next chapter. At this point it is important to note that highly politicised files are associated with more time being dedicated to them by more actors (De Wilde 2010). The EP has traditionally attached great significance and time to institutional – or in Lowi's terms 'constitutive' – issues. The expansion of co-decision as discussed in Chapter 3 is one such example. In the area of comitology, the EP has a long-standing quest of having a say in the implementation of legislation at EU level. However, on an individual level, this had in the past been an issue in which only a minority of MEPs had taken an interest. In recent years, some of these key players who had traditionally championed the Parliament's rights under comitology (such as Richard Corbett) had left the institution after the 2009 election.

It should therefore not come as a surprise that in 2009-2010 the comitology dossier raised little interest among MEPs. The Common Understanding on delegated acts was regarded as more of a technical project, and was therefore mainly dealt with by civil servants. The same observation can be made with regard to the new comitology regulation. Apart from the rapporteur, only the MEP of the Greens/EFA (Greens/European Free Alliance) group was present and active in the trialogue negotiations. Neither the S&D (Progressive Alliance of Socialists and Democrats) group nor the ALDE (Alliance of Liberals and Democrats for Europe) group in the responsible JURI (legal affairs) committee dedicated much time to the comitology file. Among the opinion-giving committees, the chairs of the INTA and AGRI (Agriculture and Rural Development) committees raised concerns on issues related to their policy fields. However, their demands seemed to come too late in the game as the rapporteur concluded the file before these committees really came to grips with the issue (interviews 22 and 23).

As the file was not very politicised and thus low on the priority list, little time was dedicated to it by shadow rapporteurs or other MEPs. The file was thus handled almost exclusively by the rapporteur and his supporting staff (assistants, secretariat civil servants and political group staff of the EPP). It will be argued in Chapter 6 that the combination of the EP coming late into the negotiation game and the fact that few MEPs took an interest in the file weakened the position of the EP on the substance of the negotiations as it missed input on certain crucial elements.

Findings

In this case study, time appears to be an essential element to explain the outcome of the negotiations. Where according to the treaty, first reading can take as much time as needed, the dynamics during the negotiations made that time worked against the European Parliament. Having been busy internally defining its own position, the EP was absent when important amendments to the text were agreed between the Commission and the Council. The self-imposed deadline to adopt the regulation in first reading and within a year therefore left little room for Parliament to make fundamental changes to the text. In addition, the limited interest raised by the file meant that very few MEPs dedicated time to studying it and only a handful of people were involved from the side EP's side. As a result, input on crucial aspects in the new comitology regulation was missing. Time, or the lack thereof was thus an important factor in limiting Parliament's influence on the final outcome. The analyses in the next chapters will connect to this finding by studying the case from the perspective of expertise and organising capacity.

5.2.3 The role of time in the case of novel foods

Time related to the procedure and negotiation dynamics

In the negotiations on the novel foods regulation time was an essential element as well (see table 4.4). The first reading followed a rather classic course, with the EP adopting its position in March 2009, three months before the Council adopted its own position. Due to the EP elections of June 2009, the formal publication informing the EP of the Council's position was postponed until March 2010 (interview 1). This triggered the clock for the 'three plus one month' deadlines of the second reading. Only two trialogues took place at a technical level during the Spanish presidency of the first half of 2010 and consequently no agreement was reached. The reason for this was a lack of political will and the belief of the Spanish Presidency that an agreement could be reached during their term in office and a strong conviction on the side of the EP that it would have more to win in conciliation than in a second reading²² (interviews 1, 7 and 15).

When the first stage of the second reading was over, the EP adopted its position in July 2010 by voting the same amendments as it did during the first reading. Negotiations did not reopen until the Commission published a long awaited report on the main "sticking point" in the negotiations, namely the cloning of animals and their offspring. Two political trialogues took place in October 2010 under the Belgian presidency to no avail, whereby the Council formally rejected Parliament's

²² This is in tune with the argument found in the EP's own activity report that it is perceived to have a competitive advantage over the Council in conciliation (see supra Chapter 4 section 4.2.2) (Kratsa-Tsagaropoulou et al. 2009: 26).

amendments in December 2012, just within the deadline of the second stage of second reading. The fact that hardly any progress was made on a common text and that Parliament had adopted virtually the same position in second reading as it did in the first reading significantly increased the workload during the conciliation stage. Traditionally only a couple of political points are still outstanding when a file goes into conciliation; here over 100 amendments submitted by the EP were still on the table.

The rejection of Parliament's amendments by the Council subsequently led to the deadlines of the conciliation procedure coming into play. Table 4.4 confirms the above mentioned assumption that the time in between the rejection of the amendments and the convening of the conciliation committee is used to hold informal negotiations. In a majority of cases, the committee is only convened when an agreement is within reach or sometimes even just to confirm the agreement found informally through trialogue negotiations (Shackleton 2000). Here however, we see that the opening of the conciliation on 1 February 2011 did not produce an agreement. The first period of 'six plus two' weeks was apparently not enough to find a compromise. After two trialogues a second attempt was made on 16 March but with the same outcome. Approaching the final deadline of the conciliation phase and also taking account of the fact that a political agreement has to be put into the correct legal terminology before it can be adopted by both institutions, time pressure was at its pinnacle in the third and final conciliation meeting on 28 March 2011. Despite this, negotiations throughout the night failed and at 4 o'clock in the morning of 29 March the conciliation committee closed its meeting without an agreement.

Due to the time pressure of conciliation the two co-legislators could not come to a compromise. Interviewees from both sides agree, however that it was not only the lack of time that led to the failure of the negotiations but rather the irreconcilability of both institutions' positions (interviews 1, 6, 7, 13 and 14). As one interviewee put it: "even with an additional month of negotiations we wouldn't have had a deal. More, much more was needed" (interview 13). Time however did have an impact on the outcome. The lack of progress during the second reading for instance, resulting in the EP re-adopting the same position as in second reading is widely regarded as "wasted time" and a "lost opportunity" (interviews 6 and 7). Instead of bringing both co-legislators closer to a compromise, the second reading only hardened the institutions in their original positions (interviews 7 and 15).

There are three reasons for the lack of progress during second reading. First, the lack of ambition of both the Spanish and Belgian Council Presidencies of 2010. Both did not see an easy compromise and were keen on passing the file on to the next presidency (interviews 1, 6, 7, 10 and 12). A second reason was that after the adoption of the EP's opinion in second reading, more than half of the time was spent waiting for the Commission to publish its report on cloning. This report was

supposed to clarify issues and move the negotiations forward. However, soon after the publication of the report, it became apparent that no breakthrough could be forced and both institutions agreed informally that no quick deal was going to be possible and that an agreement would have to be found in conciliation (interviews 1, 10, 12 and 14). A third reason was that the EP was convinced the Council would make more concessions in conciliation and that it could obtain a better deal (interviews 1, 6 and 15).

Parliament's decision not to negotiate during second reading, combined with a lack of ambition on the side of the Spanish and Belgian presidencies both contributed to a very difficult conciliation. So not necessarily the lack of time during the conciliation phase, but rather the lack of progress during the second reading was one of the elements linked to 'time' that can explain the outcome of the negotiations. The EP's own assessment that the time pressure in the conciliation phase could produce a better outcome turned out to be wrong as no agreement was found.

Individual time management

The fact that the rapporteur in this file came from the relatively small GUE/NGL (European United Left/Nordic Green Left) group in the EP meant that the novel foods file was on top of her priority list. MEPs from smaller political groups have less opportunity to attain rapporteurship of a file and given that the file could be carried over into the next legislative term a lot of time was dedicated to the preparation, consultations and communication on the file. One assistant was working almost full time on the novel foods regulation (interviews 12 and 14). Given how the file became politicised around the issue of cloning, shadow rapporteurs too are reported to have dedicated a significant amount of time on formulating positions, drafting amendments and preparing for negotiations (interviews 1, 7, 12 and 14). Several interviewees, however, report that the chairman of the ENVI (Environment Public Health and Food Safety) committee only became thoroughly involved at the end of the second reading (interviews 6, 7, and 10). By then the opportunities of reconciling the positions of the Council and the EP in second reading had already passed. Chapter 7 on Organising Capacity will demonstrate that the lack of involvement of a so-called bridging figure, such as for instance the committee chair, had an impact on the outcome of the negotiations.

When a file goes to conciliation, time management becomes more challenging. Given that three conciliation committee meetings took place, the period right before and during the conciliation stage was "as intense as it gets" (interview 14). Time management is most challenging for members of the negotiating team, namely the rapporteur, the chair of the committee, and the vice-president who leads the negotiation. While the first two are already familiar with the file, a lot of time is dedicated to briefing the vice-president who did not belong to the ENVI

Committee. As the chief negotiator, the vice-president also becomes the focal point of contacts within the EP and with the Council, the Commission, and third parties – resulting in an overcharged personal agenda (interview 2 and 14). A conciliation file is automatically given political priority and thus takes up a considerable amount of time, while all other Vice-Presidential-functions of course remain. It creates parallel work that is very time intensive. We will see in the next chapters that this aspect of individual time management also had an impact on the substance of the negotiation and the EP's organising capacity.

Findings

Both the dynamics related to time within the procedure and individual time management had an impact on the outcome of the negotiations. As explained above, no progress was made in second reading to bring the Parliament and the Council closer to each other. This was due to the Council presidencies' lack of ambition and a strategic choice on the side of the EP to go for a better deal in conciliation. On the side of individual time management, the fact that the committee chair only took an interest late in second reading, meant that opportunities were lost to bridge divisions between the institutions. Also the overcharged agenda of the vice-president meant that he was not able to fully come to grips with the file, especially as more than 100 amendments were still outstanding. With two of the three players of the negotiation team coming late into the game and therefore having missed opportunities to influence the file substantively, which meant that the dossier was dominated by the rapporteur. This considerably influenced the position defended by the EP as she started from an extreme point of view vis-à-vis the Council's and Commission's position. The EP's readiness to compromise on certain issues was thereby weakened as we will see in the following chapters.

5.2.4 The role of time in the case of the 2011 budget

Time related to the procedure and negotiation dynamics

The timetable on the budgetary procedure of 2011 shows that all three institutions followed the informal calendar they agreed rather than the timetable stipulated by the treaty (see Chapter 4 tables 4.5a and 4.5b). The only problem with the timetable is the adoption of the Council's position on 12 August 2011, instead of by the end of July. This is due to the fact that the Commission was only able to publish its proposal in all official languages by 15 June and that eight weeks had to be taken in order to give national parliaments the opportunity to scrutinise the proposal under the yellow and orange card system established by the Lisbon Treaty (Saarilahti 2011: 240). The adoption of budgetary orientations as well as the explanation of and initial debate on each institution's respective position in the first two trilogue meetings have to be seen as preparatory sessions, rather than as

actual negotiations. Substantial negotiations started in preparation of and during the conciliation meetings.

The start of the conciliation phase marks the actual beginning of a period of intense negotiations between the EP and the Council. Apart from the political dialogues which precede the actual conciliation meetings, informal contacts at technical level took place as well (interviews 25, 26 and 27). Progress was made at every meeting and on 15 November 2011, within the time limit set by the procedure, a deal *ad referendum* had been found on the 2011 budget. The fact that no formal agreement was concluded, is thus not due to a lack of time. As will be explained in the next chapter, the EP had made a link between the adoption of the 2011 budget and a number of political, institutional and legal matters linked to the negotiations of the future multiannual financial framework (MFF). The EP thus used the time pressure imposed by the conciliation procedure to force a breakthrough in negotiations on a separate though related matter.

As a result of the formal failure to find an agreement within the time limits set by the conciliation procedure, the Commission had to make a new proposal for the 2011 budget. In the event, the Commission submitted the agreement found *ad referendum* as its new proposal, with a number of technical adjustments on 26 November 2011. Time was becoming very scarce now with the threat of having to resort to 'provisional 12ths' of the 2010 budget during 2011 looming large. This would mean that certain budget lines such as those for the newly established European External Action Service (hereafter EEAS) would not enter into force thereby causing serious delay in the development of the EEAS. It was this worst-case-scenario that the EP hoped would make the Council move on the institutional, legal and political matters related to the MFF. In the end the Council "called the EP's bluff" (interviews 27 and 28). Not wanting to be responsible for a budgetary crisis, the EP agreed to approve the 2011 budget without great concessions or progress on the matters it had linked to the annual budgetary negotiations. The element of time as a resource was used strategically by the EP, but backfired as it had to concede on its demands due to the time pressure it had created itself.

Individual time management

Individual time management did not seem to have had a negative impact on the EP's position in the negotiations. As already explained before, Parliament has long-standing powers in budgetary negotiations and has set up an elaborate and strict system of consultation and coordination. This system is very time consuming, especially for the key players of the BUDG committee, but leads to a well-substantiated position. The degree of politicisation corresponds with the level of priority given to, and the number of people involved in a file.

At the outset it has to be stressed that the priorities of members of the BUDG committee are different from those of other committees. In general terms, BUDG committee members only have to deal with two files a year: the annual budget of the year to come, and the control of the current annual budget (interview 31). This of course clearly focuses the work. In addition, there is a clear division of labour that will be discussed in more detail in Chapter 7 on Organising Capacity. Basically, between January and October 2010 the rapporteur was in charge of defining the EP's position in first reading, forging compromises and determining priorities with the shadow rapporteurs and the group coordinators (interview 31). During that time the rapporteur also had to consult the opinion-giving committees. In 2010 the work was divided between two rapporteurs, with Sidonia Jedrzejewska from the EPP (European People's Party) Group being responsible for the most important headings, and Helga Trüpel of the Greens/EFA as second rapporteur. This also made the work more manageable as it was the first time Parliament had a say on all headings of the budget thanks to the new Lisbon procedure. Even when procedures, such as voting on each separate budget line threaten to take up too much time, group coordinators still have the flexibility to decide to vote in blocks and synthesise certain issues (interview 32). After the EP's position in first reading is voted, the committee chair traditionally takes over as the negotiations with the Council start (interview 31). In 2011 this happened as well, as Alain Lamassoure, the chair of the BUDG committee, took a great interest because it was the first budget that was negotiated under Lisbon Treaty rules in the midst of the economic crisis (interviews 25 and 30).

The clear division of labour and a well-established system of coordination, which includes the necessary flexibility, mean that key members are able to cope with the immense workload under strict time limits. Organising capacity, which is the focus of Chapter 7, therefore seems to have a positive impact on time as a resource.

Findings

This case shows that even when procedural and individual time management are handled well, time can still play to Parliament's disadvantage. The deadline of the conciliation procedure for the annual budget was used strategically to forge concessions on the separate, though related matter of future MFF negotiations. This approach failed, and the analysis of the substance of the negotiations in the next chapter will show that this weakened the negotiators' position as it forced them to concede on certain issues. The classic EP strategy of using time to expand its competencies and powers therefore failed.

5.2.5 Conclusions

In all three cases time as a type of resource played a significant role. The comitology case showed that time was even an *essential* element to explain the

outcome of the negotiations. The dynamics during the negotiations meant that time worked against the European Parliament. Having been busy internally defining its own position, the EP was absent when important amendments to the text were agreed between the Commission and the Council. The self-imposed time pressure to adopt the regulation within a year therefore left little room for Parliament to make fundamental changes to the text. Time, or the lack thereof was thus an important factor in limiting Parliament's influence on the final outcome.

The dynamics of the negotiations in the novel foods case are different in the sense that there was plenty of time to negotiate, but even with the time pressure of conciliation no agreement was found. Clearly the lack of time was not the main factor that led to failure. However, one element that did contribute to the outcome of the negotiations was the lack of progress during the second reading. Both the Council's Presidencies and the rapporteur were not willing to move from their positions, wasting the opportunity to bring both parties closer together. Part of the reasoning behind this strategy was the EP's assessment that it would get a better deal in conciliation than in second reading. It was a strategy which backfired as no agreement at all was found.

The budget case reflects even more clearly how time was used as a tool during the negotiations by the Parliament to mount pressure on the Council and to force a breakthrough in the separate, though related matter of future MFF negotiations. In the end however, Parliament's strategy backfired as it had to make certain concessions.

All cases show the impact of time on the final outcome. In all three cases time was not only a 'given' but was also used by the EP as a strategic element to mount pressure on the other partner in the negotiations. Looking at the outcome of all three cases however, one has to conclude that the EP's time management did not contribute positively vis-à-vis the position it was defending. In the comitology case the self-imposed deadlines shortened the time and therefore the opportunity for the EP to have a significant impact on the substance. In the novel foods case, the EP had hoped the Council would concede more in conciliation and decided to let the second reading go by without any substantial change to the text, thereby hardening positions on both sides. In the budget case the EP's strategy of threatening to let the deadline pass without an agreement backfired.

Finally, the analysis also shows that individual time management is an important resource as well. It is inextricably linked to the degree of politicisation of a file. A high degree of politicisation is associated with more time being dedicated to a file and more members being involved. Too little time dedicated to a file, either generated by a lack of political interest – as was the case with comitology – or by an over-burdened agenda of figures that can bridge divisions – as was the case with novel foods, weakens the position of the EP in negotiations with the Council and

the European Commission. The budget case, always high on the political agenda of the EP, showed that the EP is able to reach a well-substantiated position when members across the Parliament dedicate enough time to it. Not so much the individual time management, but the strategic use of deadlines weakened the EP in these negotiations.

5.3 The importance of information in the EP: yearning for input

5.3.1 Information as a resource in the context of the EP's activities

As will be demonstrated in the next chapter, expertise is a key asset to exert influence over the policy-making process. Expertise and legislative decision-making are however based on information available to the legislators. "Policies are the object of legislative choice", and that choice is based on information which in most cases is incomplete as to the outcome a certain policy will produce or as to the preferences of other actors (Krehbiel 1991: 66). The access to information is thus a valuable resource for both MEPs and the officials assisting them.

Information comes in different forms and from a range of different sources:

- in-house information from other MEPs, assistants, the political groups, and the EP's administration;
- information from the other institutions;
- and information from third parties – mainly interest representation organisations.

In-house information sources

The secretariat

Apart from their own knowledge and background, which will be one of the elements of focus in the next chapter, MEPs can rely on a range of different in-house sources for information: personal assistants, political group staffers, civil servants from the secretariat, the library service, and the directorate on impact assessments.

In 2003 Reck (2003) argued that the European Parliament had not changed its internal structure since the Maastricht Treaty in order to deal with the workload and the new role it had obtained in the co-decision procedure. The EP lacked the necessary resources in terms of expertise to play the co-decision game fully. There was an urgent need for more in-house capacity and – for instance – short-term informative briefings and background notes to deal with the files that fell under the co-decision procedure (Reck 2003: 64).

In a response to these concerns, the secretariat has been reformed in the last decade. Two DGs now provide policy support to the committees: DG IPOL on

internal policies and DG EXPOL on external policies. They are divided in thematic directorates linked to the committees, and transversal directorates on horizontal issues. Four directorates are of importance for this project. Directorate A which includes the ENVI Committee, directorate C which includes the JURI Committee, directorate D which includes the BUDG Committee, and the horizontal directorate E which has a unit for conciliation, one for impact assessments and one to assist the conference of committee chairs.

Each thematic unit is divided into two sections, one is the secretariat of the committee in question, the other is the committee's policy departments. Policy departments provide background briefings and studies at the request of the group coordinators of each committee. These are usually extensive studies made by the policy departments themselves, or outsourced to consultancies or think tanks (interview 29 and 41). As mentioned above DG IPOL has a budget of 8.5 million euros per year to carry out such studies and background briefings (Shackleton and Huber 2013). The input given by the committee secretariat is much more tied to the ongoing procedures. They assist the chair of the committee and the rapporteurs in drawing up documents and ad-hoc briefings for trialogue negotiations. Their function will be discussed in further detail below in the section on staff. In this section it suffices to know that DG IPOL and EXPOL were set up to establish a more direct link between the committees and the secretariat and to ensure a better dissemination of information and expertise inside the EP (Werner 2011; interview 36). They have effectively upgraded the role of the secretariat staff as a source of information for both MEPs and their personal staff, and increasingly for external actors too (see also Busby 2011; Dobbels and Neuhold 2013).

The horizontal directorate E has a unit dealing with legislative conciliations (the budgetary conciliation is handled by directorate B). They take over from the committee secretariat once a file goes into conciliation and provide the briefings and information on the procedure that members need during this phase. Another unit in directorate E deals with Impact Assessments. Set up in 2012 it operates on requests of the committees and has three sub-units. The first has been around for much longer and is named the 'STOA' (Scientific and Technology Options Assessment). As its name suggests, STOA assesses scientific and technology policy options for the EP. Its aim is to increase understanding on how to support scientific and technological innovation and the impact of these technologies on society and the environment through and in policies. It works at the request of EP committees. All studies however have to be approved by the STOA panel and the Bureau of the EP. STOA meetings are open to all officials of the EP and all studies can be downloaded from their website (STOA website 2012). Since 2012 STOA falls under the unit for Impact Assessments and is thus part of the so-called 'forward policy analysis' strand of DG IPOL. This directorate has two other units, one on impact assessments as such and another on 'European added value'. The latter focuses on supporting own initiative reports and produces reports on 'the cost of non-Europe'

in fields such as defence and development policy. The former focuses on screening impact assessments of the European Commission and – on request of the committees – carries out or orders impact assessments on substantive EP amendments to a legislative proposal (interviews 35 and 36).

In recent years, another in-house analytical service that is coming to be much appreciated by individual members is the library service. Fundamentally reformed in 2007 it draws up short, accessible briefings, analyses, statistics and information charts at the request of individual MEPs. These can be very specific requests linked to a meeting an MEP has to attend or more general briefings on topical subjects such as the economic crisis or initiatives launched by the European Commission. The library does not outsource and thus relies solely on its own staff that is organised in thematic policy teams. It is important to stress that the library seeks to ensure there is no overlap with the work of the DGs IPOL and EXPOL (interview 41).

Finally, the Secretary General of the EP announced that in 2014 a Parliamentary Research Service would be created on the basis of the existing resources of the Library and the Directorate for Impact Assessment with about 200 staff and “with the aim to provide our individual Members with their own independent scientific advice” (Welle 2013: 10)

Other assisting staff

Secretariat officials work alongside and with the assistants of MEPs. Assistants too are a valuable source of information as they are often described as the ‘eyes and ears’ of their members (Reck 2003: 57). Depending on their political masters and their own background they often have a substantial impact on the reports and documents produced by their member. They can play a key role in “providing MEPs with information to make decisions” which “affect individual MEPs’ capacity to exert influence (Busby and Belkacem 2013: 1). As with the secretariat officials, their role will be discussed in more detail in the section on staff below.

Group staff is an additional source of information. They usually brief members on thematic issues in the committee in question and on the group’s positions within the committee (Dobbels and Neuhold 2013). Groups also have national delegations, containing all the members of a certain nationality in that group. By consequence political groups function not only as a forum to exchange information and to coordinate positions between the different national parties, but also as a forum for the national party to give input to the European level of policy making (Corbett et al. 2011: 117-119).

Members thus have a wide range of in-house sources at their disposal. Apart from internal providers of information, external players too offer or have information available to – and needed by MEPs. Past research has shown that external players

are in fact the main source of information for drawing up amendments and writing reports (see Judge and Earnshaw 2006).

Third parties

With over 15,000 lobbyists of whom some 5,000 are officially accredited (Greenwood 2011), Brussels is the second most lobbied city in the world – after Washington DC. Third parties involved in the policy-making process or interest groups can be individual companies, European or national trade and professional associations, employers federations, chambers of commerce, EU and global trade unions, citizen interest organisations, regions and third countries, NGOs, international organisations, think tanks and consultancies (Greenwood 2011).

One of the main targets for lobbyists is the European Parliament; partly because of its relative openness compared with the other institutions, but mainly for its role in the policy-making process and the need for input. Its workload and its administration relatively small and un-specialised (Rasmussen 2011: 5). External expertise is indeed valued and wanted by the EP because of a structural lack of time and the need for detailed technical information (Busby 2011: 13). Interest group lobbying therefore is not a unidirectional activity, but more of a “two way street” interaction (Neuhold 2002: 9). Bouwen (2004: 339-340) uses the resource dependence perspective to explain this relationship: as the European Parliament is not internally self-sufficient it becomes interdependent with interest organisations as both need resources from one another, respectively information and access.

In concrete terms, the information flow goes quite far as interest groups provide MEPs and the EP’s supporting staff with detailed position papers, analyses and sometimes even amendments and voting lists. Especially rapporteurs and their shadows are the favourite targets for lobbyists. Hix and Hoyland (2010) report that interest group representatives are the source of large parts of reports and amendments proposed by members in the committee. Earnshaw and Judge (2006: 64) estimate that around 80% of all amendments submitted (and thus not necessarily adopted) in committee proceedings stem directly from interest representatives. In addition, the remaining 20% is often inspired by sources outside the EP as well.

A structural way in which contacts with interest groups and stakeholders have been established at the EP are hearings, workshops and intergroups. Hearings are organised by a committee on a given topic and allow all interested parties to present their views and opinions. There are about thirty hearings a year, but as Reck (2003: 64) writes they have evolved into “lengthy and detailed lectures” which are considered boring by the majority of MEPs. Low attendance by MEPs and their assistants is therefore a signal of hearings losing attraction. Workshops have the same aim, namely obtaining input for the policy process, but are organised by the

policy departments instead of the committee secretariat (interview 37). However, neither hearings nor workshops but informal contacts are the main instrument for third parties (Rasmussen 2011: 6). Intergroups are a forum for such contacts. They are informal groups of MEPs who, across committee, national and party lines come together on certain topics to hold exchanges of views and enter into contact with the respective members of the 'civil society'. Notable intergroups are those on Sky and Space, Lesbian-Gay-Bisexual and Transgender Rights, Trade Unions and Tibet (Intergroups website 2012). Rasmussen (2011: 7) describes intergroups as a "valuable and time saving lobbying option for interest groups as it is possible for them to target a whole group with their arguments at once rather than approaching MEPs one at a time". In 2011 27 intergroups were registered, but the unofficial number is estimated around 80 (ibid.).

In recent years contacts with third parties have become more and more the subject of rules through staff regulations and the EP's rules of procedure. There is also a code of conduct drawn up by the lobby industry itself and a unified public register has been set up, but registration remains voluntary (Greenwood 2011).

Apart from third parties, external sources of information also include the other institutions, namely the European Commission and the Council.

The Council and the Commission

Both the Council and the Commission are 'hot houses' of information on the substance of legislative proposals. A survey carried out by Egeberg and others (Egeberg et al. 2012: 17; Egeberg et al. 2013) with civil servants working at the EP showed that of all external actors most value is attributed to information and arguments of the Council and the Commission.

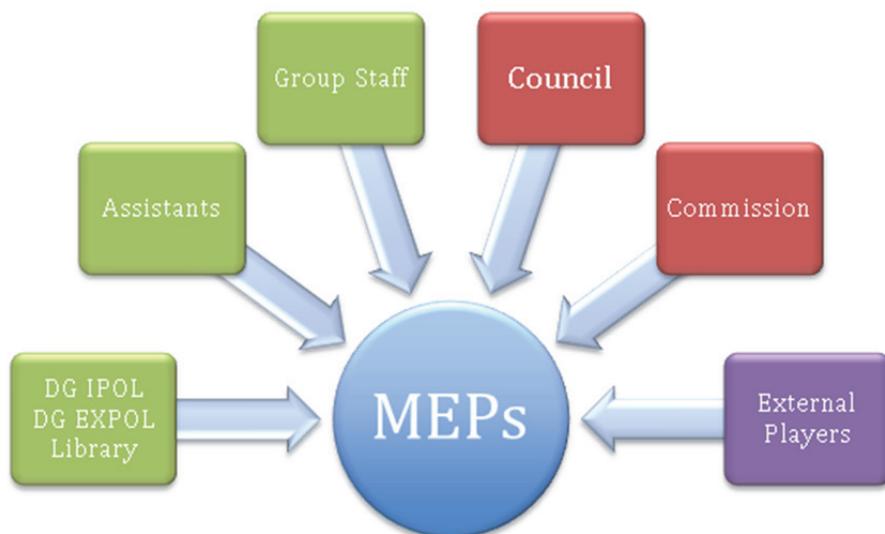
The Commission, as the drafter of the proposal is often one of the primary sources of information for MEPs during the policy process. Recent research has shown that with the extension of the co-decision procedure, contacts between members of staff of the EP and the Commission have intensified and that a close working relationship has been established (Egeberg et al. 2013). Commission representatives attend all committee meetings and are regularly asked questions – both formally and informally. As one of the three players in the ordinary legislative procedure the Commission systematically gives its views on the discussions in each of the other two institutions. In certain complex files, the Commission's interventions are more 'pedagogical' rather than argumentative. One such case has been legal migration, where migration policy overlaps with labour law and international treaties (see Dobbels and Neuhold 2013). As the official defender of the general, European interest, the Commission has a stake in the negotiations as well. Its opinions on the Council's position and on EP amendments determine the voting rules as explained in the previous chapter. Its position is therefore not

neutral, neither is its information. It is only in the conciliation phase that the Commission's position has no further impact on the voting mechanisms. Its function there is that of a facilitator and broker, rather than one of the three partners in the negotiations.

Apart from being the co-legislator, the Council or more specifically its Member States also serve as sources of information. The link between national MEPs and their governments, especially if they are of the same political party, are often well established. Information is shared on the impact of certain policies for the member state in question. Rapporteurs, for instance, often rely on their national counterparts in the Council to get information on the positions of other Member States within the Council. One interviewee described it as follows: "If you want to be a good MEP with a real impact you need a network, and part of that network is of course the Council. Your national permanent representation is one of the most important sources of information, not only on the positions in the Council, but also on the content" (interview 42). But even more so than with the Commission, the information obtained from the Council or its Member States needs to be treated carefully. Being the EP's 'opponent' in inter-institutional negotiations, research has shown that Member States sometimes strategically misrepresent their position by presenting a minority proposal that is closest to the status quo (König 2008: 167, 182). Member States, and especially the Presidency who is the main interlocutor of the EP, thus take advantage of the "information deficits" of the EP. However, everything needs to be put in perspective: even though the Council's internal decision-making process remains to a large extent a black box, interviewees confirm that with 27 (now 28) Member States and the Commission around the table, it is not too difficult to get solid and detailed information on certain positions, as long as one has a good network (interviews 42 and 34).

The chart below gives an overview of the information sources for MEPs in the policy-process.

Figure 5.2: Information sources of MEPs



Previous research found that due to the limited amount of in-house information, the Parliament has to rely heavily on third players or the Council and the Commission for input and is often criticised for being “uninformed or subjectively informed about the issues involved” (Fouilleux, de Maillard and Smith 2005: 617-618). In terms of information, Marshall (2005: 558) wrote that “EP committee members are less well resourced yet are typically responsible for legislative procedures that are more technical”. By analysing the three different cases the role of each of these sources of information will be established so that an assessment can be made as to the impact of information as a resource on the EP’s position in inter-institutional negotiations.

5.3.2 Information as a resource in the case of comitology

In-house information sources

The institutional nature of the negotiations on the new comitology regulation and the Common Understanding on delegated acts, implied that primarily internal sources of the EP were used. As explained in the background on comitology in Chapter 3, the EP has a long-standing quest to have a say in the system of implementing powers delegated to the European Commission. With the new Lisbon treaty articles 290 and 291 TFEU, it had for the first time in history the opportunity to shape the future procedures. The EP was thus not only co-legislator but also a party with a direct and vested interest in the implementation of the new regime, something which is not the case for classic legislative negotiations or

budgetary negotiations²³. Information coming from the other institutions was therefore treated – even more than in other files – with a certain degree of suspicion (interview 34).

In-house sources thus became the most important source for information gathering. Previous research has shown that in institutional matters the secretariat often plays the role of ‘guardian of rights’ for the EP (Dobbels and Neuhold 2013). In the case of comitology this was certainly the case as the head of unit of the JURI committee had been part of the working group during the Convention for a European Constitution that was responsible for drafting the two articles, which later emerged within the Lisbon Treaty. She therefore served as the main source of information inside the Parliament. The institutional memory of the secretariat, and its role as guardian of rights meant that the administration of the EP was the main supplier of amendments and played a key role in drafting the reports. Its role was even amplified as some MEPs who had previously taken an interest in the issue of comitology, such as Richard Corbett, were no longer members of the parliament in the 7th legislature.

Apart from the secretariat, the person working for the rapporteur’s EPP group as legal advisor was another source of information. As she was mainly responsible for the coordination with other groups, she made sure information on their positions fed into the drafting process. In addition, twelve committees provided the JURI committee with an opinion on the Commission’s proposal, giving the rapporteur almost a full account of the position of the Parliament as a whole.

External information sources

As mentioned above, since this was an institutional file where Parliament itself had a vested interest, information coming from the other institutions was treated carefully as they too had their own interests to defend. Where the Commission usually takes up the role as mediator or broker providing both co-legislators with additional information and clarifications, the Commission was a genuine party in the negotiations here (Christiansen and Dobbels 2012). When the Commission submitted its formal proposal for the new comitology regulation, both institutions considered it as an opening bid in the negotiations rather than as a classic proposal (Christiansen and Dobbels 2012). The Communication the Commission published in December 2009 (European Commission (Comitology) 2009) on the use of delegated acts strengthened this impression. The EP saw it as a unilateral and unbalanced declaration by the Commission ignoring the rights of the EP (Christiansen and Dobbels 2012: 8). The Commission therefore did not really play its role as broker.

²³ One could argue that in the budgetary negotiations too, the EP is affected by its implementation, as it also contains its own budget. However, there is a gentlemen’s agreement between both branches of the budgetary authority that the Council does not touch the budget of the EP and vice versa.

What goes for the Commission is even more the case for the Council. As a party with a vested interest, all information coming from the Council or its presidency was regarded with the necessary suspicion. Where in classic legislative negotiations some Member States' positions are always close to that of the European Parliament, in institutional files the relationship is more polarised. This was definitely the case in comitology as the EP had been critical of the system since its inception. The usual lobbying took place by Member States such as France, the UK, the Netherlands and Italy who approached MEPs primarily on the issue of trade defence measures (see Chapter 6 section 6.2.2). Apart from that, the ability of Member States to function as a source of information was limited.

Finally, even though comitology decisions themselves are subject to intense lobbying, the setting up of the new comitology regime attracted little interest from lobbyists. Two federations, the European Chemical Industry Council and the European Aluminium Association (interview 20 and 43) contacted both the EP and the Council to communicate their position on the issue of trade defence measures. The negotiations on that issue however, had already been concluded by then and none of the institutions was willing to take on board their suggestions.

Findings

Mostly because of the nature of the file, the EP relied almost exclusively on in-house information. The budgetary section showed that no budget was used to obtain external input and the section on time showed that the file generated little political interest. Even though it is hard to overstate the importance of the secretariat as provider of information in this case, the lack of broader input inside the EP meant it had no clear position on certain essential matters of the regulation such as trade defence measures, alignment of the old regime to the new system and voting rights on sensitive matters such as health and food safety. Chapter 6 will show that the lack of input on those matters had a negative impact on the EP's position in the negotiations.

5.3.3 Information as a resource in the case of novel foods

In-house information sources

The starting point for the rapporteur to gather information and draft the EP position was geared towards the protection of consumer and animal rights rather than towards the functioning of the internal market. This is exemplified by the invitees for the workshop mentioned above. External sources were vital as the rapporteur, her assistant and the secretariat at DG IPOL had no real expertise on food safety. External sources thus had to be combined to provide the rapporteur with amendments and draft compromise proposals (interviews 1, 12, 15).

Definitions on nano-technology for instance were combined by way of elements from the Codex Alimentarius²⁴, a report from the Commission and reports from the EFSA (European Food Safety Agency) on the matter. EFSA reports were equally important to define the EP's position and arguments on cloning, especially with a view to animal welfare and public opinion (interviews 1, 7 and 11). On the traceability of food coming from the offspring or descendants from cloned animals, an important amendment advocated by the EP, there was no clear information available on how to implement this. The lack of information however, did not prevent the rapporteur from standing firm on this amendment by using the argument that in a file on the traceability of timber the same concerns in implementation were raised, but both co-legislators had nevertheless approved it (interviews 1, 2, 12 and 13).

Shadow rapporteurs from other political groups mostly relied on group staffers for information to draft their amendments (interviews 12 and 13). Traditionally, groups have a number of people assigned to each committee who follow certain areas or policy-themes. Both the EPP, ALDE, Greens/EFA and S&D group have staff working on food safety in the ENVI committee. They were primary sources of information when it came to drafting amendments. However, we will see in Chapter 6 that the level of expertise of these staffers and by consequence their input, varies.

MEPs also rely heavily on their colleagues for information (Ringe 2011). Shadow rapporteurs of the same political group are traditionally a trusted source when it comes to information as they are the colleagues closest to other MEPs in terms of political views. They are seen as being experts on the file, or as one interviewee put it, “[shadow rapporteurs] dive into the topic and can usually be trusted” (interview 13). This issue will be addressed in more detail in Chapter 6. At this stage it suffices to say that MEPs with a record on food safety and consumer protection such as Peter Liese (EPP), rapporteur Kartika Liotard (GUE/NGL) herself, Dagmar Roth-Berendt (S&D), as well as colleagues from the AGRI committee such as for instance José Bové (Greens/EFA) were resorted to as sources of information for other MEPs in the ENVI Committee (interviews 11, 13 and 14).

External information sources

As explained above, the Commission traditionally is considered an important source of information for the European Parliament during legislative negotiations. In the beginning of the discussions on the novel foods regulation, its position was exactly that. The Commission was called upon several times to provide

²⁴ The Codex Alimentarius, established by FAO (Food and Agriculture Organisation of the United Nations) and WHO (World Health Organisation), develops harmonised international food standards, guidelines and codes of practice to protect the health of the consumers and ensure fair trade practices in the food trade.

clarifications and input on amendments on issues that were not included in the original text such as a definition on nano-technology or cloning (Policy Department Economic and Scientific Policy 2008; ENVI 2008). Also the Commission's Joint Research Centre and its Institute for Environment and Sustainability in Ispra (Italy) was consulted by the EP (see for instance Joint Research Centre 2008; interviews 12 and 15). However, the position of the Commission as a source of information became compromised as discussions progressed. Answers by the Commission, especially on the issue of cloning, were considered too vague or not addressing the EP's concerns regarding animal welfare and the amount of products from the offspring of cloned animals on the internal market (interview 11 and 12). It became evident that the Commission did not share the EP's concerns and this was confirmed by the report it submitted to the co-legislators in second reading. This report was to provide input to the negotiations, but antagonised the EP as some of Parliaments' demands were labelled un-implementable (European Commission (Novel Foods) 2010a). During conciliation matters got worse as the Commission was perceived as being partial and taking a more extreme position than the Council (interviews 1, 2, 7, 12 and 14). This impression was amplified when Trade Commissioner De Gucht visited the INTA Committee without any MEP from the ENVI committee being allowed to attend. During this meeting, the Commissioner allegedly urged the INTA members to put pressure on the negotiating team to change the EP's position on the matter of cloning (interviews 12 and 13).

The Council and its Member States' ability to function as an information source was also largely compromised by the issue of cloning. As with all inter-institutional negotiations, the Council presidency was the main interlocutor for the EP. As usual, bilateral contacts with permanent representations provided information on the position of Member States in the Council and served as a forum for the exchange of potential compromise proposals (interviews 1, 2, 7, 12 and 14). These contacts mainly revolved around the issue of cloning, traceability and labelling of offspring and foods derived from offspring (interviews 1, 2 and 12). Some Member States, such as France went further and provided detailed position papers to the EP on different aspects such as nano-technology, food coming from third countries and data protection (interviews 7 and 12). Apart from the French, the British (on cloning and food from third countries), the Austrians, the Swedish and the Dutch (mainly on cloning) were most active in contacting MEPs (interviews 1, 12 and 13).

Apart from the Member States of the EU, the issue of novel foods also raised interest with third countries – primarily the US, Brazil and Argentina, and to a lesser extent Canada, Australia, South Africa and Paraguay. They focused their interventions almost exclusively on the issue of cloning and had concerns about what the repercussions would be for trade with the EU if a ban or traceability measures were introduced (interviews 8, 12, 16). Because the EP's position was based on ethical and animal-rights concerns, third countries did not find many supporters for their arguments. Position papers and amendments were drafted,

but were not taken into account by the rapporteur and only fell on fertile ground with one or two MEPs from the EPP group. This led to third countries focusing their efforts on the Member States in the Council instead (interviews 8 and 16). One official from a third country even reports to have stopped lobbying the EP once conciliation had started because they had received such hostile press reports from MEPs on cloning, that any further activity was deemed counter-productive (interview 8).

Finally, industry and interest groups, such as Food and Drinks Europe, the Consumer's Organisation BEUC, Copa-Cogeca (European Farmers Organisation), the CIAA (International Commission for Food Industries), Greenpeace, Eurogroup for Animals, and the International Federation for Organic Agriculture Movements, also lobbied and gave input to MEPs. For European industry this revolved mainly around issues such as data protection, nano-technology and the simplification of the novel foods procedure (interviews 5 and 11). Here, as with third countries, the predisposition of the rapporteur in favour of animal rights and consumer protection made it difficult for certain lobbyists to push their points through as almost none of their suggestions were accepted by the rapporteur (interviews 5, 11 and 12). Other MEPs, especially from the ALDE and EPP groups were more receptive towards their amendments and even contacted lobbyists during the conciliation negotiations to see if certain amendments could be accepted by industry (interview 9). The semen and embryo industry in third countries were most concerned about the repercussions for trade in the cloning discussion and lobbied the EP through their respective embassies (interview 2). Last but not least, interest groups such as Eurogroup for animals and the International Federation for Organic Agriculture Movements did find fertile ground with the rapporteur. Several of their positions on animal rights were later included in the EP's position (interview 12).

Findings

The novel foods case shows that the EP desperately needs external information sources as it lacks a large in-house administration that can provide it with input. This is inextricably linked to the issue of expertise which will be dealt with in Chapter 6. The above account also confirms that there are many outside sources available to the EP ranging from the Commission and Member States to interest groups - all are ready, willing and often eager to provide input. However, as opposed to the situation of the Member States in the Council or the Commission where input is formulated on the basis of the interest of the particular Member State or DG involved, the EP's relation with information is more bi-directional. On the one hand MEPs are flooded with position papers from interest groups and Member States, while they are trying to formulate their own position. MEPs therefore have to make a selection of which sources they want to use. On the other hand, when an MEP has a certain interest he or she wants to defend – in this case

animal rights and consumer protection – he or she may find it hard to find the necessary input. We will see in Chapter 6 that a lack of information on certain issues such as traceability of offspring from cloned animals did prove to be a weakness and had a negative impact on the negotiations.

5.3.4 Information as a resource in the case of the 2011 budget

As mentioned the financial resources earmarked for the acquisition of expertise was not used for issues related to the 2011 budget. MEPs primarily rely on the Commission and their own in-house information sources to define their position on the annual budget.

First, it is important to stress that the margins for negotiation are very limited. Not only is the budget supposed to stay within the multiannual framework that was fixed for the period 2007-2013, negotiators have to take account of the ceilings per heading, the legal bases for different financial programmes, and indicative financial targets or compulsory financial indicators used for instance in the structural funds. In addition, the performance of certain programmes in the years before and their rhythm of absorption have to be considered as well (interviews 28, 29 and 30). The Commission plays an important role in defending these principles and indicators during the negotiations. It is widely recognised as the most important source of information for the other institutions (interviews 25, 26 and 28). The margin of manoeuvre for the other institutions is thus rather limited.

The EP relies mostly on its own in-house capacity. As will be explained in detail in Chapter 7, the EP has set up a coordination system in which political priorities are formulated by the BUDG committee in consultation with the opinion-giving committees. After these priorities have been approved by plenary, the different opinion-giving committees translate these into concrete amendments to budget lines. These are based on the information of the Commission, the EU's Court of Auditors, reports of the CONT (Budgetary Control) committee, which looks at how the EU budget is spent and whether or not goals are met, and own information on the performance of programmes within their policy field.

Finally, interest groups do not tend to lobby on the annual budget as most of the time they are not immediate recipients and the margins of manoeuvre are limited in any case. Most lobbying comes from Member States who provide input to their MEPs on programmes that are of national interest. In addition, other EU institutions such as the Committee of the Regions, the Economic and Social Committee, the Ombudsman or the EEAS do lobbying for their own budgets (interview 31).

5.3.5 *Conclusions*

The analysis shows first and foremost that information is a valuable resource in the EP. However, the three cases also show very different results as to how this resource is handled. In the constitutive policy field (the case of comitology), the EP started from its own institutional interest and relied exclusively on in-house sources. Internal coordination however failed in using input on all issues at stake, whereby certain elements were not addressed in the EP's position. The distributive case (2011 budget) showed that the possibility to use information is quite limited as the margins within which the budget 2011 was negotiated were very constrained. Most information is based on analysis of the Commission, the Court of Auditors or the CONT committee, which is relatively neutral. The only source of information MEPs are confronted with is that of their Member State. In the regulatory field (novel foods) in-house sources or other institutions do not suffice. The novel foods case showed that the rapporteur had to rely heavily on external sources to draft her amendments as there was a lack of in-house information and information from the other institutions was considered biased. MEPs were therefore forced to seek information from third parties. Here it is important to stress the effects of the bi-directional character of the relationship with external information. On the one hand MEPs are flooded with positions from interest groups and Member States, while they are trying to form their position on the basis of their political opinion. They do so by making a selection of which sources they want to use, knowing very well that these are biased sources. On the other hand, when an MEP has a certain interest he or she wants to defend – in this case animal rights protection and consumer protection – he or she may also find it hard to find the necessary input.

Apart from concluding that the handling of information by the EP varies from topic to topic it seems difficult to draw general conclusions on this type of resource. Nevertheless, one could argue that two of the cases point out that there is a structural problem with information gathering on issues related to policy. Where Member States and the Commission have administrations that define and defend their interests, the EP as such has no such administration. The administration of the EP is there support its members in their tasks and to defend its rights as an institution, not necessarily to give input. This is exemplified by the comitology case in which the defence of the rights of the EP as an institution were essential and the administration gave the necessary input to the rapporteur. But on more policy related issues such as voting rights in sensitive cases like health and food safety, or trade defence; or on certain matters in the novel foods case, the administration of the EP is of less use. MEPs thus have to turn to other sources such as their assistants, political group staffers and external information sources for input. This creates the double problem of having no independent, but rather biased information, and often being confronted with the fact that no input is available on

a particular opinion as defended by the member (such as traceability in the case of novel foods).

It will be argued in Chapter 6 that a lack of independent information on policy related matters is directly related to the factor 'expertise' and had a negative impact on the negotiations.

5.4 The importance of staff in the EP: Few in numbers but strong performance?

5.4.1 Staff as a resource in the context of the EP's activities

Not only budget, time and information are important resources, but also the supporting staff is of key importance for the functioning of an institution such as the European Parliament. In the following paragraphs the number of supporting staff and the tasks they perform will be analysed.

Figures and numbers

"The size of a structure, e.g. the number of posts in a secretariat, expresses its capacity to act and to have an impact"
(Egeberg 2006: 7)

In their analyses made just before the last reform of the General Secretariat, Neunreither (2006) and Reck (2003) argued that one of the EP's key problems in terms of capacity is the small size of its own service and the fact that only about ten per cent of the staff, or then around 150 so-called A-grade officials, were carrying out legislative assistance tasks for members (Neunreither 2006: 48). As a result one civil servant had to handle an average of ten legislative files at the same time, which in turn had a negative impact on their capacity to build up expertise – an issue that will be addressed in Chapter 6 (Reck 2003: 64). Both Reck and Neunreither therefore called for recruiting more A-grade officials to carry out legislative tasks and to supply members with much needed short-term support in the form of background briefings and assistance in drawing up reports.

As explained previously, the General Secretariat did reform as two Directorate Generals were set up, one on internal policy matters (DG IPOL) and one on external policy matters (DG EXPOL) with a more direct link to the committees. In addition, as demonstrated in the budget section of this chapter, over the past couple of years, (and especially in the light of the entry into force of the Lisbon Treaty), the budget for recruiting new staff members has been raised. This is also reflected in the number of staff working at the EP as shown in the tables below:

Table 5.2: Number of civil servants working at the EP

Year	Total number of civil servants at the EP
1952	37
1970	532
1979	1,995
1984	2,966
1993	3,790
2007	5,933
2010	6,135

Sources: Egeberg et al. 2011: 3; Corbett et al. 2007: 193; Corbett et al. 2011: 219, 226; Westlake 1994: 196

Table 5.3: Number of civil servants working at the EP in the years of analysis

Year	General Secretariat	Political Groups
2008	4,785	640
2009	4,922	579
2010	4,951	564
2011	5,031	747

Sources: Sources: European Parliament 2009: 16; European Parliament 2010a: 13; European Parliament 2011: 15; European Parliament 2012b: 16

The share of civil servants working at the EP stands at around 15% of all officials employed by the EU (Corbett et al. 2011: 226). The number of civil servants working for the political groups in table 5.3 shows a drop in 2009 and 2010, but this is mainly due to the European elections of 2009. Traditionally, a number of people leave their posts and the full recruitment potential is not realised until a year or so after the elections (interviews 37 and 41).

It is important to qualify the numbers in table 5.3. Not all of the 5,000 civil servants work on policy related matters. Around a quarter are translators and interpreters, while less than a quarter, or 1,150 in 2010, are actual administrators (Corbett et al. 2011: 220). Of these 1,150, not all are implicated in the policy-making process. Some carry out administrative, information-related, finance-related, and IT-tasks. The relevant civil servants for this thesis are in fact those working at DG IPOL. The table below shows their absolute numbers in the years relevant to this study.

Table 5.4: *Number of administrators in DG IPOL and Committee*

Year	2008	2009	2010	2011
Number of administrators	206	202	n.a.	255

Sources: DG IPOL 2009: 7; DG IPOL 2010: 6; DG IPOL 2012: 7

In practical terms this means one or two officials of the General Secretariat are assigned to work on a specific file in every committee (Rasmussen 2011: 6). Of the total number of DG IPOL officials, nine work at the STOA unit of DG Impact Assessments and an additional four are working at the two other units (Impact Assessments and European Added value). For these two units, which have to carry out long-term and in-depth studies, this number is in fact very low, forcing them to outsource many projects for which they have a budget of one million euros as outlined in the first sub-section of this chapter. Finally, the library employs around 120 people including communication specialists and research experts.

Apart from the secretariat officials and the political group staff, every MEP has a number of assistants at his or her disposal. Exact numbers for all four years of analysis are lacking, but in 2009 the figure of assistants accredited in the EP was around 1,300 (Corbett et al. 2011: 220) and 1,599 in 2011 (European Parliament 2012a). In that same year, an additional 2,442 assistants were registered as ‘local assistants’ (ibid.). The difference between the two categories is that the former have a contract of employment under European law concluded directly with the European Parliament while local assistants’ contracts are governed by private national law and are concluded with the member in question. On average, an MEP has around two assistants based in the Parliament and three ‘local assistants’ – who do not necessarily work in the constituency of the member, but may also work in Brussels or Strasbourg. It is important to note that this is by far fewer than the personal staff a Member of the US Congress has at his or her disposal, with an average of twenty to thirty (Reck 2003: 57).

Numbers of staff are, as Egeberg and others (Egeberg et. al 2012a) point out, an important resource for the capacity of an institution. Yet, what they do exactly and their knowledge and expertise will perhaps even be more important. While this last aspect is the focus of Chapter 6, the following sub-section will analyse the roles played by the EP’s supporting staff.

Roles of staff in the EP

The main role of staff in a legislature is providing support and information to members. It thereby also influences the policy-making process through the gathering and processing of this information and the drafting of reports, briefings and amendments. Previous research has also shown staff to facilitate integration between committees and groups inside a legislature (Hammond 1996: 281).

In the framework of the European Parliament, it is important to note that the staff of the EP's secretariat is 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, organisation 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". Research carried out in recent years has however shown that although the tasks of civil servants in the EP are regulated, they give much room for interpretation (Winzen 2011; Egeberg et al. 2012; Dobbels and Neuhold 2013).

Before addressing this issue, it is useful to identify first the different roles played by the three categories of staff in the European Parliament – its civil servants, political group officials, and assistants. At first sight, these roles appear to be clearly distinguished. The officials working for the political groups have an ideological allegiance, and perform a range of different tasks ranging from administrative or communication related work to assisting the leader or supporting committee work. They mainly carry out coordinating tasks and help define the line the group is taking on each and every file by providing input and research to members, and they often draw up whips as well (Costa 2003: 148; Corbett et al. 2011: 113). In this capacity they often give advice and facilitate compromises within and between the groups (Egeberg et al. 2012: 13). Political group officials also interact frequently with national parties and external actors who are of the same political colour, be it in the Council or in the Commission (Egeberg et al. 2012: 1-2).

The role of personal assistants varies from member to member and from assistant to assistant. Some assistants have a more secretarial set of tasks and manage their member's agenda, files and mail. Others work on their members' ties with the constituency and are responsible for the political communication. Yet another group has a more substantive policy-making role and is involved in drafting amendments and drawing up reports (Michon 2008: 178-179). Most however do a mix of all these tasks (Michon 2008; Busby 2011). Assistants also spend a lot of time speaking to interest groups and consulting with other MEPs and their assistants as well as with officials from the other institutions. By consequence, they are not only passers of information, but are counsellors to their members. They are however generally speaking less involved in drawing up reports compared to group staffers or committee secretariat officials (Costa 2003: 149-150)

Apart from being responsible for the logistics and the administrative side of parliamentary work, civil servants working at the general secretariat have a truly supporting role. They are often described as being at the bottom of the pyramid in the EP in the sense that they work at the request of the members and their staff (interviews 34 and 37). Yet, in reality especially the civil servants working for a particular committee are systematically involved in the core business of the

European Parliament, namely legislative decision-making. They work closely together with the committee chair and the different rapporteurs (interviews 34 and 38). Secretariat officials not only prepare the agenda, but also help members with background research and provide them with technical and expert assistance. They are often closely involved in drafting reports with the members' assistants and should therefore not be underestimated in terms of the impact they have in the policy-making process (Rasmussen 2011: 6; Egeberg et al. 2012: 3).

Indeed, recent research has shown that the roles played by officials in the EP are not as clear-cut as described above. Dobbels and Neuhold (2013), show for instance how, when a file is attributed political importance or when an official has a certain expertise, group staffers can play a very substantial role in drafting compromises and negotiating agreements. Secretariat officials too, can play a bigger role than is usually attributed to them (Neuhold and Radulova 2006: 57). Winzen (2011), when looking at two committees dealing with external affairs, demonstrated that committee civil servants are not just 'paper keepers' but are substantially involved in the policy-making work of the members by providing and collecting informational input. However, where Winzen found that their autonomy is under strict supervision from their political masters, Dobbels and Neuhold (2013), found that in certain cases committee civil servants perform a 'steering role'. Looking at several areas that fall under the ordinary legislative procedure, they demonstrated that committee officials sometimes go beyond the instructions and mandate given by the MEPs and steer the inter-institutional negotiations in a decisive direction. Enabling factors for such a steering role were found to be expertise, a lack of political importance attributed to the file, or the lack of internal division in the EP. In addition, the working relationship between the secretariat official on the one hand, and the MEP and his or her assistants on the other, was identified as being key in enabling the former to play a bigger and more substantive role. These findings demonstrate that committee officials and group staffers are of key importance on the substance and organisational aspects in inter-institutional and intra-institutional negotiations. A survey conducted by Egeberg and others (Egeberg et al. 2012: 13) confirmed this as 'giving advice', 'drafting documents' and 'facilitating compromises' were ranked among the top tasks of committee officials. These are genuine policy-making tasks as they imply advising members on strategy during the negotiations, writing preparatory documents for these negotiations and assisting with the drafting of the reports that are submitted to the committee.

In conclusion, it is fair to say that staff is a vital resource for the European Parliament, especially in the light of its role as co-legislator. The importance of the functions and tasks attributed to them demand not only a fair share of number of officials but also skilled and experienced personnel.

5.4.2 *Staff as a resource in the case of comitology*

In the comitology case a close working relationship in assisting the rapporteur was observed between the person working for the political group of the rapporteur and the committee secretariat. The assistants of the rapporteur were mainly involved in more administrative tasks such as keeping the agenda and making sure all the necessary documents were provided for. The main reason for this was that the person working for the political group had a stronger legal background than the rapporteur's own assistants. On the secretariat's side the head of unit was assisted by one more member of staff. The division of labour between the secretariat and the group staffer was such 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. The division in practice was, of course, not that strict, but their respective roles can be defined as such.

Dialogues were extensively prepared by the secretariat together with the presidency at the level of civil servants; with complete agendas and even scenarios in which it was decided what potential compromises would be tabled when. 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. As mentioned above, the secretariat also had a very important information function during these negotiations.

Apart from the assistants of the rapporteur, negotiations were mostly followed by group staffers who reported to their respective shadow rapporteurs and group coordinators. As mentioned above, only a limited number of MEPs were directly involved, hence the lack of involvement of personal assistants.

The combination of a strong secretariat and a knowledgeable group staffer made a reportedly solid supporting and coordinating team for the rapporteur (interviews 18, 20 and 21). A close working relationship based on trust from both sides resulted in a fruitful cooperation not only with regard to internal coordination – where they worked together to keep the ranks closed – but also vis-à-vis the Council in presenting a unified EP position. In sum, a very small number of assisting staff provided for very qualitative support.

5.4.3 *Staff as a resource in the case of novel foods*

The novel foods case has both the usual staff composition of a legislative file (assistants, group staff and the secretariat) as well as the extra staff involved during the conciliation stage.

As already mentioned above, the rapporteur, Kartika Liotard had one assistant at her disposal working almost full time on the novel foods case. The involvement of staff from the rapporteur's GUE/NGL group was rather limited as most of the coordination contacts were handled by her assistant (interviews 12 and 14). The division of labour between the rapporteur and her supporting staff was as follows: the assistant alongside the secretariat was responsible for the preparation of the documents (background and briefing notes, draft opinions, preparatory documents for dialogues) while the rapporteur handled the more political contacts and negotiations with coordinators inside the committee, shadow rapporteurs and the Council. Several interviewees emphasised the importance of the assistant and the secretariat as most of the staff of the other political groups leaned on them for information and coordination rather than taking matters in their own hands (interviews 1, 2 and 13). This is remarkable, because the rapporteur came from a smaller group. On the other hand the position of the EP was very unified whereby a lot of work was left and trusted to the rapporteur's assistant and the secretariat. Several of the MEPs in the ENVI Committee however followed the file from close by, usually through one of their assistants. These were shadow rapporteurs, such as Stevenson (ECR (European Conservatives and Reformists)), Lepage (ALDE), Roth-Berendt (S&D), Staes (Greens/EFA) Ayuso (EPP) and Liese (EPP). In the run-up to conciliation, the chair of the ENVI Committee Jo Leinen (S&D) as well as Vice-President Pitella (S&D) became more involved and each had one assistant following the file closely.

The secretariat of the European Parliament came to play an even more important role during the conciliation phase. One person from the conciliation unit was assigned to follow the file already in second reading. Apart from that, a lawyer-linguist was involved and everything was overseen by the head of the Conciliation Unit. All interviewees, from all sides at the negotiation table emphasised the importance of the staff of the secretariat both on procedural matters as well as on the substance. During conciliation most MEPs have of course their assistants supporting them, but primarily rely on the secretariat for the basic briefings, which are then supplemented by the groups for the more political aspects of the negotiations. The secretariat works most closely with the team of negotiators: the Vice-President, the rapporteur and the chair of the Committee supplying them each with separate briefings and preparations for the negotiations. The secretariat too was mainly responsible for formally writing up the final compromise amendments before they were supposed to be voted by the plenary.

All in all seven group staffers, six assistants and three civil servants working for the secretariat of the EP were closely involved in this process. Neither the group staff nor assistant MEPs, but the secretariat and the Vice-president's and the rapporteur's assistants were the main staffers supporting a team of the three MEPs who led the negotiations (the rapporteur, the chair of the Committee and the vice-president).

From the information gathered in the interviews, it is not so much the number staff that had an impact on the European Parliament's position in the negotiations, but more their background. This overview has shown that many supporting staff are available to MEPs. The analysis also reflected that less than a handful is closely involved, at a rate of one staffer per negotiator. Interviewees indeed confirmed that not the number of staff, but their background and expertise were key to the negotiations (interviews 2, 12, 13, 14, 15 and 27). It will therefore be important to look at their experience, background and level of expertise in Chapter 6 in order to qualify these numbers.

5.4.4 Staff as resource in the case of the 2011 budget

The budget case again is somewhat special as it is a case in which almost the whole parliament is involved. All opinion-giving committees have to give their input to the BUDG committee which takes the lead in the negotiations with the Council. As with the novel foods case, the assistants of the rapporteur, the chair of the committee and the shadows are important in supporting their members with briefing notes, but because of the immense coordination effort necessary to come to a position on the one hand, and the technical nature of the decision-making on the other hand group staffers and the secretariat play a very substantial role in the negotiations.

Contrary to the comitology case where coordination took place on a more informal and ad hoc level, the system in the budgetary procedure is highly formalised. Group coordinators are vital in this respect. They meet in each committee and negotiate amongst themselves before sending their amendments to the lead committee (BUDG). Subsequently, coordination meetings are held in the BUDG committee to determine the Parliament's position. It is in these meetings that the political compromises are made. Shadow rapporteurs have a different task in that they do the technical detailed work of going through amendment by amendment, whereas coordinators decide on the more general political strategy, and categories of amendments. As one interviewee described it: "coordinator meetings (in the BUDG committee) is where the real work takes place. It's where we know all the rules and the fixed amounts and find the compromises" (interview 29). The rapporteur is the bridging figure between the two. Because of the extensive coordination that is necessary to come to a position, group staffers play a much more important role than personal assistants (interviews 29, 30, and 31). They not only assist the coordinators, but usually also brief the rapporteur or shadow rapporteur of their group.

Apart from the group staff, the secretariat plays an important role as well. They are key in preparing the triologue negotiations and drafting the official documents. Apart from the head of unit, each heading of the budget has a civil servant responsible for it. He or she follows the coordination meetings described above, makes the calculations, drafts the briefing notes, the agendas for the coordination

and committee meetings, prepares the documents and tables, collects the amendments and drafts the voting lists. By having a “direct line of contact” with the committee chair, they have the necessary political backing to perform this role (interviews 25 and 26).

This case has shown that a vast number of staffers are involved in the annual budgetary procedure. Both the group staffers and the EP’s secretariat are vital in preparing and assisting the work of the members. All interviewees agreed that the EP is well-equipped in this respect, partly thanks to a long standing tradition in the BUDG committee.

5.4.5 Conclusions

The analyses above confirm that the number of supporting staff has substantially grown over the year and that staff is essential to the EP’s role in inter-institutional negotiations. Members rely on them for both the practical and substantive preparation of positions and negotiations. All three cases also demonstrate the importance of the role played by the secretariat. In all three cases they were instrumental in supporting the chief negotiators. The role of assistants and group staffers seems to vary from case to case, except for budgetary negotiations where there is a pre-set coordination system in which group staffers play an important role.

Nothing in the above analyses suggests that the EP would need more supporting staff to assist their members. In the comitology case only three staffers were closely involved in the process but managed to support the rapporteur well. In the novel foods case and in the 2011 budget case more staffers were involved but managed their coordinating and preparatory tasks as well. Neither their number, nor the role they play weakens the EP’s position in inter-institutional negotiations. However, apart from looking at how many staffers were involved and what they do, it is also important to look at how they handle their tasks. This is an issue that will be discussed in the next Chapters when looking at expertise and organising capacity.

5.6 Conclusions on resources as a capability factor

Resources enable an institution to exercise its rights, and therefore have a direct impact on its ability to influence the outcome of negotiations. In the introduction, it was stated that influence is related to the size of and access to resources as they limit or facilitate the capacity to act (Egeberg 2006). The assumption was that because of an overload of work and information and limited resources in terms of budget, time and staff, the capability factor ‘resources’ would have a negative impact on the European Parliament’s capability to influence the outcome of inter-institutional negotiations and account for it falling short of its powers. The analysis

above partly contradicts these statements and presents a more nuanced picture of the EP's resources in inter-institutional negotiations.

Time has proven to be an essential element in negotiations and one that Parliament is indeed struggling with. Reck's (2003) and Busby's (2011) findings on the difficulties members experience in handling the workload have been partially confirmed. MEPs have very little time at their disposal and how they prioritise that time can affect the EP's position in negotiations with the Council and the Commission. Both the comitology case and the novel foods case showed that when a file is low on the priority list, less time is dedicated to it by members, thereby giving more freedom to the rapporteur to define the direction of a file. In the former case, shadow rapporteurs were absent and few other MEPs took an active interest. In the latter case, the chair of the committee became involved only late, missing the opportunity to transcend the rather extremist position of the rapporteur and prepare the ground for compromise. Due to the lack of time dedicated to these files by other MEPs the EP's position was weaker. In the comitology case some important elements were left unaddressed in the EP's position, and in the novel foods case the file had become so polarised that finding a compromise had become very difficult. Nevertheless, the budget showed that even though time is scarce one can still establish a well-substantiated position. This is mainly due to the fact that the budgetary procedure is much more formalised in the sense that the division of labour is clear and the internal procedure forces all key players (the rapporteur, the committee chair, the shadows, coordinators and advisory rapporteurs) to prioritise the preparation of the EP's position. Individual time management is inextricably linked to the degree of politicisation. A high degree of politicisation is associated with more time being dedicated to a file and more members being involved.

Apart from individual time management, this chapter has also shed light on the fact that the EP is struggling with the dynamics of time in the procedure. The comitology case demonstrated the weaknesses often associated with first reading agreements for the EP. Internal procedures, whereby the EP came late into the negotiations, in combination with a self-imposed deadline definitely limited its scope to negotiate and therefore weakened its position. Apart from previous research having shown that first reading agreements raise questions in terms of transparency, inclusiveness and legitimacy, there also seems to be a problem in terms of effectiveness as the involvement of fewer people may lead to a distorted or incomplete position. Finally, both conciliation cases have shown that mounting time pressure on the Council during the negotiations – either by not using the second reading to prepare the ground for compromise or by using the time pressure of conciliation to force concessions on other files – risks having an adverse effect. In both cases, the European Parliament did not see its demands granted and was confronted with a more disappointing outcome. An analysis of the substance of the negotiations in Chapter 6 will make this even more evident. Time, or rather

the handling of it, while not being the only element that influenced the outcome of the negotiations, did have an important impact.

Information is another key resource for the position-building of MEPs. Contrary to the Member States in the Council and to the Commission, the EP does not dispose of a solid independent administration that gives elaborate input. The need for information however differed from field to field: it was more sought after in regulatory policy than in constitutive or distributive policy. Yet, the analysis has shown that across all fields it is neither the access to information, nor the processing of large volumes of information that is a problem, but rather the handling of different sources of information. In both the novel foods and the comitology case, information that could have strengthened the EP's position in the negotiations was available but (consciously) not used. As a result, the position defended by the EP's negotiators lacked certain points or background (the intricacies of the cloning and offspring issue in novel foods, and input on the impact on certain policies in the case of comitology).

The case studies have also demonstrated that neither the number of *staff*, nor the tasks they perform have had a negative impact on the outcome of the negotiations. How they perform these tasks will be dealt with in the following chapters, but it is safe to argue that access to and volume of staff is at a sufficiently high level. The following chapters will look in more detail at how they work in assessing their impact on the EP's expertise and its organising capacity.

Finally, *budgetary resources* seem to play only a minor role for the day-to-day inter-institutional negotiations the EP is involved in. In two of the three cases – the budget case and the comitology case – it had virtually no impact. This is largely due to their nature – one being distributive and the other being constitutive, and the novel foods case confirms that in regulatory policy a budget for ordering studies or organising hearings plays a larger role. Yet again, neither the access to nor the volume of the budget seemed to be the problem, but rather the handling of that budget as it did not seem to deliver the desired results. The general budgetary analysis already indicated that most of the budget for expertise goes to communication and both the novel foods and the budget case showed that the budget available for committees is not directed to deliver input that can be used in negotiations. In conclusion, it is fair to say that, even though its potential impact on the EP's position in inter-institutional negotiations is limited, the budget at the disposal of committees is not used to its full potential.

This chapter has shown that resources are indeed key, but that it is not so much the volume or access to but more the handling of the resources that tends to weaken the EP's position. Time is scarce, but the way files are prioritised and the way in which time is allocated has proven to be much more important. Information is widely available, but the choice of sources an MEP uses is key. There is a budget

available for studies, but its use is not necessarily linked to the legislative work of the EP. In other words, it is not the quantity of these resources but rather their use that need improvement if the EP wants to exercise its powers to the fullest extent.

CHAPTER 6

The power of knowledge: expertise

The third capability factor that is the focus of analysis is identified as ‘knowledge’ or ‘expertise’ in the analytical framework. The capacity of an individual or an institution to exert influence in a governance context is partly determined by its knowledge (March and Olsen 1995: 94). Knowledge of the decision-making procedures and of policy substance is indeed a defining factor for effectiveness in a political setting. It is connected to resources such as staff and information, but at the same time a distinct category. March and Olsen (*ibid.*) understand ‘knowledge’ in terms of training and experience, but the complexity of today’s public policies requires a considerable degree of specialisation as well. The term ‘expertise’ therefore seems more appropriate, because as Krehbiel (1991: 62) puts it, “[a] well-designed legislature is a producer, consumer and repository for policy expertise”. The importance of expertise is even more marked in the EU context where the main output of the decision-making system is of a regulatory nature (Majone 1996). There is indeed a certain technocratic bias in the EU’s public policy, in the sense that expertise is a firm basis for authority, persuasiveness and thus influence. “Knowledge, rather than budget, is the critical resource in regulatory policy-making” (Radaelli 1999: 759). Expertise gives individuals or groups “access to and influence within the political process” (Busby 2011: 13-14).

Before assessing the role of expertise in the different cases, it is important to clearly define the concept in the framework of the European Parliament’s functions and distinguish it from the categories of resources discussed in the previous chapter. This will then be applied to the case studies.

6.1 Expertise as a capability factor in the context of the EP's activities

6.1.1 What is expertise?

Expertise in a policy-making context contrasts with lay knowledge (Ossege 2011: 11-12). It is closely linked to specialisation and experience when defined as the knowledge that has been developed over time through specialisation in a certain subject matter (Haas 2004: 572, Lungu 2011: 1).

The literature makes a distinction between so-called “technical” expertise and “procedural” expertise. The first is what is generally understood as knowledge on a given subject matter. This knowledge is then applied or used in order to formulate a position or a decision (Ossege 2011: 12). It is the “technical know-how (...) indispensable in developing effective EU legislation in a particular policy area” (Bouwen 2004: 340). Procedural expertise refers to the process of getting legislation approved, “it provides (...) the procedural cornerstones to refer to while forming a decision” (Ossege 2011: 12). Knowing the ‘tricks of the trade’ can be as important during negotiations as expertise on substance. Expertise thus also says something about how skilfully one can use the procedures to one’s advantage. Or as one interviewee put it “you can know as much on a given topic as you want, if you do not know how to play the game, you’re useless in the negotiation room” (interview 33).

It is necessary to clearly distinguish expertise from resources such as staff and information as discussed in the previous chapter. Where Chapter 5 focused on which and how many sources of information are available to MEPs, this chapter will focus on how that information is translated into amendments. Where Chapter 5 analysed how many staff members were involved in a given file and what their different roles were, this chapter will focus on the quality of the staff and the MEPs involved by looking at their background, recruitment, and experience.

All the aspects of expertise identified above: technical knowledge, procedural knowledge, experience and the skilful use of information will be addressed more elaborately below when specific elements of expertise in the context of the activities of the EP will be discussed.

6.1.2 The importance of expertise for legislatures

“Public policies are complex, and consequently, effective legislatures need policy specialists”
(Krehbiel 2004: 113)

The increased variety and technical complexity of public issues is one of the greatest challenges for representative bodies and their elected members (Porter

1974: 703). Members of parliament are usually not intentionally put forward by their parties as experts in specific areas, but when elected are nevertheless expected to deal with very complex issues. Without appropriate structure they would have to rely solely on their own training and experience and the resources at hand to make policy decisions. Already in the early days of the US Congress the organisational focus therefore lay on providing a structure that “tapped policy expertise of those who had it and nurtured specialization among those who did not” (Krehbiel 2004: 122). As specialisation, or the strategic development of policy expertise, contributes to adequate problem solving (see Ossege 2011), the design of a well-organised legislature should be adapted to produce and consume policy expertise (Krehbiel 1991: 62). The need for specialized policy expertise has led most parliaments to adopt a committee structure (Schickler 2001: 8). “[C]ommittees have been a means by which legislatures can master complex issues and serve as centres of expertise and information” (Bowler and Farrell 1995: 226). They focus their activities on specific policy areas and are supposed to be representative in their composition. Resources of the committee such as budget and staff are made available to members to enable specialisation in the subject matters at hand and reduce the uncertainty of policy choices (Krehbiel 1991: 62). It is therefore “an efficient way for the parent body to obtain costly information about the consequences of alternative policies” (Gilligan and Krehbiel 1987: 287).

The strategic acquisition and use of policy expertise, or specialisation, is also advantageous for the individual member as it reduces the uncertainty on the outcome of policy choices and enhances his or her position within a committee (Gilligan 1997: 366). Indeed, a combination of legislative entrepreneurship and specialisation has a positive effect on the image and standing of the individual member (Schickler 2001: 8-9). Finally, one has to acknowledge that specialisation through committees also poses the challenge of coordination between committees and political groups inside a legislature. The degree to which policy choices deviate from the majorities in the plenary should be minimised as much as possible (Krehbiel 1991: 5). These organisational challenges will be addressed in Chapter 7 on Organising Capacity.

Expertise and the EP

It is clear from the literature and practice that the general challenges for legislatures or parliaments discussed above also apply to the European Parliament. In the context of the EU, complexity resides in the wide range of policy-problems, the large number of actors involved in policy-making and the multi-dimensional character of issues (Reh 2008: 2). In addition, the EU has been famously characterised by Majone as a ‘regulatory state’ (Majone 1996). Even though policy areas where the EU is active such as development, defence and budget nuance this image, the fact remains that the majority of the EU’s output is regulatory policy. The EU produces legislation on a wide range of policy topics that are often branded

as technical or technocratic²⁵ (Radaelli 1999: 758-759). The key competence in such a policy-making context is 'know-how' or expertise (Harcourt and Radaelli 1999: 109). Expertise is indeed a highly valued asset, and not only in the domain of regulatory policy: in the context of the budgetary negotiations too expertise plays an important role as over 2.000 amendments and a multitude of different budget lines are negotiated (Costa 2003: 146-147; interviews 27, 28 and 29).

How does Parliament fare in regulatory Europe? Busby (2011: 10, 13) argues that the technicality and complexity of legislation is one of the greatest challenges for an MEP to deal with. Expertise has become essential for the well-functioning of the EP. Some authors argue that expertise should not be the main focus of an institution such as the European Parliament which has to defend the broader European interest (Bouwen 2004: 345). Others are of the opinion that the EP has an advantage in terms of expertise because of its committee structure and the limited number of files an MEP has to deal with in comparison with his or her counterpart in the Council (often the Coreper I or II ambassador) (Farrell and Heritier 2003: 583). The next sub-section will counter both views by demonstrating the pressing need for – and the problems the EP is experiencing with – expertise.

6.1.3 Challenges for the EP's in relation to expertise

The EP's relation with expertise poses both challenges for the EP in an inter-institutional context as well as for the internal organisation of the EP.

The inter-institutional context

The extension of co-decision traditionally increases the demand for expertise and fosters specialisation inside the EP (Costa 2003: 147). Sarah Hagemann (2011) predicted that the debate inside the EP would shift from its position in the inter-institutional triangle of the EU to its role and impact on policy substance. The challenge for the EP in the post-Lisbon context would be to acquire the necessary expertise within each of its policy areas. The main inter-institutional question would not be a battle over prerogatives and competences, but on how expertise plays into the overall legislative process. Maurer (2008: 17) comes to a similar observation by arguing that “[t]he Lisbon Treaty will have a considerable impact on the “functional professionalisation” and policy field linked “specialisation” of MEPs”.

²⁵ The term 'technocratic' or 'technical' is not to be understood as 'apolitical' or not-politicised, but rather in the sense of its complexity. The degree to which a file is attributed political importance has often very little to do with its intrinsic nature as even the most 'technical' topics such as food standards or comitology procedures can become politically important.

Yet, some authors argue that expertise is something the EP has difficulties with. In the EU's inter-institutional context the Council representatives have a "technical legitimacy" based on very specific and detailed national interests, whereas MEPs have a broader "democratic legitimacy" representing their constituents (Fouilleux, de Maillard and Smith 2005). In that light, Maurer (2008: 7) argues that MEPs have little to gain from building up solid expertise as regards their position towards the media or the electorate. European elections are not won because one is a great expert on a given topic, and media attention during the legislature does not focus on highly complex issues but more on open conflicts or heavily politicised questions where expertise does not seem to matter. "As a consequence, the Parliament is often criticized (...) for (...) being uninformed or subjectively informed about the issues involved" (Fouilleux, de Maillard and Smith 2005: 617). Radaelli (1999: 771), counters this position by arguing that even though MEPs work in a very politicised and mediated environment, expertise is still very relevant for them to play their role in the decision-making system. One does not exclude the other.

In the context of this thesis, the concept of politicisation is used as defined by Wlezien (2005) and De Wilde (2010). Their definition goes beyond the more static distinction between 'technical' and 'political' issues put forward by Radaelli (1999) who described technical issues as those approached on the basis of expertise, whereas political issues are approached on the basis of values. Expertise and values play a role when approaching a file, but the politicisation of an issue is a process, and is not alone determined by the nature of an issue (Fouilleux, de Maillard and Smith 2005: 611-612). As Wlezien (2005: 557) argues, an issue is not salient or politically important by definition, but by the degree to which it is perceived as a political problem. The process of politicisation, or the political importance attributed to a certain issue (see Borghetto 2008; Oppermann and Viehrig 2011) is thus inextricably linked to "polarisation of opinions, interests or values and the extent to which they are publicly advanced towards the process of policy formulation" (De Wilde 2010: 35).

Another argument related to the EP's relation with expertise is that the sensitivity of policy makers to the cost and impact of regulation is low when these costs are born by external entities that have to comply with them (Harcourt and Radaelli 1999: 109). In an EU context this would mean that the EP cares less and spends less time and effort on the detailed effects and cost of legislation as it is the Member States that have to implement it. Related to this issue, Burns (2005: 492) argued that the EP's success is dependent on who pays the costs or receives the benefits of the EP's amendments. She hypothesised that the EP would be more successful when its amendments do not impose costs on Member States but rather on industrial actors.

It is clear that there is debate on whether the EP needs expertise. According to some scholars, that need can be counterbalanced by the politicisation of issues and

the absence of responsibility for the costs of implementation. Yet, in a study of 2006 on the EP's performance in inter-institutional negotiations, Thomson and Hosli (2006: 398) found that a lack of expertise on the side of the EP on the technicalities of policy "often means that it cannot make full use of the potential it has according to the procedural rules". They further argue that

(...) legalistic analyses of the co-decision procedure may attribute equal power to the Parliament and the Council. However, the results presented here indicate that the Parliament's power is much lower in practice. Some of the practitioners indicated that the Parliament's position is weakened by the lack of technical policy expertise among MEPs compared with the Council, whose Member State representatives are supported by large national bureaucracies.

This finding is fully in accordance with the assumption on expertise formulated in the framework of this thesis, namely a lack of expertise has a negative impact on the EP's ability to influence the outcome of inter-institutional negotiations. Irrespective of the question of how expertise plays in an inter-institutional context, the next section will show that inside the EP itself, the development of expertise may lead to fundamental concerns.

Challenges with expertise inside the EP

The Parliament's expansion in terms of size and competences has led to more specialisation of individual policy makers inside the EP (Christiansen 2001: 750). As already touched upon in Chapter 2 of this thesis, "[i]n most legislatures, expertise is universally needed, but not uniformly distributed" (Krehbiel 1991: 68), leading to information asymmetry. In a representative body such as the EP the positions that are adopted should reflect the preferences of a majority in the plenary body. Information asymmetries, as a result of expertise and specialisation, however raise the possibility of "opportunistic use of expertise". This not only risks compromising the representative nature of the institution but may also affect its institutional strength negatively as it can lead to one-sided positions being defended (Krehbiel 2004: 113). Asymmetries may occur between the members themselves, between the elected officials and the non-elected officials, and between the committee and the plenary.

Between members

In the first category the element that creates asymmetries between members is specialisation. Knowledge on a given topic is "universally needed" but never evenly distributed within a legislature, some members have more of it than others (Gilligan and Krehbiel 1987: 460; Krehbiel 1991: 71). As explained above, the committee system of a parliament stimulates specialisation of members. Even within a committee MEPs specialise in different topics within the committee's field

of competence. Specialisation thus creates asymmetries in expertise between members and holds the risk that this expertise is not shared. Acquisition of expertise is indeed a costly affair and members should have a good incentive to share it so that the full potential of that expertise is realised for the institution (Krehbiel 1991: 64). If this incentive is not there, members could be tempted to make strategic use of expertise by keeping it from others and using it to advance their own positions. This is particularly the case for so-called 'preference outliers' or members that have extreme positions. They are expected to specialise more, "participate harder, and ultimately generate outcomes that are biased", towards their preferences (Gilligan 1997: 371). Knowledge is power, and in a policy-making context where expertise is valued such as the EU's, specialisation indeed wields influence. In his research on the EP, Nils Ringe (2010) found that members often rely almost blindly on other members who they consider to be more knowledgeable and share preferences with in order to determine their own position on a file. Members with a reputation for expertise can therefore wield considerable influence. It is not surprising to observe that asymmetries and strategic use of expertise may indeed lead to one-sided views with little exchange of information between committees (Neuhold 2001: 6). This in turn can weaken an institution's position as the basis upon which its position is based, is not broadly carried.

Indeed, specialisation and expertise are often linked to the position of a member. Positions therefore can also create asymmetries. "[A]lthough Parliament has 736 members, it is only a handful of MEPs who shape the overall EP position on a legislative act, namely the rapporteur, the shadow rapporteurs and the coordinators" (Rasmussen 2011: 7). In order to be complete, also the chair of the committee and a vice-president (in case of conciliations) have the potential to shape the outcome. Reh (2008: 20) argues that these positions are likely to be linked to a certain level of expertise in the subject matter. Marshall (2005: 554) too found that there is "a subset of highly influential committee members", who – on the basis of expertise – "exercise informal quality control over technically deficient or overtly biased information". The research of Neuhold (2001: 6) points in the same direction as the appointment of rapporteurs was found to be partly based on expertise gained through specialisation and partly based on political prestige. Here too, specialisation and expertise were found to lead to an increased confidence of non-committee members in their colleagues, but still entails the risk of leading to the adoption of unbalanced or one-sided positions. The issue of positions and the influence they wield will be further addressed in the next chapter on Organising Capacity.

Asymmetries in expertise or specialisation between members thus creates certain risks inside a Parliament. It concentrates influence with a handful of MEPs and could potentially lead to one-sided positions.

Between members and staff

Even though several scholars (Mamadouh and Raunio 2003: 349; Rasmussen 2011: 6) describe the EP's in-house expertise as small, group staff and the EP committee secretariats are important for providing expert assistance to the members (Neuhold 2001: 8). Previous research (see Winzen 2011, Dobbels and Neuhold 2013, Egeberg et al. 2012) has shown that the EP's supporting staff carries out far reaching policy-making tasks in inter-institutional negotiations. In a majority of cases this was found to be based on the expertise of the official involved, on the condition he or she had a good working relation with the member in question (Dobbels and Neuhold 2013). The fact that the expertise of supporting staff is valued in the EP is further exemplified by the report on the EP's activities of 2009 in which the call for increasing investment in expertise and training for civil servants was stressed (Kratsa-Tsagaropoulou et al. 2009: 29).

However, here too expertise may lead to asymmetries, namely between members and their staff. The risks associated with these asymmetries very much correspond to the risks of delegating tasks to civil servants, an element which was discussed in Chapter 2. In her research on the US Congress, DeGregorio (1988: 460) not only found that asymmetries led to staff willfully manipulating processes, but also to the situation in which elected members turned more and more to their staff, rather than to their fellow members or to their electorate. This increasingly 'professionalised' the working environment in the Congress and resulted in the adoption of positions that put more emphasis on cost and efficiency rather than on personal political opinions. This connects to Maurer's (2008) argument which was discussed above: by putting such an emphasis on the importance of expertise, are we not losing sight of the more political role an institution such as the EP should play? The expertise of civil servants and the effect on the EP's position therefore raises more questions about legitimacy than it does on the central question of this thesis, namely the strength of an institution in practice.

Between committees and plenary

"Committees, as agents of their parent chamber, exist to investigate, deliberate, apply specialized knowledge, and recommend action" (Krehbiel 1991: 105). The committee system in many parliaments was put in place in order to prepare well-deliberated decisions for the plenary in an efficient way (Gilligan and Krehbiel 2007: 287). This structure leads inevitably to asymmetries in terms of expertise between the plenary and the committees. These asymmetries are normal and present in every legislature, but it may potentially lead to preference outliers shaping the decisions and positions in the committee, which can have an impact on the broader inter-institutional negotiations.

The risk of asymmetries between committees and plenary is all the more relevant in the context of the European Parliament where over 70% of legislation is agreed at first reading (see table 4.1). This means the only discussion and vote in plenary is on a negotiated agreement with the Council with – in practice – no further possibility to amend it. In this context, Reck (2003: 52) called upon the EP to do “some basic homework if it wants to avoid a further deterioration of both its committee and plenary system into an all-devouring voting machine”. Research on the US Congress confirmed that asymmetries in terms of expertise, combined with a limited scope for the plenary to amend the agreements found at committee level, created inconsistencies in terms of representativeness (Gilligan and Krehbiel 1987: 288; Shepsle and Weingast 1987: 86-87). The broader issue of coordination between the committee and the plenary will be taken up in Chapter 7 on Organising Capacity, but in this chapter the effect of asymmetries in expertise on that coordination will be analysed.

In conclusion, it is fair to say that the development of expertise through specialisation creates asymmetries. Asymmetries between members; between members and their staff; and between the committee and the plenary. These asymmetries not only have a potentially negative effect on the representativeness of the decisions taken, but may also lead to one-sided positions being adopted and defended in inter-institutional negotiations. With one case agreed in first reading, and two cases that went into conciliation, these risks will undoubtedly come to the fore during the case study analyses. Before starting the empirical analysis, a last aspect of expertise will be discussed, namely the importance of background and experience.

6.1.4 Background and experience of members and staff

As explained in the introductory sections of this chapter, March and Olsen (1995: 94) link the concept of expertise to training and experience. It has been argued that expertise comes through specialisation and one important factor in that respect is experience with the subject matter and with the rules of the game. In this section these elements are further explored by looking at recruitment, background, and the effect of turnover and mobility of both elected members and staff.

Recruitment

Putting forward candidates for the European elections

What background and what experience does one need in order to be a candidate for the European elections? The rules governing the European Parliamentary elections are laid down in the 1976 Act Concerning the Election of the Members of the European Parliament by Direct Universal Suffrage. The act was last amended in 2002 and had before been supplemented with Directive 93/109/EC which lays down rules for voting and standing as a candidate for EU citizens residing in a

Member State of which they are not nationals. These instruments have established a set of common electoral rules such as the concept of proportional representation, a threshold of maximum 5% to win a seat and the prohibition to combine the post of MEP with a national parliamentary seat (Duff 2012). The nomination of candidates, the demarcation of constituencies and the formulas to distribute seats are all left to the individual Member State (OSCE 2009: 14). Consequently there are also no specific EU wide rules about standing as a candidate apart from the general principles of the EU treaties. All Member States have established specific electoral procedures to put forward candidates for the European elections. Most of them include traditional clauses such as not having a criminal record, or not combining certain elected offices. Aspects such as the eligibility age limit for candidates therefore vary from Member State to Member State: in twelve countries it is 18, in others 21 or 23 and in Cyprus, Greece and Italy you have to be at least 25 years old to be eligible to become an MEP (OSCE 2009: 16).

Not only rules, but also practices in putting forward candidates differ among Member States and between political parties. Some use the European Parliament as an exile for the national political system, for others it is a prestigious post for '*fin de carrière*' politicians. Some, like the British UKIP (UK Independence Party) and BNP (British National Party), use it for their leaders to hold a high ranking paid elected position because in the national electoral system it is harder for them to get elected. Other parties, like Forza Italia with the infamous Berlusconi *babes* on the list in 2009, seem to have other reasons for putting forward candidates (Taylor 2011). Overall one can conclude that there are no specific legal rules nor fixed practices regarding background, experience or expertise that Member States or political parties use to put forward their candidates. Almost anyone above a certain age can stand as a candidate for the European Parliamentary elections.

*Recruitment of staff*²⁶

The recruitment of staff is different per category. The civil servants working for the secretariat of the European Parliament are EU officials and thus subject to the same type of recruitment as civil servants working in the Council secretariat or the Commission. Selection is done on the basis of a large-scale competition, the so-called '*concours*'. After the last two enlargements, the European Personnel Selection Office was established to manage this process for all three institutions together. It reformed the *concours* in 2009. However, all officials involved in the cases that are discussed in this thesis were recruited under the previous system. This system was heavily inspired by the French diplomatic exams. There were three

²⁶ Here, the same supporting staff is discussed as in Chapter 5, i.e. staff with policy-making tasks: personal assistants, group staff and civil servants of the highest level (so-called AD level) working at the Secretariat General of the EP on policy related issues (e.g. DG IPOL)

stages an applicant had to pass before being put in a pool out of which services of the institutions could recruit. The first stage was a pre-selection test on verbal and numerical reasoning and detailed questions on the EU's history, treaties and decision-making. This stage was "designed to eliminate as many candidates as possible, since as many as 20,000 people may apply for a single major concours" (Ban 2009: 7). One had to dedicate time, study and have a good memory in order to pass this first stage. After this pre-selection stage candidates' backgrounds, CVs and diplomas were evaluated. AD-level staff, the focus of this research, are all required to hold higher degrees. For some categories of staff, such as legal advisers or lawyer linguists there were and still are specific requirements and separate tracks for the *concours*.

The general *concours*, however, did not require any specific field of education: political scientists, civil engineers, doctors, psychologists, and graduates from other disciplines, all had equal access. The second stage of the *concours* was a written test that was either general in nature or focused on an area of specialisation: law, accounting, or information technology. This stage combined both multiple-choice tests and written essays (Ban 2008: 6). Those who passed were subsequently invited to Brussels for an interview before a Selection Board of EU officials which asked standard job-interview questions on personality and motivation but also gauged knowledge on the topics the candidates had discussed in the written stage. The effectiveness of both the written stage and the interview stage is reported to have varied and depended heavily on the constellation of the Board and the staff that corrected and marked the exams (ibid.: 7). After having passed these stages the successful applicant was put on a recruitment list and would either be contacted by one of the institutions or – in a majority of cases – had to actively apply for a position before getting a job.

A common critique of the recruitment system as described above, was that it did not test skill or competence as much as it tested knowledge of the EU's decision-making system and history. As indicated above, the system was reformed in 2009 with a much bigger focus on competences and skills²⁷. The previous *concours* was very beneficial for candidates who 'fitted the mould': former interns or contractual agents of the institutions and people with foreign study or working experiences found it easier to pass. Another critique is that the *concours* mainly recruits generalists (Reck 2003: 52, Ban 2008: 8). This is especially the case for the Council Secretariat and the General Secretariat of the EP. When specific *concours* are written out for policy experts, this is usually for vacancies in Commission DGs. Apart from lawyer or lawyer-linguist selection procedures, there were no expertise

²⁷ The main selection procedure now is a day-long assessment centre test during which the applicant has to take part in several activities such as a group discussion on an EU topic with other applicants, a presentation and an interview.

related selection procedures in the *concours* for the civil servants that are the unit of analysis in this research.

The recruitment of political group staff is both similar and different. They are recruited through party political channels, either in the EP or through national parties and parliaments (Egeberg et al. 2012: 10). A majority of them are temporary agents who are hired via specific party linked competitions. These competitions are often modelled on the *concours* with oral and written exams and language tests. Political preference and party allegiance of course play a role as well (Corbett et al. 2011, 113). In recent years, there has been a tendency to select more on the basis of expertise. In the larger groups especially, specialisation is encouraged, and group staffers are assigned to a specific field within the committee's area of competence (Costa 2003: 148; interview 44) But also smaller groups such as Greens/EFA are stressing the importance of expertise. Staffers being recruited to work in the Economic Affairs committee for instance not only have to demonstrate a thorough knowledge of the EU's decision-making procedures and current affairs, but also on more committee specific matters such as regulatory reforms in the financial sector (interview 45).

Finally, 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 implies that assistants enjoy similar social benefits to those of EP civil servants with their salaries graded accordingly. MEPs are however entirely free in the selection of candidates they want to work for them. And practice thus also differs from MEP to MEP.

Background and education

Background of Members

Around a third or 35.7% of the members in the 2009 European Parliament are MEPs with national parliamentary experience and 17.1% have had ministerial experience – 11 members are former prime ministers or presidents (Corbett et al. 2011: 55-56). These numbers are higher than those of the previous decade, which can be explained partly by the enlargements of 2004 and 2007 which brought a sharp increase of MEPs with national experience as a member of parliament or minister. Older Member States such as the UK, Germany, the Netherlands and France have drastically lower numbers. This does not mean they send inexperienced members to Brussels, rather the opposite: these Member States score high on seniority because they have a tradition of promoting 'European careers' for the politicians they send to Brussels. Seniority is therefore also linked with turnover, a point that will be addressed further down.

Apart from politicians, the 2009 Parliament also includes judges and magistrates, trade union leaders, scientists, doctors, former lobbyists, academics and diplomats

and even an Olympic medalist (Corbett et al. 2011: 58-59). Yordanova (2009) found that education and professional expertise has a positive impact on the likelihood of membership of certain committees. For instance “expertise in economics increases an MEP’s likelihood of joining the Committee on Budgets (...) and the Committee on Economic and Monetary Affairs,” whereas lawyers are more likely to join JURI and doctors the ENVI committee (Yordanova 2009: 72). In short, it is a diverse group of which a vast majority has a political or public sector background. It is however clear that in terms of assessing specialisation and expertise the specific background and experience of the individual members dealing with the cases under discussion will have to be examined.

Background of staff

As explained above, the system for hiring AD-level officials in the Secretariat General of the EP and political group staff stimulates above all the recruitment of generalists as the selection process does not focus on expertise in specific areas. In the past, the broad range of areas they had to cover and the language of the rapporteur, often determined the division of workload amongst officials, rather than their respective fields of expertise, strengthened this tendency (Costa 2003: 151). Contacts with experts from the Commission and the Council, and an increase in the use of translation have led to more specialisation in recent years. Nevertheless, the generalist nature is also reflected in the educational background of most of the staff in the groups and the secretariat. Research has first of all found that around 70% hold a master’s degree with 17% and 12% holding bachelor and PhD degrees (Egeberg et al. 2012: 10). The majority of civil servants working at the secretariat come from other positions in the EP administration, the national public administration or the political groups. Both group staff and secretariat officials have similar backgrounds: a very large majority are educated in law or social sciences and only very few have a natural sciences or technological background (Egeberg et al. 2012: 10).

Research on the background of assistants comes to similar conclusions. Most assistants have a law or social sciences background and have completed programmes on European studies as part of their degree. Most popular in this respect are the College of Europe, the London School of Economics and the Université Libre de Bruxelles (Michon 2008: 174). Almost half of the assistants prove their political loyalty by holding membership cards of the political party of the MEP they work for (ibid.: 172).

The main competences in terms of education for supporting staff is therefore having a legal background or at least a thorough knowledge of the functioning of the decision-making of the EU and of current affairs. The EP’s supporting staff can thus best be characterised as generalists in political affairs, rather than as policy specialists. Both Neunreither (2006: 47) and Costa (2003: 151) confirm this and add

that 'generalism' is reinforced by the fact that they have to cover vastly different policy fields throughout their career. In her research on technocracy in the European Parliament, Reck (2003: 52) came to the conclusion that this is one of the main reasons why the institution lacks expertise in certain policy areas. In that context, Reck called for the recruitment of "scientific staff" who "understand the technical language of the research studies that are coming from external contractors and which is able to transfer it in a language understandable for non-scientists such as the majority of the MEPs".

Turnover and mobility

Staff turnover and mobility

The administrative system of the EP's general secretariat is characterised by a high degree of tenure (Dobbels and Neuhold 2013: 379-380), which stimulates seniority. Egeberg and others (2012: 12) found that the level of seniority for political group staff is the same as for secretariat staff. Turnover is moreover rather limited for these groups and as mentioned above, some go from working for one of the political groups to being a secretariat official. For assistants the story is different as their position is often inextricably linked to that of the MEP they are working for. Turnover of members (see *infra*) is thus linked to that of their assistants. The effect of a high degree of seniority and thus experience with political group staff and administrators of the secretariat could be beneficial for the development of expertise. The longer someone works in a certain field or for a certain committee, the more opportunity there is to specialise and become an expert in that field. This was definitely the case in the past, notably in the seventies when members combined their post at the EP with national parliamentary work. Their absence encouraged civil servants to become experts in their fields of competence. In combination with the security of tenure and careers with very low internal mobility between services this provided a fertile ground for specialisation and the development of an "independent non-partisan service" with a high degree of expertise (Neunreither 2006: 46-47).

Nowadays the situation is different. As discussed above, the supporting staff that is recruited are mainly generalists. Their relatively low number (see section 5.1.4 on staff in Chapter 5 on resources) means that they have to cover many areas within a committee. Yet, it is not so much this that hampers the development of expertise, but rather the rules on internal mobility. The fact that a civil servant working for the EP secretariat has to change service every three or seven years²⁸ means that they neither have the capacity nor the time to reach the same level of expertise of

²⁸ The policy on mobility for secretariat officials in the EP stipulates that an official should change post every seven years. New recruits however have to change twice in the first seven years of their appointment, which means a first time after three and a half years, and a second time after their seventh year. After this the normal regime of changing posts every seven years applies (interview 46).

a Commission or a Member State official (Dobbels and Neuhold 2013: 380; Reck 2003: 64). Research in psychology has shown that on average it takes ten years to become a qualified policy expert (Ericsson and Charness 1994: 738). Political groups do not have fixed rules on mobility of staff, but it is common that people change posts every four or five years, usually around the time of an election – depending of course on the election result and the language of the members in the different committees (interview 46 and 47 and 48).

Not so much turnover but rather mobility hampers specialisation and the development of expertise.

Turnover of members

As Perez (2012: 1) writes, with the European Parliament gaining more and more competences with every treaty reform, the question of turnover, or the rate of members that are not re-elected, is “timely and important”. The argument throughout this thesis is that powers have to be enforceable in practice and turnover is an important element in that respect as it is directly linked with experience, a crucial factor for influence (Scarrow 1997).

Turnover has to keep the balance between on the one hand bringing in fresh blood and new ideas and on the other, allowing members the time to specialise, gain experience and become effective. “[R]ates that are too high or too low can cause significant problems” (Perez 2012: 2). Research on national parliaments has found that a healthy turnover rate is around 30% (Matland and Studlar 2003) and that newcomers need around three years to become fully effective members (Perez 2012: 5; Hyneman 1938: 21). Experience and seniority are highly valued because they are linked with expertise and specialisation (Gilligan 1997: 373). Experienced members not only know the tricks of the trade in terms of procedures, but are also familiar with existing legislation, the stakeholders and the implementation of the policy; in addition, they also know the way to transform their own interests into legislative action (Hynemann 1938: 22). Having a large majority of members staying on for another legislature thus increases the capacity and expertise of the institution as a whole; and therefore its standing in an inter-institutional context. In order to be complete, it also has to be pointed out that a rate of turnover that is too low causes sclerosis in terms of institutional and political renewal. In the US this has led to a movement campaigning for mandatory term limits (Matland and Studlar 2003: 89).

The turnover rate in the European Parliament has been traditionally high at a level of around 50%. Table 6.1 shows the development since 1989. Linked to previous research, this would mean that over half of the members are functioning at less than their full potential (Perez 2012: 5). Mamadouh and Raunio’s (2003) research confirm the benefits of staying on for at least two terms by showing that MEPs in

their second or third mandate were more productive than newcomers. It “indicates that it takes some time to build reputation inside the Parliament and to be recognized as an expert” (Mamadouh and Raunio 2003: 348). When looking at the numbers for each Member State, Germany and the UK jump out as exceptions with respectively 60% and 70% of members that stay on. These countries often have MEPs with very long service in the Parliament, which contrasts with others such as Poland, France and Italy who have very high turnover rates of around 60% for France and Poland and 70% for Italy (Corbett et al. 2011: 52). This leads to the observation among many who work at and with the EP that there is a difference in quality and expertise between these groups (interviews 49, 50, 51).

Table 6.1: Turnover of MEPs throughout the years

Election year	Turnover rate
1989	51.4%
1994	42.5%
1999	45.7%
2004	54.0%
2009	49.6%

Source: Corbett et al. 2011: 51

Causes for this high rate of turnover and the differences between Member States are diverse. Perez (2012) found that the distance of the Member State from Brussels, the size of the delegation, the salary difference with national parliaments and the length of membership of the Member State in question are important factors. The further away from Brussels, the smaller the delegation, the bigger the salary difference and the younger the Member State, the higher the turnover.

The effects of a high turnover rate such as the EP’s are not necessarily all negative. First of all, it implies an alertness and responsiveness of Members towards their constituency as their incumbency is not safe (Gilligan 1997: 382). Circulation of members is also necessary to ensure legitimacy and avoids the risk of the so-called “triple A” connected to low turnover rates: arrogance, apathy and atrophy (Matland and Studlar 2003: 88). As mentioned above a high turnover rate also implies bringing in new ideas and has a positive influence on public policy innovation as policy preferences change more with every legislature (ibid.). Atkinson and Docherty (1992: 302) found that a high turnover also creates the conditions for institutional reform as newer members are often impatient with legislative lassitude and often push for procedural and institutional change.

The negative effects of a high turnover rate are nevertheless quite severe, especially in the light of the capability factor of expertise. A 50% renewal rate

weakens the EP vis-à-vis the Council and the Commission, as it reduces the experience and thereby also the level of expertise (Perez 2012: 4; Gilligan 1997: 382). High turnover also negatively affects the quality of the work. Quality in legislating and policy analysis is inextricably linked to seniority and experience (Putnam 1976). A member who is not planning on staying for at least two terms is also less likely to “carve out a niche” (Schickler 2001: 9). Short-term thinking of this kind leads to what Atkinson and Docherty (1992) define as ‘amateurism’: members with short careers in a legislature that do not develop the necessary expertise to play their role as member fully. In that respect it will also be important to look at turnover in terms of committee membership. A member that has been in the Parliament for three terms, but changes committee every term might have the same problems regarding the development of expertise on the policy subject as newcomers have (Mamadouh and Raunio 2003: 349).

Turnover thus is an important issue to take into account when analysing the factor of expertise. With a high rate for the European Parliament it will be important to see whether this has affected the EP’s performance in the inter-institutional negotiations that took place on the three cases.

6.1.5 Conclusion

The above analysis of ‘expertise’ in the context of the EP’s functions has demonstrated that it is an important factor to take into account when assessing whether the EP’s influence in practice is matching up to the powers it has. In a policy-making environment where regulatory decisions, that are often highly complex, are the main source of output, the demand and need for expertise is great. As co-legislator in almost all regulatory fields and as a branch of the budgetary authority, the EP too needs the necessary expertise to fully play its role. Past research has shown that a lack of expertise has affected the EP’s performance in inter-institutional negotiations negatively.

This section has identified some of the challenges the EP has in relation to expertise. First, expertise is something that does not come naturally with a political body composed of elected officials who do not represent one specific interest. Second, the fact that the European Parliament itself is not responsible for implementation makes its members automatically less sensitive to the exact effects and costs of legislation. Third, the development of expertise is hampered by a high turnover rate. With more than half of the Members not returning to their position after each election, a lot of valuable experience and expertise is lost every five years. Finally, research on the US Congress has shown that even if expertise is developed, it risks having a negative effect on the representativeness of the positions that are adopted.

In order to assess the impact on expertise, factors such as turnover, background, experience, and staff mobility of the key players will be looked at in the three case studies. The following questions will be examined: have these elements had an impact on the substance of the position and amendments defended by the EP? And how did this play into the overall negotiations with the Council and the Commission? Those are the questions that need to be examined in order to see whether the assumption that a lack of expertise is hampering the EP in fully playing its role as co-legislator is correct.

6.2 The role of expertise in the case of comitology

In each of the cases a general profile of the key players, both MEPs and staff, involved in the negotiations will be given. What is their background and experience, and was there any effect of turnover or mobility? This will then be linked to the analysis of the substantive negotiations and the positions taken by the EP by focusing on key amendments made to the proposals of the European Commission.

6.2.1 Expertise of the key players

MEPs

Only a limited number of MEPs were actively involved in the negotiations on comitology. This was partly to do with a lack of political interest in the reforms and a lack of understanding of the subject matter. In the following sections, the background and expertise of the MEPs involved will be analysed.

Jozsef Szajer (rapporteur – EPP)

Szajer is a Hungarian MEP and vice chair of the EPP Group. He is a member of the AFCO (Constitutional Affairs) committee and a substitute in the JURI Committee. He is also an experienced and high ranking Hungarian politician: he is a founding member and former parliamentary leader of the Fidesz Party in Hungary and was chairman of the drafting committee of Hungary's new constitution in 2011 (interview 18). He has a strong background in European Affairs having been the Vice Chairman and Chairman of the European Integration Committee in Hungary between 1992-1994 and 1998-2002 respectively. He was also Member of the European Convention between 2002 and 2003 and an observer MEP between 2003 and 2004. He has been an MEP in the JURI committee since 2004 (Szajer 2012).

As a representative of an acceding Member State in Working Group IX on Simplification during the European Convention, Szajer was already familiar with the topic of delegated and implementing acts (interview 52). The basis for articles 290 TFEU and 291 TFEU on which the new comitology regime was established was

drafted in that Working Group (2002: 10-12). In the light of this experience, during the 6th and 7th Parliament Szajer was rapporteur of a report with recommendations to the Commission on the alignment of legal acts to the comitology decision of 2006 and of four regulations adapting a number of instruments to the regulatory procedure with scrutiny which was part of that decision (Szajer 2008; Szajer 2011).

Szajer was thus regarded as a political expert on comitology and was well aware of the stakes of the Lisbon Treaty reforms (interview 20 and 21). It was therefore no surprise that as a member and vice-president of the largest political group inside the European Parliament, he obtained the rapporteurship for the negotiation of the new regulation.

Shadow rapporteurs

For S&D, the German MEP Bernhard Rapkay was appointed shadow rapporteur. He has been an MEP since 1994. For three terms he was a member of the ECON (Economic and Monetary Affairs) committee and a substitute for ITRE (Industry, External Trade, Research and Energy). Since 2009 he has been a member of the JURI committee. In that capacity he has been mainly dealing with immunity and privileges reports for citizens, enhanced cooperation on the patent and the new staff regulations (Rapkay 2012). Other than having come across comitology provisions in the regulations he piloted in the ECON committee, he has no specific background in comitology. Rapkay was also not very active during the negotiations on the file. He did not attend any trialogue meeting and did not intervene in the JURI committee meetings when other members of his group had raised concerns on the issues of trade, financial instruments and the alignment of existing regulations to the new system (see infra) (interview 18).

For the Greens/EFA group, coordinator and Austrian MEP Eva Lichtenberger shadowed the file. Before becoming an MEP she was a member of the Tyrolean and Austrian Parliament and was a minister in the Tyrolean Government responsible for Environmental protection between 1994 and 1999. She too was a member of the European Convention, though not of the Working Group on Simplification (Lichtenberger 2013). Yet, in that capacity she had a general understanding of the reasons behind the Lisbon Treaty reform in comitology. Since 2004 she has been an MEP, first in the TRAN (Transport and Tourism) Committee and since 2009 in the JURI Committee. Apart from being a member of the Convention, she has no legal or any specific comitology background, but was nevertheless the most active MEP in the JURI committee apart from the rapporteur (interview 18).

Apart from these two MEPs, very few others inside the JURI Committee were actively involved in the negotiations. The chair of the committee, Klaus-Heiner

Lehne (EPP), was kept informed on the negotiations but never actively intervened. The other political groups sent their group staffers or MEP assistants to the trialogues and were debriefed by them and during committee meetings by the rapporteur. The reason for the limited involvement of other members is two-fold. First, inside the JURI committee, the comitology reforms were not considered controversial. The line proposed by the rapporteur namely to defend the EP's rights as an institution were almost unanimously supported (interviews 19 and 20). The file therefore was not attributed high political importance and raised little interest among MEPs in the JURI committee. A second reason is that JURI has no real tradition of appointing shadow rapporteurs that actively intervene in the negotiations (interview 18). In many files it is not clear whether there are shadows appointed as the follow-up is usually handled by the coordinators and their group staff. The limited involvement of other MEPs will also be dealt with in the next chapter on organising capacity.

MEPs of other Committees

Three other MEPs from outside the JURI committee became involved in the file. Paolo De Castro of the S&D and chair of the AGRI Committee, Gay Mitchell of the EPP and advisory rapporteur for the DEVE (Development) Committee, and Vital Moreira of S&D, chair of the INTA Committee.

Paolo De Castro has extensive experience in agriculture. He studied and taught Agricultural Economics and Policy at the University of Bologna, and was Minister of Agriculture and Forestry between 1998 and 2000 in the two governments led by Massimo D'Alema and in the 2006 Prodi government. In 2009 he was elected MEP and because of his vast expertise in agriculture appointed chairman of the AGRI Committee (De Castro 2012). As the Lisbon Treaty brought the Common Agricultural Policy under the ordinary legislative procedure, it was De Castro himself who was appointed advisory rapporteur for the opinion of his committee on the new horizontal comitology regulation. Although he was an expert in the field of agricultural policy, comitology was a new issue. No other MEP had any experience with or knowledge about it, and the matter initially raised little interest in the committee (interview 19). A key concern in the field of agriculture was however the adaptation of the existing *acquis* to the new Lisbon Treaty rules and the inclusion of delegated acts where there were old comitology provisions (see *infra*).

Gay Mitchell has been MEP for the ECON and DEVE Committees since 2004. He was Minister for European Affairs in Ireland between 1994 and 1997. During the Irish Council Presidency of 2006 he was actively involved on inter-institutional issues and in that capacity dealt with the implementation of the newly established regulatory procedure with scrutiny which had been agreed in the same year under the Austrian Presidency (Mitchell 2012a; Mitchell 2012b). Mitchell thus had a good

background to understand what was at stake in the reforms and took an interest as he not only was rapporteur for the DEVE opinion but was also in charge of two of the four financial instruments that were being negotiated with the Council and the Commission parallel to the negotiations on the horizontal comitology regulation. As will be explained below, the main sticking point in the negotiations on the financial instruments was on the choice between delegated and implementing acts for certain provisions (interview 23).

Vital Moreira, Portuguese S&D MEP and chair of the INTA committee too was involved in the file. Moreira is a Law professor and a former judge at the Portuguese Constitutional Court. He was elected MEP in 2009 for the first time and became chair of the INTA Committee (Moreira 2012). Apart from his general legal background, he did not have specific expertise in comitology. The key point from INTA's point of view was the inclusion of trade defence measures in the new horizontal comitology regulation, a matter which in the past had been dealt with in separate regulations with a different voting regime (see *infra*).

A remarkable role in the negotiations was played by the ENVI Committee. Like eleven other committees it had published an advisory report (Leinen 2010), which was considered one of the most important ones as it dealt with comitology in its day-to-day business. However, ENVI did not actively intervene on the issue of voting arrangements in cases linked to public and human health, and food safety (including GMOs) which is a defining point in the new regulation. In addition, even though its rapporteur, Jo Leinen was a former member of the AFCE committee and in that capacity dealt with the negotiations on the Lisbon Treaty, the implications of the new horizontal regulation were not fully understood as mistakes were made in the draft report (see *infra*). Here too, the analysis below will show that this was a key factor for the EP's position in the negotiations that followed.

Staff

As already discussed in the previous chapter, the assistance of both the committee secretariat and the group staff was of key importance for the rapporteur. The official Szajer worked with most closely was the EPP group adviser for the JURI committee. She has a legal background and took up the coordination between the political groups, with the other committees and with the Conference of Presidents (interviews 18, 20 and 21). The committee secretariat was key on the substance of the negotiations and the main drafter of amendments, reports and preparatory documents for the trialogues (interview 18 and 21). As explained in the previous chapter, the Head of Unit of the committee secretariat took an active role and was assisted by two other officials. The Head of Unit had been a member of the Convention Working Group IX on Simplification and in that capacity co-authored the basis for articles 290 and 291 TFEU (interviews 18 and 20). Having also been involved in the adaptation of the regulations discussed above after the 2006

decision, she was widely regarded as the main expert in the Parliament's administration.

Apart from these administrators, the EP's legal service too was involved; not only in the JURI Committee, but also in the AGRI, INTA and DEVE Committees (interviews 19, 21 and 22). In the first case they were involved during the negotiations themselves in advising the rapporteur on the compromise amendments and the positions taken in triilogue negotiations. In the latter case, the legal service was the main actor in raising awareness for the comitology file in the opinion-giving committees and in explaining the implications of the regulation to the respective advisory rapporteurs.

Findings

The above analysis shows that the core negotiation team consisting of the rapporteur assisted by staff from his political group and a strong committee secretariat had extensive expertise on the comitology reforms. Very few other MEPs of the JURI committee took an interest, because the file was not considered controversial. The main point of the rapporteur's mandate, namely to defend the EP's rights as an institution, caused little internal division.

Turnover of MEPs did not play a significant role as all active MEPs were experienced politicians. What did play a role in the JURI committee was the lack of awareness of the full implications of comitology on other domains. This can be explained by the mobility factor discussed above. The lack of experience with the issue is a result of having been a member of other committees in the past. MEPs outside the JURI committee that took an interest did not have a specific comitology background either and only became active after they had realised specific issues in their domain were being affected by the horizontal comitology regulation (alignment in the case of AGRI, the discussion on delegated vs. implementing acts in the case of DEVE, and the impact on trade defence measures for INTA). All of the advisory rapporteurs involved were experienced in the subject matters of their committee, but had to rely on their respective committee legal services to come to terms with the matter. Their initial lack of awareness and late reaction in the negotiations had an impact on the EP's position as will be shown in the analysis below.

We will see that the very focused mandate adopted by the JURI committee and the low expertise on comitology issues in the other committees did indeed have an important effect on the EP's position in the course of the negotiations. In the next section the substantive negotiations will be analysed in that light.

6.2.2 The role of expertise in the negotiations

As explained in Chapter 3, the negotiations on the new comitology regime followed two tracks: one on the new horizontal comitology regulation establishing mechanisms for control by Member States where the Commission adopts implementing acts, and one on a Common Understanding regarding the use of delegated acts. The effect of resources such as timing and the role of staff in the negotiations have already been discussed in Chapter 5, here the focus will be the substance of the negotiations and the role expertise played in this respect.

The negotiations on the new comitology regime were of an institutional nature. As explained in the section on information (see Chapter 5 section 5.3.2), there was no need for external information and the EP relied fully on its in-house information sources (interview 18). In-house expertise was thus vital in formulating the EP's position on the regulation and the Common Understanding. In the following sections the amendments proposed by the EP during the negotiations and its reaction to the positions of the Council and the Commission will be analysed in this light.

Negotiating a Common Understanding on delegated acts

The actual negotiations on the implementation of article 290 TFEU began before the entry into force of the Lisbon Treaty when the Commission was planning on publishing a *Communication on the implementation of Article 290 TFEU* (European Commission (Comitology) 2009). Although being a Communication i.e. a unilateral statement made by the Commission, this document had been thoroughly discussed with the Member States in the Council under the Swedish Presidency in the second half of 2009. It includes sections on the process of preparing delegated acts, provisions for an urgency procedure, explanations of the right of revocation and opposition that can be exercised by the Council and the European Parliament, and, most significantly, so-called 'model articles' to be used in the basic acts with specific time limits for the right of opposition and the urgency procedure. The Swedish Presidency and the Commission asserted at the time that the EP had been involved in the preparation of this Communication, a claim which has been refuted by EP officials (Christiansen and Dobbels 2012: 8).

The Communication, however, was not able to establish a spirit of loyal cooperation between the Council and the Commission: already in early 2010, negotiations on three other legislative proposals became blocked on the issue of delegated acts²⁹. It was not so much the use of delegated acts versus comitology that was a point of discussion – as would later be the case. The sticking point here

²⁹ These were the negotiations on the regulation concerning the non-commercial movement of pet animals, the regulation on industrial emissions and a regulation on energy labeling (interview 54)

was the proposed manner in which the Commission should prepare delegated acts under a basic act adopted by the co-legislators. In its Communication the Commission had stated that

[e]xcept in cases where this preparatory work does not require any new expertise, the Commission intends systematically to consult experts from the national authorities of all the Member States, which will be responsible for implementing the delegated acts once they have been adopted
(European Commission 2009, p. 6)

A majority of Member States in the Council, however wanted the inclusion of a recital in *every* future basic act. This recital would state that the Commission would consult *national* experts in the preparation of delegated acts. The Commission considered this unnecessary for two reasons: first, it would give the impression that the Council was trying to introduce comitology through the backdoor, and, second, not all delegated acts might actually require expert input in the preparation phase. For reasons of institutional balance, the rapporteurs of the files that were blocked, did not want the inclusion of such recitals either, unless Parliament's own experts were included as well (Christiansen and Dobbels 2012: 9).

In the event, the need for a speedy adoption of the regulation, forced a decision by introducing a recital reading "It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level"(European Union 2010b). The word "national" had been deleted from the Council's recital, implying that any expert – including those of the European Parliament – could be consulted.

Officials at the Parliament, however, were still dissatisfied with the way in which the Commission's Communication had come about and consequently did not consider the EP bound by it (Christiansen and Dobbels 2012: 8). The practice established in the first few basic acts containing provisions for the adoption of delegated acts was seen by the Parliament as a temporary arrangement awaiting a formal agreement among the three institutions on the implementation of article 290 TFEU (European Union, 2010b). For this reason, when the Commission introduced its proposal on the new comitology regulation in March 2010 (discussed below), the idea of an inter-institutional agreement on delegated acts was being put forward by the EP. As the two other institutions considered the established practice to be sufficient, Parliament proposed the adoption of a "Common Understanding", an idea Szajer had already promoted in his preliminary report (Szajer 2010a: 6), i.e. a gentlemen's agreement between the three institutions. In order to push through this demand, the Parliament created a linkage with the ongoing negotiations on the comitology regulation: no new regulation until a Common Understanding was agreed.

The document was however long considered to be irrelevant and “an administrators’ project” by the Council Presidency and Commission negotiators, as only the committee secretariat staff was actively involved in pushing this forward. This was the case until the rapporteur contacted Commissioner Sevcovic directly and found him willing to commit to the negotiation of a Common Understanding in a June 2010 meeting of the JURI Committee (interview 18 and 20). The rapporteur had consciously used his political weight to obtain this commitment. However, this was the only political intervention in this negotiation track as the text was never substantially negotiated on political level or in dialogues, but in ‘technical contacts’ – sometimes even by email – between Council, Commission and Parliament officials. Moreover, since Parliament was *demandeur* for this, both Council and Commission were in a stronger negotiating position. It is therefore not surprising to see that the final text is more a consolidation of the established practice after the so-called “pets precedent” and builds further on the disavowed Commission Communication (Common Understanding 2011). The main new elements that were introduced at the request of the EP were the following:

- in paragraph 4, the EP had asked for an “early and continuous” transmission of all relevant documents on the preparation of the delegated act, which in the final text became a “simultaneous, timely and appropriate” transmission of documents as the Commission found the EP’s wording too strong
- the rule that no delegated acts would be transmitted during periods of recess and European Parliamentary elections in paragraph 6
- and the inclusion of the standard recital on consultation of experts into the model articles
(Common Understanding 2011: 2-3; 6)

The impact of the first two amendments is low. In the first case, the Commission had already committed itself to the transmission of documents in its Communication, and in the second case, there was hardly any opposition to the recess-amendment as it merely guaranteed the exercise of the right of opposition for the EP. The third amendment, the standard recital, originated with the Member States as explained above. Yet, it was the European parliament that pushed for its inclusion in the model articles (Christiansen and Dobbels 2012: 9). Research has shown that the practical effect of this article is that Member State experts are now almost systematically consulted in the preparation of delegated acts (Christiansen and Dobbels 2012, 2013). EP officials are only invited as observer members when consultations take place in existing expert groups (interview 24). The fact that no substantive contribution can be made to the consultation process, and that the EP sends committee secretariat officials who often lack expertise on the issues discussed in these working groups has raised questions inside the EP on whether

the limited resources it has should be dedicated to this type of activities (interviews 18 and 24).

From the above account it can be concluded that expertise did not play a very big role in the substantive negotiations on the Common Understanding. The main amendments were procedural or institutional in nature and did not require any specific expertise other than the know-how of the EP's internal procedures such as the recess and exercising the right of opposition. The negotiations were handled by the committee secretariat staff which possessed this type of expertise. What *did* emerge from this analysis is that the rapporteur's political weight and his administrators' energy were invested in this file. This is due to the importance attached to the implementation of article 290 TFEU and the instrument of delegated acts by the EP. It links back to its long-term struggle to have a say in the system of delegated and implementing acts (see section 3.4.2 in Chapter 3). The Common Understanding, however, has little added value compared to the Commission Communication. Its unclear legal status has even raised questions as to the use of the document inside the EP (interview 18). Moreover the most important amendment on the consultation of experts, made for reasons of institutional balance, seems to have a negative effect on staff management inside the EP as valuable resources are used for activities with no output other than the symbolism of being present during consultations with Member States.

In addition, research has shown that the use of delegated acts has come under pressure due to a lack of trust in the Commission on the part of Member States (Christiansen and Dobbels 2012; 2013). As a result, whenever there is a choice to be made between delegated and implementing acts, a majority of Member States in the Council prefers to use implementing act, because it gives them more control over the substance of the acts adopted.

It can be argued that one of the major political points of the EP in these negotiations, the preparation and use of delegated acts thus yields underwhelming results. This is clearly not due to a lack of expertise during the negotiation process. The reasons why the results are underwhelming are twofold. First, because the Council favours the use of implementing rather than delegated acts – because it wields more power in the former and because there is a general sense of mistrust among Member States in giving the Commission too much leeway – (Christiansen and Dobbels 2012: 17); and second because the EP's capacity in terms of having the necessary staff and expertise to play a significant role in the follow-up of delegated acts is too low.

The negotiations on the new comitology regulation (art. 291 TFEU)

In the Council, the Commission proposal of 3 March 2010 on the mechanisms of control by Member States on the use of implementing acts (i.e. the new comitology

regulation), was regarded as a negotiation document more than a 'genuine' proposal. After all, the Commission had given itself a considerable degree of leeway, first, by bringing all aspects of the comitology procedures under the qualified majority rule³⁰, including trade defence measures, second by deleting the referral to the Council in case there is 'no opinion' in the consulted committee, and third by proposing an automatic alignment of previous comitology procedures to the new system. The Commission also included broadly defined exceptions to go against the opinion of the committee (European Commission (Comitology) 2010). In the course of the negotiations in the Council the text was revised quite substantially on a number of key issues that now define the nature of the new comitology regulation: the introduction of an appeal committee, the alignment of the old system to the new system, the introduction of the common commercial policy and the voting arrangements.

The Appeal Committee

The Council added a so-called appeal committee, composed of member state representatives of a higher political level that would be triggered in certain cases where no opinion emerged from an ordinary comitology committee (Christiansen and Dobbels 2013). Effectively, the purpose of this appeal committee is to replace the previous referral to the Council, which is absent from the new system.

The idea of having an appeal committee was not formalised in an official Council position, and therefore none of the reports of the Parliament's committees mentioned it. Yet, it was expected that the EP would not accept a reintroduction of the Council or a similar body as such. In that case it would demand similar provisions for Parliament in line with the equality between the institutions promised by the treaty. As a consequence, the fact that an ENVI Committee amendment *did* put the Council back into the draft regulation, is to be seen as an *accident de parcours*, of which more would follow (Leinen 2010: 5). Szajer as rapporteur for JURI gave his opinion on the creation of an appeal committee in a working document that was drafted as an informal reaction to the ongoing negotiations between the Council and the Commission. In this document, the rapporteur denounced the fact that the appeal committee does "not look or (...) work under the same rules as other committees (...)" (Szajer 2010c: 2). Especially the provision that a member state representative would chair the meetings rather than the Commission was highlighted as problematic. Remarkably, this wording was a lot less confrontational than what was said in the June 2010 meeting of the JURI committee where MEPs strongly opposed the very idea of having an additional committee (JURI 2010a).

³⁰ This means that a qualified majority against the Commission's proposal is needed in order to stop the Commission from adopting the implementing act.

In the end the appeal committee did materialise. It operates under its own Rules of Procedure, is of a different level than the normal committees, but is chaired by the Commission. This last aspect could be seen as a victory for the Parliament, but it is rather one for the Commission, supported by Parliament, as it was the Commission which defined it as a breaking point for a first reading agreement³¹.

Here too, expertise was not the key factor in the negotiations, but rather again an institutional struggle for influence in the new system (Brandsma and Blom-Hansen 2012). The Council managed to introduce the Appeal Committee as a so-called “safety net”, which was something wanted by a majority of Member States in case of a negative opinion or no opinion in certain policy areas. The Commission on the other hand managed to obtain the chairmanship of this committee, with help from the EP. Even though initial reactions to the Appeal Committee were negative in the JURI Committee, the rapporteur facilitated the agreement with an informal working document: rather than positioning himself against the appeal committee, he made the case for Commission chairmanship. This had to do with the fact that the EP came late into the negotiations, as discussed in the previous chapter. Some matters, such as the creation of an appeal committee, were already considered agreed by both the Commission and the Council and could not be changed if the deadline of reaching an agreement at first reading was to be kept.

Automatic alignment

On the Commission’s proposal of having an automatic alignment of the existing *acquis* with the new procedures, EP committees such as ENVI (Leinen 2010), ECON (Sanchez Presedo 2010), AGRI (De Castro 2010), PECH (Kuhn 2010) and IMCO (Internal Market and Consumer Protection) (Grech 2010) were more in favour of doing the adaptation through separate proposals or so-called “omnibus regulations”. These were considered necessary so that every field would be scrutinised in order to determine whether there weren’t any provisions that should rather be dealt with through delegated acts instead of implementing acts. Moreover, De Castro had highlighted agriculture as a priority area because since the Lisbon Treaty it falls under the ordinary legislative procedure. Consequently, Szajer demanded a full review of the existing *acquis* in new areas of the ordinary legislative procedure in order to make sure that the EP’s rights as co-legislator were respected and that delegated acts are used where appropriate (Szajer 2010b).

With the Commission and a majority of Member States in the Council being against the idea of adaptations through “omnibus”-regulations, the provisions on

³¹ In that light, it is interesting to note that it was the Council presidency which suggested to the rapporteur to adopt an informal working document in which he could strongly advocate a Commission chair. This was handy for the Presidency which strived towards a first reading agreement as it mounted pressure on the Member States who were in favour of a Member State presidency (Christiansen and Dobbels 2012: 14-15).

automatic alignment remained in the regulation. Szajer also did not push hard for it, as he considered it to be a specific concern of the AGRI committee and not necessarily part of his general mandate to defend the EP's rights as an institution (interview 19). The EP thus had to be satisfied with a declaration in which the Commission committed itself to review the areas where the EP had raised concerns before the end of the Parliamentary term (European Commission (Comitology) 2011a). This was little more than the Commission had already promised in the Framework Agreement it concluded with the EP (European Parliament 2012a: 203).

Here again, expertise does not seem to have had an important impact on the final outcome. The point was simply not considered a priority by the rapporteur in the face of opposition by both the Council and the Commission.

Common Commercial Policy

The developments in the area of trade defence measures are perhaps the unexpected highlight of this regulation. Under the Spanish Presidency, the Council had been unable to adopt a general approach due to a stalemate among the Member States (Euractiv 2010b). The Commission had proposed to integrate regulations concerning trade defence (i.e. anti-dumping, safeguards, and anti-subsidy instruments) that previously did not fall under the 1999 decision into the new comitology regulation. In the eyes of most observers this would constitute a 'mini-revolution' - one that had already been advanced by Peter Mandelson during his tenure as Commissioner (2004-2008), but had failed to come about on that occasion (Christiansen and Dobbels: 12). After all, such a change would imply that the Commission would gain significantly more power since Member States would require a qualified majority to stop a trade defence measure from being adopted by the Commission, instead of the simple majority needed under the old system. The Council was split almost 50-50 between 'free-traders' led by the United Kingdom and the Netherlands opposed to this, and 'non-free traders' led by France and Italy in support of the Commission's proposal.

The INTA committee of the Parliament however, had asked for a so-called 'carve out' in its report at the request of a Swedish EPP MEP Christofer Fjellner, a demand also supported by free trade oriented Member States in the Council (Moreira 2010: 6-7). The carve out would mean that the regulations not falling under the 1999 decision would be adapted to Lisbon separately and would thus not automatically include the QMV rule. INTA's proposal was later branded by both Szajer and INTA's chair Moreira as an *accident de parcours*. After the full implications of the amendment were highlighted by Commission and Member State representatives at the highest levels, it emerged that the mood in the committee was more in favour of qualified majority voting for trade defence (interview 22). A lack of interest and good understanding of the subject matter had thus produced a mistake in the INTA position. Because of the internal confusion, Szajer's working document and draft

report did not mention anything on trade. The Belgian Presidency finally unblocked the situation in the Council after weeks of intense negotiations between the free trade camp and the more protectionist camp on Coreper level. It can be argued that the final deal was a victory for the Commission and the 'non-free trade camp'. After a transition period of 18 months (a 'face saver' for the free trade camp), trade defence measures would be dealt with under the QMV rule making it harder for third countries to lobby – or blackmail – Member States (Euractiv 2010c). In the meantime the existing regulations would be adapted to the new regime. The change in voting arrangements is considered revolutionary, but the Parliament barely had a concrete impact on the final outcome. The deal forced by the Presidency was indeed accepted unchanged in the trilogue negotiations (Christiansen and Dobbels 2012: 12).

Here, the lack of impact of the EP on the negotiations did have to do with expertise. The position of the EP was unclear and changed throughout the negotiations because the amendment's consequences were not well understood. INTA members had no experience with comitology. The confusion about INTA's position combined with the fact that the JURI mandate only focused on the EP's position in the new system, meant that the issue was not taken up during the first contacts with the other institutions. In the end, the EP was forced to accept the agreement found after painstaking negotiations in the Council, even though by then the INTA committee had clarified its position.

Voting arrangements

Another issue that was not resolved in the negotiations between the Council and the Commission in the first half of 2010 concerned voting arrangements for sensitive measures such as taxation, financial services, and health or safety of humans, animals or plants (e.g. GMOs). Remarkably, in his first report, and at the suggestion of the EP secretariat, Szajer had written an amendment that said that in the absence of an opinion in the Committee, the Commission could not adopt a draft measure (Szajer 2010b: 9). This went even further than what some Member States in the Council were asking, namely that such cases would have to be reviewed by the appeal committee. The Parliament's amendment would mean that 'no opinion' would be equal to a no vote, which would reverse the whole system of comitology as a qualified majority would have to be reached in order for a measure to be adopted. The amendment was later corrected by Szajer (2010c: 3) in his working document where he wrote the following: "It appears from the system laid down in the Treaties that the majority needed by the Member States to control the Commission when it exercises implementing powers should not be harder to reach than the majority needed by the Council to control a delegation of legislative power". The first amendment was described as another *accident de parcours* as the implications of it were not fully realised (Christiansen and Dobbels 2012: 11).

At the specific request of the Council Presidency, Szajer's document further mentions that there should be no "move away from the normal rules and (...) qualified majority voting". Here again, the EP acted as a facilitator for Council-Commission negotiations as a group of Member States led by Denmark and the UK argued that for the sensitive measures described above, a simple majority should be enough to stop the measure from being adopted. The use of simple majority voting however was a red line for the Commission. The remark in the working document was thus a clear reference to the ongoing discussion in the Council on voting arrangements regarding sensitive matters. In the end, the regulation contains a recital that urges the Commission not to go against a predominant position in the appeal committee in these areas – and foresees that in case of no opinion in the lower committee and when a simple majority is against, the matter should either go to the appeal committee or an amended version of the draft act should be submitted to the lower committee (European Union 2011).

This was another compromise found in the Council that was taken aboard by the European Parliament without any changes. The reason the Parliament had little impact on it is two-fold. First, because of the approach taken by the JURI committee of focusing only on the EP's position in the new system, sensitive areas such as taxation or health and safety were not taken into account when formulating the opinion. Second, a lack of understanding again undermined the EP's position. Not only did the ENVI committee's report not address the matter (Leinen 2010), the first JURI opinion turned the system of comitology upside down by making it impossible for the Commission to adopt an act if there was no qualified majority in favour. Here again, the limited focus and a lack of expertise weakened the position of the EP and reduced it to a facilitator for negotiations between the Council and the Commission rather than a player who had a direct impact on the outcome.

Other parliamentary amendments

The analysis above reflects that the Parliament was being reactive during the negotiations on key amendments to the Commission's proposal. This is due to the limited focus of JURI's initial position and a delayed or impaired comprehension of the implication of certain elements such as the voting arrangements and the discussion regarding trade defence measures. Yet, apart from these aspects, the EP did put forward some amendments of its own.

Almost all of the committees that submitted an advisory report to the JURI committee demanded a binding right of objection, similar to that on delegated acts, for both the Council and the European Parliament. In case one of the two institutions considers that the Commission has overstepped its mandate in adopting implementing acts it could force the Commission to review the matter (Hübner 2010: 8-9; Kuhn 2010: 8, De Castro 2010: 9, Grech 2010: 8, Fox 2010: 8,

Leinen 2010: 5, Mitchell 2010: 11-12, Moreira 2010: 9, El Khadraoui 2010: 7; Szajer 2010b: 10). Article 291 TFEU however foresees no role for the European Parliament. The exercise of control on the Commission's implementing powers is assigned to the Member States, or in duly justified cases and matters of foreign and defence policy to the Council. The legal services of the Commission and the Council therefore vetoed this amendment. In the trialogue negotiations, the EP obtained what was described by all parties as a 'face saver' in the form of a non-binding right of scrutiny for the co-legislators (Christiansen and Dobbels 2012: 13). The amendment the EP had pushed for on institutional grounds, i.e. to give the Parliament a role in the new regime, went beyond the legal boundaries of the treaty.

The same observation can be made for the amendment put forward by six opinion-giving committees to allow representatives of the Parliament to attend the committee meetings as observers (Leinen 2010: 7; Kuhn 2010: 10; De Castro 2010: 10; Mitchell 2010: 9; El Khadraoui 2010: 5; Moreira 2010: 11). Because it is legally impossible to include the EP systematically in the mechanisms of control based on article 291 TFEU, the rapporteur did not even defend this amendment in trialogue negotiations or took it up in his draft opinion (Szajer 2010b).

A last element of discussion in the negotiations was linked to the debate on the distinction between delegated and implementing acts. As demonstrated by previous research (Christiansen and Dobbels 2012, 2013), this is an area of significant inter-institutional tension. The grey zone left by the treaty on the scope of application of the two instruments creates conflict between the Council, the EP and the Commission on which instrument to use. A majority of Member States usually prefers the use of implementing acts while the Commission and the Parliament traditionally favour delegated acts. At the time of the negotiations on the regulation concerning implementing acts in the second half of 2010, four external financial instruments were being negotiated by the DEVE committee:

- a financing instrument on accompanying measures to enhance the competitiveness of the banana export sector in ACP countries (African Caribbean and Pacific Group of States) (Regulation 2011/1341)
- a financing instrument for cooperation with industrialised and other high-income countries which covered among other issues the Erasmus Mundus Project (Regulation 2011/1338)
- a financing instrument for the promotion of democracy and human rights worldwide (Regulation 2011/1340)
- a financing instrument for development cooperation (Regulation 2011/1339)

In all four of these instruments the EP rapporteurs, including Gay Mitchell, opted to use delegated acts for the adoption of strategy papers as well as the multiannual programmes developed by the Commission to implement these instruments (Malhère 2012). The Council and the Commission rejected these amendments and

the file became tangled up with the negotiations on the horizontal comitology regulation. Gay Mitchell, also rapporteur for the advisory DEVE opinion, saw a possibility to solve the matter through article 2.2 of that regulation. This article defines the fields and cases in which the examination procedure to adopt implementing acts applies. A group of Member States in the Council, led by the Netherlands, had asked for the specific mentioning of external financial instruments, or at least files with budgetary implications (Christiansen and Dobbels 2012: 12). Even though the regulation concerned only the implementation and application of article 291 TFEU, and said nothing on the distinction between delegated and implementing acts, this was seen as a provocation by the rapporteurs in the DEVE Committee. Szajer in charge of the horizontal comitology regulation made this clear during the JURI Committee meeting of 2 September by stating the following:

Any attempts by Council to use this regulation to try to deal with all external financing programmes as implementing acts should be resisted strongly. This would prejudice negotiations which are ongoing on individual files - on a case-by-case basis - and Parliament's committees have by and large considered that such programmes should involve delegated acts and not implementing acts.
(JURI 2010b)

The matter was discussed with the Council during the second and third dialogue. Eva Lichtenberger, the only active shadow in the file, argued that the Council's wording prejudged the choice of instrument. Subsequently, the rapporteur proposed to take the Council's wording out and introduce a recital on the distinction between delegated and implementing acts. This was refused by the Commission and the Council Presidency as both their legal services argued that a recital in a regulation on the application of article 291 TFEU could not regulate this matter (Christiansen and Dobbels 2012: 13). Indeed, it is not a regulation, but the treaty which defines the criteria to distinguish between the use of delegated and implementing acts. During the third dialogue a compromise was found whereby article 2.2 stated that the examination procedure would apply for implementing acts relating to "programmes with substantial implications" and a corresponding recital explained that this included "programmes with substantial budgetary implications or directed to third countries" (European Union 2011).

The impact on the negotiations on the four financial instruments was limited. In line with the argument of the legal services, the horizontal comitology regulation only deals with the application of article 291 TFEU and cannot prejudice anything about the choice between applying article 290 and 291 TFEU in another regulation. This is indeed regulated by the treaty. Consequently, the negotiations were not helped forward by the regulation and the four instruments were only agreed upon in a conciliation procedure months later where the EP accepted the use of

implementing acts, but obtained the commitment of receiving additional information on the use of these acts (Malhère 2011).

Here again, the position of the EP was motivated by institutional reasoning without taking due account of the legal boundaries imposed by the treaties.

6.2.3 Findings

The analysis of the negotiations confirms the findings of Christiansen and Dobbels (2012), namely that the EP's impact on the implementation of the new system of delegated and implementing acts was rather limited. This sheds a different light on the EP's role in comitology. Where scholars found the EP to successfully employ a strategy of advancing its own role through inter-institutional struggles by using its veto-power under co-decision in the pre-Lisbon era (see Bergström 2005; Kietz and Maurer 2007; Héritier 2012, Héritier et al. 2013); this analysis shows the EP to be less successful in advancing its own position even though it had veto power.

The table below summarises the result from the EP's point of view.

Table 6.2: Summary of key issues in the negotiations on the Common Understanding and the new comitology regulation

Issue	EP result	Reason
Common Understanding	+/-	Instrument in itself is a victory for Parliament, but actual impact is limited
Recital on expert consultations	+	Support for amendment made by the Council
Recess Period	+	Uncontroversial
Transition of documents	+	Uncontroversial
Regulation on art. 291 TFEU		
The appeal committee	+/-	Parliament did not want an appeal committee at first, but supported Commission chairmanship
Automatic alignment	-	No case-by-case adaptation
Common Commercial Policy	0	Unclear position
Voting arrangements	0	Unclear position
Binding right of objection	-	Not legally possible
Observer status	-	Refused by Council and Commission
Distinction between delegated and implementing acts	-	Not legally possible

Key: '+' positive; '-' negative; '+/-': mixed; '0': no impact

Following what was perceived as Parliament's victory in comitology after the Convention and the entry into force of the Lisbon Treaty (see also Christiansen and Dobbels 2012: 3) its main focus during the negotiations was the implementation of article 290 TFEU on delegated acts. The resulting Common Understanding, but perhaps more importantly the limited use of delegated acts in current legislation are in that respect underwhelming results. On the regulation concerning the implementation of 291 TFEU, the European Parliament not only came late into the game as shown in the last chapter, but also acted more as a facilitator for discussions between the Commission and the Council, rather than as a player with a substantial stake in the negotiations. The reason for this was that the amendments proposed by the JURI committee initially focused only on the EP's own position in the new system, rather than on the implications of that system in different policy fields. This was a position that was inspired by the EP committee secretariat which took a leading role on the substance of the negotiations³². The emphasis on the Common Understanding, the amendments on obtaining observer status in the committees, the proposed right of objection and the discussion on the financial instruments all have to be seen in that light.

The effect of this approach is double. Not only did it raise very little interest with other MEPs in the JURI committee – as it was uncontroversial from the EP's perspective –, it also meant that the JURI negotiating team did not actively seek to amend provisions related to specific policy areas. It is fair to say that the file was not very politicised at the beginning. The result was that the most important innovations were initially eclipsed from the EP's position, such as the question on trade defence measures, the voting arrangements and the appeal committee. And this is where expertise as a factor comes in. As demonstrated in the first section of this analysis, there is no question that the JURI negotiating team possessed the necessary expertise to deal with the matter. However, when members of other committees, who had no previous expertise in comitology, were confronted with the implications of the new decision for their respective fields (voting arrangements for ENVI, trade defence measures for INTA, and the distinction between delegated and implementing acts for DEVE), the negotiations had already advanced to a stage where little could be done from the EP's side apart from obtaining a few 'face savers'. In addition, the amendments put forward by these committees were either unclear (as in the case of trade defence measures) or not legally compatible with the treaties (as in the case of the voting arrangements and the distinction between delegated and implementing acts). This is a clear case of asymmetry in expertise between members and between committees as discussed in the first half of this chapter. It also shows that when a file becomes more politicised, more actors want to be involved.

³² This confirms the finding of Dobbels and Neuhold (2013) that the EP committee secretariat plays an important role when it comes to defending the EP's institutional rights.

The EP's commitment to work towards a first reading agreement within a certain deadline and the fact that it came late in the negotiations set the context in which the negotiators had to work. The combination of a limited mandate in terms of scope for the rapporteur, the low degree of politicisation of the file at the beginning of the negotiations and asymmetries in expertise between committees weakened the EP's position. By not having addressed certain issues in time or by misunderstanding certain amendments its impact on the final outcome was limited.

6.3 The role of expertise in the case of novel foods

6.3.1 Expertise of the key players

MEPs

Kartika Tamara Liotard (GUE/NGL – rapporteur)

Kartika Tamara Liotard is a Dutch MEP and member of the Confederal Group of the European United Left – Nord Green Left (GUE/NGL) political group. She studied at the University of Maastricht and specialised in criminal and administrative law. From 1997 until 2004 she worked as an advisor for the ministry of agriculture, nature and food quality in the Netherlands, taking care of subsidised projects. She has been a member of the European Parliament since 2004, is a member of the ENVI Committee, and a substitute of the FEMM (Women's Rights and Gender Equality) and DEVE committee. Liotard is a former member of the Dutch Socialist Party, but left the party in 2010 because of an internal conflict with colleague MEP Dennis de Jong over the distribution of tasks between them in the EP and the recruitment of assistants (Liotard 2012; interview 12).

Being a member of a small political group of 35 members in the Parliament, she had never been appointed rapporteur before the dossier on novel foods. Nevertheless, she was the EP contact person for the EFSA between 2005 and 2012 and was shadow rapporteur on legislation concerning genetically modified organisms and on foodstuffs intended for particular nutritional uses. She is also active on issues regarding women and the elderly and presents herself increasingly on animal welfare issues. This and her firmness in defending amendments related to the wellbeing of animals during the novel foods negotiations are widely regarded by both people inside and outside the EP as an open application to become the European candidate for the Dutch Party for the Animals (Partij voor de Dieren) at the next European elections (interviews 1, 2 and 12). In that light she has also become an active member of the intergroup on Animal Welfare.

While not being an expert on food safety as such, her contact with the EFSA, her experience as shadow rapporteur and her predilection for animal welfare made her sensitive to certain issues raised in the novel foods regulation. Analysis of the

negotiations below will show that these were indeed the points she focused on most. As a result, her background and preferences have had a considerable impact on the negotiations.

Gianni Pitella (Vice-President and Chair of the Conciliation Committee – S&D)

As the novel foods regulation went into conciliation, one of the three vice-presidents responsible for conciliation was designated to lead the EP's delegation, namely Italian MEP and S&D member Giovanni (Gianni) Pitella. Pitella graduated in medicine and surgery at the University of Naples. He was elected member of the Italian Chamber in 1996 but ended his mandate to become an MEP in 1999. He is president of the Italian delegation in the S&D group and was appointed First Vice-President of the European Parliament in July 2009 (Pitella 2012). As a vice-president he is a member of the Parliament's Bureau which is responsible for EP budgetary, administrative, organisational and staff-related matters. He is also a member of the CULT (Culture and Education) committee, and a substitute for the ECON committee. During the 5th and 6th legislatures Pitella was a member of the BUDG committee and in that capacity wrote several reports including that for the 2006 budget conciliation (Pitella 2008). The novel foods regulation was however his first *legislative* conciliation as head of the negotiating team.

As with the other vice-presidents, Pitella has no specific substantive expertise on the files that go into conciliation. The vice-presidents are appointed and work according to an informal rotating mechanism. As Alejo Vidal-Quadras Roca (EPP) and Rodi Kratsa-Tsagaropoulou (EPP) had respectively led conciliation negotiations on the telecom package and the regulation concerning bus passenger rights, it was Pitella's turn to lead the EP's delegation. Vice-Presidents appointed to conciliation are usually experienced and high-ranking MEPs with significant procedural expertise. It is fair to say that Pitella fits this image, having been a long-term member and experienced with the process of conciliation. His relative lack of expertise in food safety and the novel foods case in particular, however, proved to be a weakness during the conciliation negotiations.

The shadow rapporteurs and key members of the conciliation committee

As the rapporteur came from a small political group, coordination with the shadow rapporteurs and members representing their group in the conciliation committee were even more crucial than usual. For the EPP it was not always clear who was shadowing the file. At the outset Spanish MEP Pilar Ayuso was the designated shadow. Ayuso has been an MEP since 1999 and active in the ENVI, ITRE and AGRI committees. She has a strong agricultural background with a PhD in agricultural engineering, having been a researcher for the National Institute for Agricultural Research in Spain and as the Director-General responsible for food in the Ministry

of Agriculture, Fisheries and Food. Remarkably, in the last two parliamentary legislatures she did not write any reports, but was shadow rapporteur in several agriculture related files (Ayuso 2012). Having a strong link with the agricultural sector and Unions in Spain, she approached the novel foods file from that angle and was one of the few voices inside the EP critical of the rapporteur's approach on cloning. This position caused an internal power struggle inside the EPP for the shadow rapporteurship (see also Chapter 7 section 7.3.1). During second reading it was no longer clear who had the lead in the EPP as the German MEP Peter Liese also became intensively involved in the file.

Peter Liese has been an MEP since 1994 in the ENVI and ITRE committees. He studied medicine and obtained a PhD in Human Genetics at the University of Bonn. He also has a strong religious background as a member of the Central Committee of German Catholics and advisor to the sub-commission on bioethics of the doctrinal commission of the German Bishops' Conference (Liese 2012a). He is coordinator of the EPP group in the ENVI Committee and is the chair of an informal working party on bioethics. He was rapporteur on several technically complex files such as the directive for setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells, and the directive relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use (Liese 2012b). Liese is widely respected inside the EP on bioethics. As coordinator of the EPP group in the ENVI committee he pulled the novel foods file towards him in second reading as the main focus of the EP's position had become the ethics of cloning. In the analysis of the negotiations made below, but also in the next chapter on Organising Capacity, this turn of events, based on Liese's expertise, will prove to have had a significant impact on the consolidation of the EP's position and therefore on the negotiations as a whole.

At the time of negotiation of the novel foods regulation, German MEP Jo Leinen of S&D was the chair of the ENVI committee. Leinen has a law degree and is a graduate from the College of Europe. He has extensive expertise in environmental affairs having been a member of the SPD's (Sozialdemokratische Partei Deutschlands) environment commission and having been minister of the environment for Saarland between 1985 and 1994. In his first two terms in the EP Leinen was a member of the AFCO committee responsible for the follow-up of the European Constitution and later the Lisbon Treaty (Leinen 2012). Other than having been rapporteur on a decision laying down animal and public health and veterinary certification conditions for importation into the Community of certain live animals and their fresh meat, Leinen has no specific experience or expertise in food safety as all other reports he wrote focused exclusively on environmental issues. Analysis in Chapter 5 has already shown that the lack of involvement of the chair had a significant impact on the negotiations. This will become even more evident in the discussion of the negotiations below.

For S&D a key member in the ENVI committee and conciliation delegation was the German MEP Dagmar Roth-Berendt. Having been an MEP since 1989 and spokeswoman for environment, health policy and consumer protection, she is widely regarded as an expert, not only on procedural matters, but also on the matters dealt with by the committee. As a rapporteur of the directive concerning cosmetic products she successfully concluded conciliation negotiations in 2003 (Roth-Berendt 2003). She further concluded the recast of that directive in 2005 and negotiated several reports on so-called transmissible spongiform encephalopathies³³ and related feed and food controls (Roth-Berendt 2012). It is therefore fair to say that thanks to her experience and expertise, Roth-Berendt was and still is one of the most influential members of the ENVI committee.

For the ALDE group, the French MEP Corinne Lepage shadowed and was the most active in the negotiations. Lepage is a first term member but was minister of the environment for France between 1995 and 1997 and chaired during the French presidency of 1995 (Lepage 2012a). After that she was Chair of the Committee for independent research and information on genetic engineering. Based on that experience she became the rapporteur on the important directive concerning the restriction or prohibition of cultivation of GMOs (Lepage 2012b). Even though Lepage has direct experience with food related matters and GMOs fell outside the scope of the novel foods regulation, her experience and expertise made her a key member in the ALDE group on this file.

For the Greens/EFA group, the Belgian MEP Bart Staes shadowed the novel foods regulation. Staes has extensive European experience having first worked as a political group staffer between 1983 and 1999 and from then onwards as an MEP (Staes 2012a). He is the vice-chair of the CONT committee and substitute for the DEVE and ENVI committees. In the field of animal and food safety, Staes successfully negotiated a directive on official inspections in the field of animal nutrition in conciliation and on statistics concerning plant protection products in second reading (Staes 2012b). He was also a rapporteur in the conciliation concerning statistics on pesticides. Even though Staes does not have a particular expertise in food safety, his extensive experience with conciliations in the ENVI field made him the key member of his group for these negotiations.

Finally, for the ECR group, Scottish MEP Struan Stevenson was the key member. Stevenson has been an MEP since 1999 and is vice-chair of the PECH committee and substitute for ENVI. Important to know is that Stevenson was director of J. and R Stevenson Ltd, a farming and tourism business in Scotland. Stevenson was never actively involved in writing a report for the ENVI committee but nevertheless

³³ These are progressive medical conditions that affect the brain and nervous system of humans and animals.

became active on the case of novel foods after reports that beef carrying cloned DNA had entered the food chain in the UK emerged (Campsie and Ross 2010). Being directly involved in the farming industry in Scotland, Stevenson became a vocal supporter of a ban on the import of cloned embryos and meat (Stevenson 2010).

Staff

As already discussed in the previous chapter, assistance for the EP's negotiating team (composed of vice-president Pitella, rapporteur Liotard and committee chair Leinen) was mainly handled by a small group of MEP assistants and the EP officials working in the co-decision and conciliation unit.

Several interviewees point to the importance of this team during the negotiations (interviews 1, 2, 6, 13, 14, 15, 16). The extensive procedural expertise of the EP secretariat is highlighted in that respect (interview 2). By having a permanent team that handles conciliation meetings and provides advice for MEPs in preparation of trilogue negotiations in first and second reading, there is extensive experience and institutional memory at the disposal of the negotiating team. Indeed, the analysis in the next chapter on Organising Capacity will show that the EP secretariat played a dominant role in keeping the EP's ranks closed and had a key role during the conciliation negotiations. Having concluded two successful conciliations with the Council on the telecom package and bus passenger rights the year before, the Secretariat now was confronted with a first time Hungarian Council Presidency and a Commission unit with little to no experience in handling conciliation negotiations (interviews 2, 16, 15, 6). The procedural expertise provided by the EP secretariat was therefore of crucial importance, not only to the EP's delegation but to the negotiation process as a whole.

It also emerged from the last chapter that it was difficult to find independent information on the positions advocated by the rapporteur. Expertise however played a very important role until the end of the negotiations as over 100 amendments were still outstanding when the file went into conciliation and new elements kept emerging (interview 6). None of the staff that assisted the negotiating team directly had any particular background in food safety, apart from the rapporteur's assistant who had carried out research into EFSA at University (interview 12). They nevertheless played an important role as players from all institutions point to them as being the EP experts on the file who knew the text through and through (interviews 1, 2, 6, 13, and 14). Moreover, the secretariat made practical use of its institutional memory to substantiate the positions based on amendments in other files (interview 2). In addition, as demonstrated in the previous chapter, most of the staff of other political groups relied on them for information and briefings on substance (interviews 12, 13, and 15). Apart from the staffer of the Greens/EFA group where the expert on food safety was a bio

engineer, none of the other groups had hands on expertise. The rapporteur's assistant and the EP secretariat, who wrote the vast majority of the EP's amendments, were forced to compose them based on their own research (interviews 12, 13, and 15). We will see in the analysis below that this lack of substantive expertise did have an impact on the negotiations with the Council.

Findings

It can be argued that the EP possessed extensive procedural expertise. Several MEPs had experience with conciliation negotiations and successfully concluded files in third reading. Also on the side of the secretariat the track-record was good: two successful conciliations in the past year and significant institutional experience in assisting trilogue negotiations. The impact of turnover is non-existent, as all except one MEP have at least served two terms. The EP thus scored high on experience.

The picture on substantive expertise is more delicate. Very few MEPs have a background in food safety. Those that come closest are the rapporteur, having been the contact person for EFSA for several years, and MEP Liese who has a strong background on bioethics. None of the MEPs however were involved in the first novel foods negotiations and most of them have a more environmentally oriented background. The assisting staff too did not possess extensive expertise on the matter, and had to rely on outside sources and their own research to come to terms with the subject matter.

In the section below it will be shown that this had a significant impact on the course of the negotiations.

6.3.2 The role of expertise during the negotiations

Based on an analysis of the Commission proposal, the subsequent negotiations and in-depth interviews, key issues during the negotiation have been identified covering the amendments of both co-legislators. They have been regrouped into five thematic areas which include the rationale of the proposal, the reform of the procedure to allow novel foods on the EU market, the issue of nanotechnology, traditional food coming from third countries, and cloning. The analysis below will go into each of these areas to assess the role of expertise during the negotiations from the EP's perspective.

Rationale of the proposal

The logic and rationale behind the regulation was of key importance to the rapporteur. Liotard's own background and fields of interest (see above) as well as the fact that the responsible committee in the EP was ENVI and not IMCO which

deals with internal market files, meant that consumer protection and animal welfare were central to her in defining the EP's position. As explained in the previous chapter, detailed input and amendments for these positions came from Eurogroup for Animals, the IFOAM (International Federation of Organic Agriculture Movements) group, and BEUC on consumer protection (interviews 1, 2, 3 and 9).

The rapporteur's starting position was exemplified in a number of amendments made in first and second reading which defined guaranteeing food safety, consumer protection, environmental protection and animal health as the main purpose of the regulation, and on an equal footing compared to the effective functioning of the internal market (Liotard 2008: 5-6, 23). The Commission (European Commission (Novel Foods) 2008) on the other hand, had put the free movement of food and unfair competition at the centre of its proposal. The spirit of the EP amendment was accepted by the Council, but a recital which gave priority to consumer protection and animal welfare *over* the internal market, was rejected (Liotard 2008: 89; European Commission (Novel Foods) 2010b). As this particular element of the negotiations was resolved in technical triologue meetings in between the conciliations, no major political negotiations took place on this issue. The main reason for this is that it did not have any real implications for the regulation's implementation (European Parliament (Novel Foods) 2011: 1). It is nevertheless important to highlight this issue because it shows the EP's starting position well and sets the tone of the debate that followed on related amendments.

Indeed, where both the Council and the Commission had accepted this first set of amendments, the rapporteur met with opposition when she wanted to operationalise this philosophy in other articles. The EP's report in first and second reading wanted to include both ethical concerns and environmental concerns in the list of criteria checked by the EFSA when judging novel foods entering the market (Liotard 2008: 16, 18, 22, 32, 45-46; Liotard 2010: 19-20, 23, 39, 53, 56). This would be done by giving a role to the opinions of the European Group on Ethics in Science and New Technologies (EGEST) and the European Environmental Agency (EEA) as a part of the EFSA assessments. The Council (Council of the European Union (Novel Foods) 2009a: 2), supported by the Commission (European Commission (Novel Foods) 2010b) however rejected the idea of adding it as a formal criterion and only mentions ethical and environmental concerns in a recital as something to take into account. According to the Council's amendments, only at the risk management stage may ethical aspects be formally considered, after consulting the EGEST. The Council saw no role for the EEA. The EP did not accept this in second reading and put forward the same amendments during conciliation. In triologue negotiations leading up to the second conciliation meeting of 16 March 2011, the EP agreed to drop all of its amendments related to this point on one condition. This condition was that the general criteria for including novel foods on the market included the provision that "where relevant" there would be no

significant risk for animal health and welfare or the environment (Council of the European Union (Novel Foods) 2011a: 30). The lack of specification on how this risk would be assessed and the addition of the words “where relevant” (traditionally used to water down the text), indicate that the compromise found veered more towards the Council and Commission’s position than that of the EP.

The negotiations on provisions concerning animal testing developed in a similar way. In both reports in first and second reading, the EP had submitted amendments which stipulated that the welfare of animals should be central to the regulation, that animal testing should only be used as a last resort, and that duplicate vertebrate animal testing should be prohibited (Liotard 2008: 46; Liotard 2010: 58). The concern was recognised by the Council in a recital, but was rejected in the articles as according to their reading it fell outside the scope of the regulation (Council of the European Union (Novel Foods) 2009b: 11). In fact, parallel to the negotiations on the novel foods regulation a directive on the protection of animals used for scientific purposes was being negotiated. These negotiations came to a conclusion in 2010 before the conciliation phase and it was therefore agreed before the second conciliation meeting that data derived from animal testing under the 2010 directive may be used in the framework of the assessment of novel foods so that further or duplicate animal testing is avoided. This was a victory for the rapporteur, for whom animal welfare was central, though she was clearly helped by the conclusion of the negotiations on the 2010 directive.

Finally, the EP wanted to introduce the precautionary principle as a key concept in the text, but saw the core of its amendments rejected. In the context of the novel foods regulation, the precautionary principle implies that if something is suspected of having a risk, until it is proven scientifically safe, it should not be allowed on the market. The principle is commonly applied in environment, food safety and consumer protection policy and is even mentioned in article 191 TFEU as the basis of the EU’s environment policy. The EP position in first and second reading foresaw that in the event of doubt due to insufficient scientific certainty or a lack of data, the precautionary principle shall be applied and the food in question should not be included on the community list of foods allowed on the EU market (Liotard 2008: 5; Liotard 2010: 6). The Council and the Commission rejected this idea and only mentioned the principle in a recital. During the second conciliation meeting the EP accepted this compromise (Council of the European Union (Novel Foods) 2011a: 23).

The above discussion shows a fundamental difference in political conviction between the Council and the Commission on the one hand and the EP on the other on how to approach the novel foods regulation. Not necessarily expertise, but rather a political vision determined the positions. Where the EP, under leadership of the rapporteur and with detailed input from interest groups, clearly took a position based on consumer, environmental and animal health protection, the

Commission and the Council's position prioritised the smooth functioning of the internal market. Except for the amendment on animal testing, the Council and Commission's point of view dominated the compromises that were found. Even though all of the issues regarding the general philosophy were resolved before the final conciliation, the subsequent analyses will show that the fundamental difference in vision shown here, was a fault line that ran throughout the negotiations and is key to understanding the final outcome.

Reforming the procedure

Delegated or implementing acts?

As discussed on the background of the case in Chapter 3, the main purpose of revising the 1997 novel foods regulation was to simplify and streamline the procedure for allowing novel foods on the EU market. How the procedure would be reformed was therefore a key issue in the negotiations. The Commission (European Commission (Novel Foods) 2008: 7) had proposed a harmonised and centralised procedure where applications would be submitted to the Commission and EFSA would carry out safety evaluations. The Commission's decision to put a novel food on the so-called 'community (later Union) list' and other related matters would have to be taken through comitology procedures with control of Member States represented in the Standing Committee on the Food Chain and Animal Health (SCFAH), and in some cases with scrutiny by the EP.

More specifically, implementation of the measures proposed in the regulation such as laying down specifications or conditions to include a food on the list, post-market monitoring requirements, or updating the community list with a novel food other than traditional food from third countries would all go through the regulatory comitology procedure, which stipulates that a committee composed of Member State representatives can stop a measure from being adopted by qualified majority. Criteria to assess if a food has been used before the entry into force of the 1997 regulation, or the collecting of information to determine this, would go through the regulatory procedure with scrutiny, in which the EP has a veto as well. The Commission stated efficiency and the highly technical nature of the decisions as reasons for opting to use comitology procedures (European Commission (Novel Foods) 2008: 7-8).

The rapporteur however, wanted the EP to be involved more in the process and submitted amendments so that the updating of the list for food other than traditional food from a third country would not be taken by the regulatory procedure but by the regulatory procedure with scrutiny (Liotard 2008: 28, 38). This might not have been too much trouble to negotiate, if it were not for the entry into force of the Lisbon Treaty.

As explained in Chapter 3, two new legal instruments for implementation in the Union saw the light of day with the entry into force of the Lisbon Treaty: delegated acts on the basis of article 290 TFEU and implementing acts on the basis of article 291 TFEU. The former gives the co-legislators a right of objection and revocation on the delegation made to the Commission, the latter replicates the old comitology procedures where Member States exercise control over the Commission in specialised committees. As mentioned in the analysis on the case of comitology above, the choice of instrument is an area of inter-institutional battle between the EP and the Council, with the latter preferring the use of implementing acts and the former the use of delegated acts. This was exemplified by the negotiations on the novel foods regulation. After the entry into force of the Lisbon Treaty, the Council had stated that the provisions on the regulatory procedure with scrutiny, which fell outside the scope of the automatic alignment, should be changed into implementing acts for the following cases: updating the Union list, transitional measures, adopting further criteria, and collecting information from Member states or food business operators. Only the adoption for criteria to assess if a food has been used before 1997 was to be made by delegated acts (Council of the European Union (Novel Foods) 2010a: 10). All of these amendments were accepted by the Commission (European Commission (Novel Foods) 2010b). In second reading however, the EP deleted all references to the regulatory procedure and left the question open for discussion in conciliation (Liotard 2010: 36, 59, 68, 70).

Under impulse from ENVI chair Leinen, who was familiar with this inter-institutional debate, the EP negotiation team demanded the use of delegated acts to update the Union list, change the conditions or specifications to include a food on the list, and adopt rules on the collection of information from Member States or food business operators (interview 2, Council of the European Union (Novel Foods) 2011b: 15-16). This was categorically rejected by the Council. With 11 out of the last 22 amendments covering this issue, the debate on implementing versus delegated acts remained one of the last points to resolve apart from the cloning issue (Council of the European Union (Novel Foods) 2011c: 57-62; interview 53). Attempts were made to come to an agreement, but not one of the Member States in the Council was willing to concede as they considered the concessions to use delegated acts on the criteria to assess whether foods were used before 1997 and to update the definition on nanomaterials (see *infra*) enough. However, as no progress was booked on the cloning issue (see *infra*), the matter of delegated versus implementing acts too remained unresolved.

Similar to the negotiations on comitology, the amendments made on this issue were inspired by institutional interests and not based on expertise. Several interviewees (interviews 1, 2, 12, 13, 14, 15, and 16) confirmed that it was very likely that a compromise would have been found if all other issues – including cloning – had been resolved. No one around the table would accept failure in this file on the basis of an institutional conflict that is difficult to explain to those

outside the negotiation room, in particular the media. It was indeed not this issue that made the negotiations fail, although it did add to the tension and frustration between the institutions as the Council was almost unanimously opposed to the EP's amendments.

Post-market monitoring

Apart from the delegated versus implementing acts debate, the issue of post-market monitoring too was a point of discussion in shaping the new procedure. The Commission had proposed that post-market monitoring for food allowed on the market for human consumption can be carried out "where appropriate" and on the basis of the conclusions of the safety assessment by EFSA (European Commission (Novel Foods) 2008: 8). The EP's first reading report however wanted to broaden the scope of monitoring to *all* foods and also deleted the wording "where appropriate". Following pressure from the IMCO committee (Liotard 2008: 76), ENVI did include a time period during which this monitoring should take place in order to increase legal certainty for business. It demanded post-market monitoring by Member State authorities for all novel foods with a review of the authorisation after five years. During this monitoring phase animal health and welfare aspects should be taken into account next to food safety (Liotard 2010: 31). The Commission rejected all these amendments and the Council too opposed systematic post-market monitoring and the revision of authorisation after five years as it would place a disproportional administrative burden on food business operators and authorities of Member States. The Council would only allow monitoring on a case-by-case basis, for instance when new scientific or technical information emerges which might influence the safety evaluation. As with other amendments the rapporteur submitted the same amendments in second reading and the matter was to be negotiated during conciliation.

Before the first conciliation meeting which took place on 1 February 2011, the EP had dropped its demand for systematic post-market monitoring but requested that case-by-case monitoring also apply to foods that were already on the Union list, and not just for new foods (Council of the European Union (Novel Foods) 2011a: 64-65). This was rejected by the Council and the EP settled for case-by-case monitoring (Council of the European Union (Novel Foods) 2011c: 13).

This element in the negotiations again shows the fault line discussed above with the EP taking a position inspired by the precautionary principle and focusing primarily on consumer protection, while the Council advocated a more internal market based position.

Additional labelling

Another area of discussion was additional labelling requirements. In its proposal, the Commission had left the possibility open. After pressure from IMCO (Liotard 2008: 65-66) and AGRI (*ibid.*: 96), the rapporteur drafted a new article 9 in which all new foods placed on the market should be labelled as novel foods with clear and easily legible information on their composition and nutritional value. An amendment requiring the labelling of products from animals fed with genetically modified feeding stuff was also included (*ibid.*: 20-21), but this was quickly rejected by the Commission and the Council arguing that GMOs fell outside the scope of the regulation. On the other labelling requirements too, the Council (2009b: 14) reacted negatively. It found the EP's proposal excessive and – with support of the Commission (2011b) – would only allow specific labelling requirements on a case-by-case basis which would be stipulated in the Union list as proposed in the initial Commission text. The rapporteur quickly dropped these demands in the conciliation phase and focused only on labelling requirements as part of the debate on cloning and traditional food coming from third countries (see *infra*).

The debate on the amendments regarding post-market monitoring and labelling are typical for Council-EP negotiations in regulatory policy. As indicated in the first part of this chapter, the question of responsibility and carrying the burden of implementation heavily influences each actor's position and the success of EP amendments (Burns 2005: 492). As with other amendments in this regulation, the EP demanded assurances in the light of food safety and consumer protection which were considered excessive by Member States. A repeated reproach in the Council is that MEPs have no idea of the administrative cost of certain amendments they propose (interviews 1, 2 and 4). This does not necessarily weaken the EP, nor is it always negative as it often pushes the Member States to do more in terms of control and monitoring than they would normally be ready to accept. It nevertheless shows a fundamental difference in approaching regulatory policy between the co-legislators. As indicated in the previous chapter, the EP has recently responded to these concerns by establishing its own directorate for impact assessments to – among other things – assess the costs and benefits of certain amendments. The discussion on novel foods, and especially that on cloning (see *infra*) was one of the triggers to go through with this idea which had been debated for years in the EP (interviews 3, 6 and 35).

Nanotechnology

In its proposal the Commission (2008) had mentioned that foods changed according to nanotechnology fall under the scope of the regulation. As this was a new issue compared to the old regulation, the EP reacted in line with the precautionary principle. After input from the AGRI and IMCO rapporteurs (Liotard 2008: 92-93), rapporteur Liotard drafted a definition of what exactly an

'engineered nanomaterial' consists of. She also submitted an amendment stipulating that the Commission was to update the definition in light of technical and scientific progress according to the regulatory procedure with scrutiny. In addition, the rapporteur added a reference to a 2005 opinion of the Commission's Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR) which argued that there are major gaps in the knowledge necessary for risk assessment in relation to nanoparticles. The Parliament's report therefore demanded that until specific methods for risk assessment have been approved, no food containing such technology should be placed on the Union list (Liotard 2008: 11-24). Afterwards, foods containing nanomaterials on the market should be labelled accordingly. The basis of this amendment was indeed clearly the precautionary principle. As little was known on the issue of nanomaterials, the EP wanted to limit risks as much as possible. The amendment on the prohibition to put it on the Union list was inspired by the AGRI committee and draft definitions were based on Liotard's assistant's own research and input given by interest groups such as IFOAM EU Group and CIAA (interviews 1, 3, 5, 9 and 12).

The Council rejected all amendments except for the recital referring to the SCENIHR report and the definition on nanomaterial. It did however recognise the need for systematic safety evaluation of foods containing engineered nanomaterials and called upon the Commission to develop – with EFSA – appropriate testing techniques. It did not go as far as the EP to ban such foods from the Union list until these techniques are established (Council of the European Union (Novel Foods) 2009b: 14). The Council also highlighted the need for an internationally agreed definition but added that the definition should be adapted through implementing acts. Finally, it rejected the amendments on systematic labelling, but accepted that the precautionary principle would apply in case of doubt concerning the safety of foods containing nanomaterials.

The Commission however did not accept the use of implementing acts to update the definition, and also considered the scope to change the definition too limited as it would only be able to adopt further criteria to clarify. According to the Commission, this would have negative consequences for innovation in the food industry (European Commission 2010b: 5). It therefore argued to use delegated acts and apply a broader scope. This amendment was the first of two amendments on the basis of which the Commission rejected the Council's common position. The rapporteur however, submitted the same amendments in second reading and left the question as to how the definition would be adapted open.

The question therefore remained to be discussed during conciliation. Before the second conciliation meeting a compromise was found whereby the SCENIHR report was mentioned in a recital as well as the call to EFSA and the Commission to ensure that appropriate test methods are developed. The Council conceded to update the definition through delegated acts, but the EP refused to accept agreement on this

point until all other delegated acts related articles were resolved (Council of the European Union (Novel Foods) 2011a: 26).

The general moratorium for placing food on the market containing nanomaterial was rejected by the Council as EFSA considers each application on its own merits on a case-by-case basis. Finally, the request of systematic labelling was also rejected by the Council. By means of compromise the word nano would be listed in brackets as part of the list of ingredients when engineered nanomaterials are present in food.

The negotiations on nanotechnology demonstrate on the one hand again the starting position of the rapporteur in adhering to the precautionary principle, and on the other hand how the EP handles its weakness in expertise. Neither the administrators, nor the rapporteur and shadow rapporteurs had any specific knowledge on nanomaterials. Yet inspired by their starting position and by means of their own research and the input from interest organisations, input was gathered to draw up a position based on that starting position. The lack of expertise initially hampered the Parliament in making its claims heard, but its concerns were finally recognised. Even though the final compromise does not include the most important element (i.e. the moratorium for placing such foods on the market), the EP had a definite impact on the labelling discussion, the definition and its updating, and the demand to develop test methods.

Third Countries

Another area of intense negotiation was the procedure for traditional food coming from third countries. The Commission introduced a quicker safety assessment than before based on the history of safe food use in the country of origin. If that history has been demonstrated and if the Member States and the EFSA do not present reasoned safety objections based on scientific evidence, the food could be placed on the market on the basis of a notification of the business operator in question. If there should be reasoned objections, the normal comitology procedure for allowing novel foods on the market would apply.

Remarkably, the rapporteur followed the Commission in allowing a lighter procedure for traditional food coming from third countries, thereby adopting a more free market based position. Only minor amendments were made to the Commission proposal. In her first draft report, the rapporteur wrote that the safe use should be demonstrated for fifty years, instead of 'one generation' as proposed by the Commission. After pressure from IMCO and AGRI (Liotard 2008: 70, 100) who argued for twenty and twenty-five years respectively the report voted in plenary stipulates twenty-five years. The EP's position also specifies that Member States or the EFSA alone can raise objections by introducing the words 'and/or' instead of 'the Member States and the EFSA'.

The Council first of all wanted a separate list for such foods apart from the Union list, something which was rejected by the EP. More fundamentally, it also demanded a separate procedure for bringing a traditional food from a third country on the market which was much stricter than the notification procedure proposed by the Commission and supported by the EP. An application would have to be made to the Commission, after which a mandatory analysis and opinion of the EFSA would be asked. The final decision would be taken through the regulatory procedure with scrutiny, later amended to implementing acts and the examination procedure (which is similar to the basic regulatory procedure) under article 291 TFEU (Council of the European Union (Novel Foods) 2009a: 41). In its reaction to the Council's first reading position, the Commission accepted the new procedure, but asked for shorter deadlines (2010b). The EP however, rejected the idea of a stricter procedure, and the rapporteur submitted the same amendments with the notification procedure spelled out in second reading.

The matter therefore was still wide open in conciliation. During the first round of negotiations in the conciliation phase, the rapporteur accepted a separate list but kept arguing for a notification procedure instead of going through comitology (Council of the European Union (Novel Foods) 2011b: 15-16). A compromise was found based on the initial proposal of the Commission. A party who intends to place a traditional food from a third country on the Union market has to notify the Commission (see Council of the European Union (Novel Foods) 2011a: 55-56). Within a period of four months the EFSA or a Member State can submit a justified safety objection, based on scientific evidence. If this is not the case, the food will be placed on the separate Union list. If it is the case, the EFSA has to give its opinion on a second application which includes a reaction to the objections. On the basis of that opinion the Commission shall – in accordance with the examination procedure based article 291 TFEU – submit an implementing act to include the food on the list.

The point of gravity in the agreed procedure clearly lies with notification and not with comitology. This shows the impact of the EP on the final outcome. The Commission had accepted the Council's position in first reading, yet in the final text the co-legislators returned to a notification procedure. Contrary to almost all other issues on the negotiation table, the EP was inspired by the IMCO free market approach. Both this and the fact that the EP's amendments were in line with the initial Commission proposal strengthened its hand to come to this outcome.

Cloning

The issue of cloning was undoubtedly the most divisive between the three institutions and the main reason the negotiations failed. The Commission proposal had been silent on the issue apart from mentioning non-conventional breeding

techniques in the scope of the regulation. The rapporteur did not even address it in her initial contacts with the Council Presidency in the first half of 2008 when an exchange of views was held on the key issues of the proposal (interview 4). However, after a question in the ENVI committee it emerged that food derived from cloned animals and their offspring would also be covered by the regulation (interview 12).

The rapporteur reacted forcefully by asking to ban all foods from cloned animals and their offspring from the scope of the regulation and therefore also from the Union list (Liotard 2008: 7-8). The EP report also asked the Commission to publish a report on cloned animals used for food supply and included definitions on the food derived from cloned animals and descendants of cloned animals. The report furthermore asked for a specific legislative proposal covering the cloning of animals for food supply, including the placing on the market of meat or dairy products derived from cloned animals or their offspring. Finally, the EP also called for a moratorium on the placing on the market of foods manufactured from cloned animals or their offspring. The rapporteur's arguments were based on public opinion polls which had shown that a majority of citizens were negative towards cloning (Eurobarometer 2008), and on reports from EFSA which demonstrated serious animal welfare concerns related to the technique of cloning. Ethics and animal welfare were thus central in formulating the EP's opinion. The Commission however rejected all these amendments arguing that the matter should be dealt with within the scope of the regulation and that the EP's amendments were not science based and difficult to implement (interview 11).

The Council, on the other hand took a different stance. It agreed with the Commission that the matter should fall within the scope of the regulation and pointed to the risk of a potential legal vacuum that might emerge if the matter were dealt with by means of a separate proposal from the Commission which would come at a later date. At the same time however, the Council also included food derived from offspring in the scope of the regulation, which was refused by the Commission as this is food obtained by conventional reproductive techniques. In response to the EP's request, the Council recognised that the novel foods regulation could not adequately manage all aspects of cloning and called upon the Commission to produce one year from the date of entry into force of the novel foods regulation a report on all aspects of food production from cloned animals and their offspring, followed if appropriate by a legislative proposal. Only Greece signalled disagreement with this in a statement attached to the Common Position, and argued that the issue should be excluded from the scope of the regulation (Council of the European Union (Novel Foods) 2010b: 3). The Common Position was however approved unanimously. This was necessary as the Commission did not agree with the Council's amendments regarding delegated and implementing acts (see above) and with the amendment to include the food derived from offspring of cloned animals in the scope of the regulation.

As mentioned in the previous chapter (see Chapter 5 section 5.2.3 on time as a resource), the Commission was asked to produce a working document that could provide a solution for the differences between the Member States, the European Parliament and the Commission. This report only came out on 19 October 2010, when several months in second reading had already passed. In that report the Commission (2010a: 5-6) stated there is no obligation in the EU to notify the production, trade or import of clones or their semen and embryos and that it is therefore difficult to get a complete picture of the market situation. In the EU, the Commission wrote, cloning is done for research purposes only. It however admitted that products of the offspring of clones had entered the food chain, for instance coming from the US and countries in South America where cloning is a popular technique in the food industry. As explained above, such a case emerged in the UK in the summer of 2010. This caused ECR's MEP Stevenson to speak out against such practices and the case further hardened the EP's overall position towards cloning (interview 1).

In the working document, the Commission also pointed out that putting food on the market coming from cloned animals directly is not economically interesting, and that traceability of cloned animals is either voluntary or non-existent. Tracking offspring, or semen and embryos is not done in- or outside of the EU. The Commission is reported to have discussed the possibility of a moratorium with the Association of European farmers and of European agri-cooperatives. The conclusion of these talks was that a moratorium would be inappropriate because there are no means to ensure full traceability of imported products and there is no control to legally pursue those who break the moratorium. In addition, the Commission cited WTO rules in the General Agreement on Tariffs and Trade (GATT), the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT) to warn against a ban or moratorium on food coming from offspring of cloned animals. As there is no scientific basis for banning such products, a market prohibition could cause infringement procedures by countries such as the US, Argentina and Brazil, who lobbied this point extensively in the EP, the Commission and in the Council (interviews 1, 3 and 41). It can be argued that none of these points – the economical viability of using clones for food purposes, the feasibility of tracing offspring (including semen and embryos), or the trade implications – were considered by the EP. The amendments were purely inspired on ethics and animal health concerns, which the Commission also recognises in its report.

The Commission, in order to find a way out of the deadlock, proposed to put forward a legislative proposal with a temporary suspension in the EU of the cloning technique of farm animals for food purposes, the use of cloned farm animals, and the marketing of food from clones. In addition it would establish a traceability system for imports of semen and embryos to allow farmers and industry to set up data banks of offspring in the EU. No further measures were proposed to regulate

the food coming from the offspring of cloned animals. Again, because such food is obtained through conventional breeding techniques.

After a very brief trialogue when the report came out, and both co-legislators assessed it negatively, the Belgian Presidency concluded to no longer treat the matter during its term, triggering thereby the conciliation procedure under Hungarian Presidency (interview 15).

In conciliation both co-legislators started working on a new article, proposed by the EP, which would regulate the temporary measures concerning cloning pending a legislative proposal from the Commission on the issue. It provided for definitions on cloning, offspring and reproductive material, a ban on the use of cloning for food production, and a prohibition to place food derived from cloned animals on the Union lists. The article also asked the Commission to put in place a traceability system for the reproductive material from cloned animals and their offspring. The question of what to do with offspring however was the most complex and divisive. The EP wanted full traceability for animals and reproductive material, labelling of food products coming from offspring and pre-market authorisation. However, already in first and second reading there was confusion about the term 'offspring' (interview 12). The rapporteur had used 'descendants' in her first report (Liotard 2008: 10), but in English this only means the first generation after the clone. Offspring however, includes all generations. Both in the Council and in the Commission serious concerns were raised on the proportionality and feasibility of such a measure. The rapporteur and Green MEPs such as Staes refuted these claims by pointing to other files, such as the timber regulation 995/2010, where traceability that was argued to be unfeasible was also voted into law (interview 12). Member States in the Council were fundamentally divided on the questions regarding pre-market authorisation, traceability and labelling. With blocking minorities on all three issues, the presidency had to prepare the second conciliation night without a concrete mandate (see Council of the European Union (Novel Foods) 2011a, 2011b). In addition, the Council could not even agree on a definition of cloning and some Member States were even 'peddling back' on the Council's position in first reading and did not want to include offspring in the scope of the novel foods regulation at all (interviews 7 and 53). The only element the Council could agree to with the EP was that no food derived from cloned animals could be included on the Union lists (Council of the European Union (Novel Foods) 2011b: 57).

Negotiations continued in between and during the second and third nights of conciliation and became more complex as discussions began on which generations of offspring to include, and which types of food to label as a distinction was made between meat from bovine animals and dairy products. As explained before, the co-legislators failed to come to an agreement before the deadline of the conciliation and the negotiations ended in failure.

It is clear from this analysis that the EP has dominated the debate on cloning. It had been a latent issue in the proposal of the Commission, but once discovered was soon made the centrepiece of the negotiations. In line with Radaelli's argument (1999) that values play a role, it was observed that the amendments made on cloning were fully in line with the rapporteur's starting point to take consumer protection, food safety and animal welfare as the basis for amendments. On many points in the cloning debate this approach clashed with science, feasibility, *implementability* and existing international trade rules as the full implications of the demands were only realised as the negotiations progressed. The clash between the EP and the Council was based on conflicting visions: one of a political vision and values translated into legislative amendments versus a more expertise and science based position with a strong focus on (administrative) feasibility and a costs-benefit analysis (interviews 2, 8 and 11). In line with the definition of politicisation used, the file became politicised when importance was attributed to the issue of cloning which polarised opinions, interests and values between the institutions. Assessing the final outcome, one cannot but conclude that the EP negotiators failed to achieve their objective. By not having an agreement, the matter of cloning, reproductive material, and offspring remains unregulated in the EU.

Again, this case confirms two of the claims made in the first half of this chapter. First, politicisation – here exemplified by the cloning case – can limit the impact of having a weaker position in expertise. And second, the question of responsibility and carrying the burden of implementation, heavily influences each actor's position and the EP's success rate (Burns 2005: 492).

6.3.3 Findings

The following table shows a summary of the analysis made above.

Table 6.3: Summary of key amendments on the novel foods regulation

Issue	EP result	Reason
Philosophy of the proposal		
Consumer protection on equal footing with internal market)	+/-	Recognised but not operationalised
Ethical considerations as an assessment criterion	+/-	Listed as a criterion but watered down
Animal welfare as an assessment criterion	-	Outside the scope of novel foods regulation
Environmental considerations as an assessment criterion	-	Outside the scope of novel foods regulation
Animal testing	+	Link made with a related directive
Precautionary principle	-	Recognised but not operationalised
Reforming the procedure		
Delegated vs. implementing acts	X	Institutional problem of a horizontal nature

Issue	EP result	Reason
Post-market monitoring	-	Administrative burden on Member States and food operators
Labelling	-	Administrative burden on Member States and food operators
Nanotechnology		
Definition	+	Vacuum in the proposal addressed
Updating the definition	+	Commission on the same side
Moratorium	-	Assessment covered by EFSA
Labelling	+/-	Mentioned in list of ingredients
Test methods	+	Vacuum in the proposal addressed
Third countries		
One list	-	Separate lists
Notification procedure	+	Commission and industry on the same side
Cloning		
Moratorium	+	Obtained in conciliation
Outside the scope	+/-	Transitional measures pending a new proposal
Offspring in the scope	+	Obtained in conciliation, even though position Council was unclear
Post-market monitoring	X	Unfeasible according to Council and Commission
Traceability	X	Partly unfeasible according to Council and Commission
Labelling	X	Administrative burden and control questioned

Key: '+' positive; '-' negative; '+/-' mixed; 'X': no agreement found

The analysis above demonstrates that there was a fundamental difference between the co-legislators in approaching the regulation on novel foods. The EP's amendments were mainly inspired by the need for consumer protection, animal welfare and ethical concerns, whereas the Council and the Commission took a more internal market based position. They repeatedly emphasised the need for positions to be based on science, the feasibility and *implementability* of the regulation in light of administrative burden for Member States and food operators as well as the costs and benefits resulting from certain EP amendments (interviews 2, 3, 4 and 11). In addition, it could be argued that the Council was in a relatively stronger position as the "cost of no agreement" was lower than that of the EP (Putnam 1988). Where the EP clearly wanted to regulate food from cloned animals and their offspring, the Council's position was less clear-cut therefore failure to come to an agreement was considered less fundamental than in the EP. The table above shows that this clash led to mixed results for the EP. In areas where this logic was pre-dominant in the EP's approach, such as the philosophy of the proposal or reforming the procedure not much was achieved. On cloning the differences were even unbridgeable as no agreement between the co-legislators could be found. This was also due to the fact that the issue had politicised the regulation in the EP. Cloning had become the central issue in the negotiations and an element on which

the EP's rapporteur had repeatedly presented herself in plenary and the press. This polarised the situation with the Council and the Commission as it hardened the positions inside the EP and made a compromise impossible to reach. Linking this finding to the analysis on expertise in the first half of this chapter, it can be argued that politicisation can compensate for a lack of expertise without the weaker party losing influence.

In other areas, such as the debate on nanotechnology, the EP's amendments – which were primarily based on the logic of the precautionary principle – did make a considerable impact on the final result, even though in-house expertise on the issue was very limited. The discussion on the procedure for traditional food coming from third countries is the so-called 'odd one out'. The EP – contrary to what one would expect in light of the rapporteur's starting position – sided with the Commission in arguing for a lighter notification procedure.

Its successes were thus mainly based on filling a vacuum left by the proposal of the Commission (as was the case with nanotechnology), or by having the Commission as a partner (as was the case with the procedure for traditional food from third countries).

Linking the analysis of the negotiations to the analysis on the background of the MEPs, shows that background played a key role in the negotiations. Indeed, the views of the two MEPs with expertise in food safety – the rapporteur with strong political views on animal welfare, food safety and consumer protection and MEP Liese who has a strong profile on bioethics – dominated and framed the EP's position during the negotiations. Apparently even so dominant that the extensive procedural experience present in the EP's delegation team to successfully conclude conciliation negotiations was insufficient to lead to an agreement. When a rapporteur comes from a small political group this is not something that follows automatically. Especially not when a file becomes highly politicised as is surely the case when it enters the conciliation phase. Consequently, other key MEPs must have supported her line as well. This brings us to the EP's internal organisation in determining its position and preparing the negotiations, which is the topic of the next chapter. It will be shown that there too background and experience played an important role.

In order to come to a comprehensive understanding of the final outcome we must indeed also look at which positions were dominant inside the EP. Throughout the analysis in this chapter 'the EP' has always been mentioned as a collective actor. The next chapter on organising capacity will show that the EP is no monolith and that the way in which positions were formulated and coordinated internally are inextricably linked to the expertise and background of the MEPs involved and the final outcome of the negotiations.

6.4 The role of expertise in the case of the annual Budget 2011

6.4.1 Expertise of the key players

Identifying the key players in the Budget 2011 case is slightly different from the other cases. As explained in the previous chapter, group coordinators and group staff take up important roles as the formulation of the EP's position and preparation for negotiations with the Council requires a significant coordination effort. Apart from the 'usual suspects', such as the rapporteur, the shadows and the committee chair, their background and expertise will be of relevance as well.

MEPs

Sidonia Elżbieta Jędrzejewska (Rapporteur – EPP)

Polish MEP Sidonia Jędrzejewska is a first term member of the European Parliament and was appointed rapporteur of the 2011 annual budget. She has a PhD in sociology from the Polish Academy of Sciences (Jędrzejewska 2013). It may seem remarkable that a first term MEP obtained the rapporteurship of the first ever annual budget under the new Lisbon procedures which put the EP on an equal footing with the Council. However, Jędrzejewska worked as an administrator in the Secretariat of the European Parliament's Committee on Budgets and as a budget adviser to the EPP between 2006 and 2007 dealing with the negotiations of the 2007-2013 MFF of which the 2011 budget is a part. She thus had recent and extensive expertise on Parliament's budgetary affairs.

Alain Lamassoure (chair of the BUDG committee – EPP)

French MEP Lamassoure is undoubtedly one of the key members of the BUDG committee. He studied at Science Po and at ENA in Paris and worked for a total of thirteen years at the French Court of Auditors between 1968 and 1999, first as an auditor and a commissioner, later as a senior member of the Court. He was adviser for the Minister of Cultural Affairs, the Minister of Finance, the Minister for Infrastructure and Giscard d'Estaing, President of the Republic between 1973 and 1981. He became minister responsible for European Affairs between 1993 and 1995, and was responsible for the budget until 1997, including in 1995 during the French Council Presidency. He was an MEP between 1989 and 1993 and was re-elected in 1999. Currently he is serving his fourth term. He was also a member of the European Convention and in that capacity dealt with the new budgetary rules (Lamassoure 2013).

As an MEP and Minister, Lamassoure has built up impressive expertise on budgetary affairs. During his first term he was rapporteur already on the budget for the Parliament and chair of the CONT (Budgetary Control) Committee. From 2004 onwards he also worked extensively as a member of the AFCO Committee on the new treaty provisions on the budget. In that capacity he became a strong advocate

for the Union's own resources. He was the chief negotiator for the EPP group during the negotiations on the 2007-2013 MFF and worked with Jędrzejewska in that capacity (Lamassoure 2009a). In the run-up to the entry into force of the Lisbon Treaty, Lamassoure (2009b) wrote a report on the procedural guidelines on budgetary matters. It is therefore fair to say that with this background and experience he was a well-placed figure to oversee the first annual budgetary negotiations in which the EP was on an equal footing with the Council. As the negotiations took place in the midst of the economic crisis and with the annual budget negotiations becoming an element in the discussion on how the future MFF would be negotiated, Lamassoure indeed played a key role. In the capacity of chair of the BUDG committee, he was the main interlocutor in the negotiations with the Council and led the negotiations on the 2011 annual budget. Both inside and outside the European Parliament, Lamassoure is regarded as the EP's chief political expert on budgetary affairs (interviews 25, 27 and 30). His experience and expertise were vital for the EP in the negotiations.

Jerzy Buzek (then president of the EP – EPP)

As the (then) president of the European Parliament, Buzek was actively involved in the negotiations on the 2011 budget as will be explained below. Buzek is a former Polish Prime Minister and an MEP since 2004. He has a more technical background as a doctor and professor in “technical sciences” (engineering), the representative of Poland at the International Energy Agency between 1992 and 1997 and as the secretary and later scientific director of the Polish Academy of Science - Institute of Chemical Engineering (Buzek 2013). During his first term as an MEP he was a member of the ITRE committee and was rapporteur for the report on the seventh framework programme for research and innovation as well as the European Strategic Energy Technology Plan (Buzek 2008).

During the 7th parliament, he was elected president of the EP for the first half of the term with 555 votes out of 644 (Buzek 2012). Coming from the largest group in the EP, being a former prime minister and coming from one of the new Member States, Buzek was an obvious candidate for the post. During his term in office he oversaw the entry into force of the Lisbon Treaty and became involved in the negotiations on the 2011 budget as general institutional and legal questions regarding the preparation of the future MFF became linked to the annual budgetary negotiations. It is fair to say that apart from his work on the 7th framework programme, Buzek had no first hand experience or expertise on European budgetary affairs, something which many interviewees pointed to as a weakness during the negotiations (interviews 27, 28 and 31).

Shadow rapporteurs and coordinators

Francesca Balzani was shadow rapporteur for S&D. Balzani is a lawyer and was adviser to the Genova e Imperia Savings Bank Foundation between 2005 and 2007

(Balzani 2013). She was a Member of the Genoa City Council with responsibility for budget and fiscal policy between 2007 and 2009. During her term in office she reformed the city budget by focusing more on innovation, allocation of the budget according to projects and a reduction of financial derivatives (Balzani 2012a). In 2009 she was elected as MEP and became a member of the BUDG Committee. Apart from her experience at city-level she had no obvious expertise in budgetary affairs, let alone the EU budget. In order to remedy the lack of experience of certain members, some political groups in the BUDG Committee have established a rotation system for the rapporteurship of the annual budgetary procedure which entails that future rapporteurs are given experience by shadowing for their group in the previous years (interview 30). Balzani thus used the experience of the 2011 budget to become rapporteur a year later (Balzani 2012b).

Göran Färm is the S&D coordinator of the BUDG Committee. Before becoming MEP he worked as a journalist in Sweden. He was a member between 1999 and 2004, and came back in 2007 (Färm 2013). In 2002 he was rapporteur for the 2003 budget under the pre-Lisbon rules (Färm 2003). Having been a member of the BUDG committee during the 5th parliament and a member of the temporary committee on the policy challenges and budgetary resources for a sustainable European Union after 2013, he is one of the most experienced S&D members of the committee.

Dutch MEP Jan Mulder is the ALDE coordinator for budgetary affairs. Mulder is an agricultural engineer and worked as a European Commission official on agricultural and development affairs between 1976 and 1994 before being elected as an MEP (Mulder 2013). Having been a member of the BUDG committee, the CONT Committee for budgetary control, and rapporteur for the 2004 budget, Mulder has extensive experience in EU budgetary affairs (Mulder 2004). In that light he was appointed quaestor of the European Parliament responsible for looking after the financial and administrative interests of MEPs. Mulder is therefore widely recognised as an expert in EU budgetary matters.

Helga Trüpel is a German MEP and coordinator for the Greens/EFA group in the BUDG committee. She is a former senator for Bremen and also vice-president of the CULT committee in the EP (Trüpel 2013). During the 2011 budget negotiations she was not only coordinator but also rapporteur for certain sections of the budget, namely IX on European Data Protection Supervisor and X on the European External Action Service, as well as the sections on the European institutions (Trüpel 2011). This approach was taken in order to reduce the workload of the main rapporteur in this first budgetary procedure under Lisbon Treaty rules. Before this, Trüpel had no prior experience in as a rapporteur.

Salvador Garriga Polledo is the EPP coordinator in the BUDG committee and an experienced MEP serving his fifth term (Garriga Polledo 2013). He wrote the report

on the policy challenges after 2013 and was rapporteur for the 2005 annual budget (Garriga Polledo 2007).

Finally, Richard Ashworth is a British conservative MEP and coordinator for the ECR group in the BUDG Committee. Ashworth is a former farmer and chairman of a further education college and was elected as an MEP in 2004 (Ashworth 2013). He had limited experience in budgetary affairs and had only written one report on the future simplification of the Common Agricultural Policy during his entire career as an MEP (Ashworth 2010).

With the exception of Ashworth, there is a clear distinction between shadow rapporteurs and rapporteurs on the one hand and coordinators on the other. Group coordinators seem to be the more experienced members with at least one term in the BUDG committee on their CV and having been rapporteur of one of the annual budgets before Lisbon. Rapporteurs and shadow rapporteurs seem to be younger and less experienced, but gain experience through the process of shadowing. It is fair to say that the central member of the committee is Lamassoure with a vast experience in both national and European budgetary affairs.

Staff

As explained in the previous chapter, assistance for MEPs during the annual budgetary procedure is mainly provided by the group staff and the committee secretariat. The MEPs' personal assistants are more involved in the negotiations on legal budgetary instruments (interview 25). Where the group staff's tasks mainly focused on internal coordination, the secretariat had the additional task of preparing trilogues with the Council presidency and Commission representatives. Most of the group staffers and secretariat officials have no particular background in budgetary matters when they start in their respective functions, but build their expertise along the way (interviews 29 and 32). At the same time, one has to realise that group staffers working on the budget usually only have two files to deal with per year (i.e. the follow-up of the current budget and the negotiations on the new budget), and that the secretariat staff has made a division of labour according to headings. This makes the workload bearable and specialisation easier. In the run-up to the entry into force of the new budgetary rules under the Lisbon Treaty, the secretariat also made a working document for the rapporteur which was distributed to all MEPs, assistants and group staff of the BUDG committee. It included a detailed analysis of the new procedures from the Parliament's perspective (interview 29). Apart from this, there was no specific training organised on the new rules. In other committees however, the secretariat provides regular presentations on the budget procedure and the involvement of opinion-giving committees (interview 32).

Several interviewees have stressed the importance of the secretariat's head of unit as being the technical expert on budgetary affairs in the Parliament's administration (interview 25, 27, 29, and 30). By having a direct line to the chair of the committee he was of key importance in preparing the negotiations with the Council. The general assessment of the level of expertise of secretariat officials however varies. Most are generalists and have to build up their expertise in the committee, or have dealt with budgetary matters in other committees before moving to the BUDG committee (interviews 29 and 30). The rotating system of officials is said to be a weakness as it makes having a constant high level of expertise at the secretariat impossible (interview 29, 30 and 32). These are undoubtedly dynamics which play in regular committees as well, but the specific characteristics of the work in the BUDG committee – the enormous volume of amendments, the technical nature of the work and the extensive but necessary coordination – make them even more relevant. On procedural matters however, and similar to the novel foods and comitology case, the secretariat's expertise is undeniable (interviews 26, 29 and 30).

Comparing expertise between the institutions, most interviewees agree that no one matches the level reached by Commission officials (interviews 25, 26, 27, 28, 29, 30, 31 and 32). They have the most specialised computer programmes to calculate spending and incomes and have the most detailed overview and knowledge of the overall budget. The analysis below will show that expertise did play a significant role in the negotiations.

6.4.2 The role of expertise during the negotiations

Based on the in-depth interviews, official documents and negotiation papers as well as existing literature on the 2011 budget negotiations a number of key issues have been identified around which the negotiations centred. Indeed, it would go beyond the scope of this thesis to analyse and discuss all of the more than 2,000 amendments these negotiations generated. In order to analyse the impact of expertise as a factor, it suffices to look at those points that were the object of actual inter-institutional and intra-institutional negotiations. The way the budgetary procedure is set out enables such an analysis as both branches of the budgetary authority define their position separately from each other and only start negotiating on a common text during and in the run-up to the conciliation phase.

Apart from the traditional budgetary issues, such as the overall payment and commitment appropriations, certain other questions became linked to the 2011 budget negotiations. These mainly had to do with the involvement of the EP in the then-upcoming MFF negotiations (i.e. the multi-annual financial framework for 2014-2020). The analysis below is structured accordingly.

The negotiations on the 2011 budget as such

The annual budget is divided into commitment and payment appropriations. In its first proposal, the Commission (European Commission (Budget) 2010a) set the commitment appropriations at 142,565 million euros or 1.14% of the EU GDP. Commitment appropriations cover the yearly cost for operations to be carried out over more than one financial year. It is the maximum of expenditure which can be committed during the financial year. This constituted an increase of 0.77% as compared to the year before. The Commission set the payment appropriations at 130 136 million euros or 1.04% of the EU GDP. Payment appropriations are the actual expenditure available for that financial year. This constituted an increase of 0.21% as compared to the year before. It is important to realise that the negotiations on the annual budget started at the beginning of the financial crisis. The Commission had thus put economic recovery, youth, and investments in infrastructure at the centre of its proposal (Saarilahti 2011: 182).

When making an analysis of the amendments made to the budget, it has to be stressed that these are submitted within the ceilings set by the MFF for each heading and sub-heading. The legal bases of the different financial programmes have to be respected, and in certain cases compulsory financial indicators have to be taken into account such as in the structural funds. The margin of manoeuvre for the two branches of the budgetary authority is thus rather limited. Nevertheless, the analysis below will show clear differences in the approach taken by each institution (interview 28). The table on the following page gives an overview of the modifications made to the budget by the institutions as well as the final result.

Table 6.4: Evolution of the 2011 budget negotiations

HEADING	Commission proposal 27/04	Council position 12/08	Difference with Commission	EP position 20/10 (rounded up)	Commission proposal 26/11	Agreement 10/12
COMMITMENT APPROPRIATIONS	142 565 167 849	141 777 334 465	-787 833 384	143 070 000 000	141 818 270 555	141 909 398 849
1. Sustainable Growth	64 406 946 054	64 360 396 054	-46 550 000	64 466 000 000	64 501 160 054	64 501 160 054
1.a Compet growth employment	13 436 852 270	13 390 302 270	-46 550 000	13 485 000 000	13 520 566 270	13 520 566 270
1.b Cohesion growth employment	50 970 093 784	50 970 093 784	0	50 981 000 000	50 980 593 784	50 980 593 784
2. Preservation natural resources	59 486 248 389	59 011 601 738	-474 646 651	59 875 000 000	58 659 248 389	58 659 248 389
3. Citizenship, FSJ	1 803 069 740	1 792 319 740	-10 750 000	1 822 000 000	1 821 851 740	1 821 851 740
3.a Freedom security and justice	1 135 252 740	1 124 342 740	-10 910 000	1 139 000 000	1 138 954 740	1 138 954 740
3.b Citizenship	666 377 00	667 977 00	+160 000	683 000 000	682 897 000	682 897 000
4. The EU as a global player	8 359 669 377	8 265 929 377	-93 740 000	8 683 000 000	8 754 299 377	8 754 299 377
5. Administration	8 255 374 289	8 093 227 556	-162 146 733	8 223 000 000	8 081 710 955	8 172 839 289
PAYMENT APPROPRIATIONS	130 135 942 102	126 527 133 769	-3 608 808 333	130 560 000 000	126 527 133 763	126 527 133 762
	(1.04% GDP)	(1.02% GDP)		(1.04% GDP)	(1.01% GDP)	(1.01% GDP)
1. Sustainable Growth	54 281 117 696	52 314 977 696	-1 966 140 000	54 679 000 000	53 328 224 047	53 279 897 424
1.a Compet growth employment	12 059 714 170	11 218 574 170	-841 140 000	12 128 000 000	11 598 063 009	11 580 193 848
1.b Cohesion growth employment	42 540 796 740	41 465 796 740	-1 075 000 000	42 551 000 000	41 682 470 728	41 652 094 626
2. Preservation natural resources	58 135 685 296	57 314 977 696	-820 707 600	58 512 000 000	56 409 294 284	56 378 918 184
3. Citizenship, FSJ	1 491 552 740	1 422 637 740	-68 915 000	1 497 000 000	1 460 219 466	1 459 246 345
3.a Freedom security and justice	852 573 740	802 963 740	-49 610 000	848 000 000	814 250 466	813 277 345
3.b Citizenship	638 979 000	619 674 000	-19 305 000	649 000 000	645 969 000	645 969 000
4. The EU as a global player	7 398 763 867	7 010 864 867	-387 899 000	7 646 000 000	7 148 979 971	7 137 527 520
5. Administration	8 256 429 289	8 094 282 556	-162 146 733	8 224 000 000	8 080 415 995	8 172 839 289

Sources: Council of the European Union (Budget) 2010a; 9; Saarlahti 2011, Jedrzejewska and Trüpel 2010, European Commission 2010c; Council of the European Union 2010d; n.b.: certain numbers have been rounded in case no detailed figures were available in the official documents

The Council's Common Position

The Council reduced the Commission's proposal to 141 777 million euros in commitments and 126 527 million in payments. The Council proposed these reductions in light of the severe economic situation in the Member States and the need for budgetary discipline (interviews 25, 28 and 29). The Council thus proposed to reduce all commitment appropriations except for the sub-heading 1b on Cohesion Growth and Employment and sub-heading 3b on Citizenship where it added a new budget line for the financing of preparatory action for the preservation of commemorative sites in Europe such as Auschwitz-Birkenau (Council of the European Union (Budget) 2010a: 73). During the trialogue of 30 June 2010 where the Council presented its position, the EP criticised the reductions made, arguing that the role of the EU budget is to support and underpin economic recovery in the Member States. This was a first indication of the negotiations to come when the EP still had to define its detailed position.

Without going into too much detail, the Council reduced budget lines in commitment and payment appropriations across the board:

- Under **heading 1a** on competitiveness for growth and employment it reduced 54 budget lines in commitment appropriations for a total amount of 46.5 million euros, including 5.5 million for the Research Executive Agency (Saarilahti 2011: 196), 2.9 million in education and culture and 9.7 million in enterprise (Council of the European Union (Budget) 2010a: 64). A further 114 budget lines were reduced in payment appropriations for a total of 841 million euros of which 546 million in research (Saarilahti 2011: 197).
- Under **heading 1b** on cohesion, growth and employment, the Council kept the commitment appropriations proposed by the Commission, but reduced six budget lines in the payment appropriations good for 1 075 million euros including 386 million on the Fund for Regional Development and 129 million in the European Social Fund (Council of the European Union (Budget) 2010b: 113).
- Under **heading 2** on the preservation of natural resources, the Council reduced the commitment appropriations on 33 budget lines for a total of 474 million euros, including a reduction of 38 million euros on interventions in the agricultural market and 420 million on the line for clearance of accounts (Council of the European Union (Budget) 2010a: 15). The payment appropriations were cut by 820 million euros, including a reduction of 53 million for LIFE+ the financial instrument for the environment (Council of the European Union (Budget) 2010b: 8).
- Under **heading 3a** on liberty security and justice, the Council reduced 15 budget lines for a total of 10.9 million euros including 8.36 million on decentralised agencies such as Europol, Eurojust and the European Police College (Council of the European Union (Budget) 2010a: 76). The payment appropriations were cut by 49.6 million euros for 23 budget lines, including 9.5 million on the European Fund for the integration of third-

country nationals, and 4.3 million in the fund for the prevention of and fight against crime (Saarilahti 2011: 198).

- Under **heading 3b** on citizenship, the Council reduced the commitment appropriations with 3.8 million in a total of 5 budget lines, including 2 million in civil protection within the EU (Council of the European Union (Budget) 2010b: 210) but also a new budget line worth 4 million euros for commemorative sites in Europe (Council of the European Union (Budget) 2010a: 17). The payment appropriations were cut by 20.3 million in 10 budget lines, including 8.1 million in action in the field of health, and 6 million in civil protection within the EU (Saarilahti 2011: 199).
- Under **heading 4** on the EU as a global actor, the Council reduced the commitment appropriations in 17 budget lines for a total of 93.7 million euros, including 25 million for the instrument of pre-accession assistance for rural development (Council of the European Union (Budget) 2010a: 58), and 15 million in macro financial assistance (Council of the European Union (Budget) 2010b: 11). The payment appropriations were cut in 35 budget lines for a total of 590.8 million, including 100 million for transition and institution-building assistance to potential candidate and candidate countries, (Council of the European Union (Budget) 2010a: 81), and 30 million for the instrument for democracy and human rights (Saarilahti 2011: 199).
- Finally under **heading 5** on administrative expenses, the Council reduced both commitment and payment appropriations for the institutions' administrations considerably with over 162 million euros, of which 80 million for the Commission, and 14 and 10 million for the European Economic and Social Committee and the Committee of the Region respectively (Council of the European Union (Budget) 2010a: 36, 45-47). It also refused the creation of any additional new post for the institutions, with the exception of the EP and the European Council and External Action Service – the last two being new institutions at the time (Saarilahti 2011: 195-196)³⁴. In addition it refused to accept an indexed and thus predetermined 1.85% increase of wages for EU personnel and cut 22.6 million in pensions (Council of the European Union (Budget) 2010a: 36, 85). The Council argued that the cuts corresponded to the situation in the Member States where administrations were also forced to slim down and save money.

The Council's position was a compromise between those Member States opposing an increase compared to the 2010 budget – not even according to inflation – and a minority who advocated an increase well above inflation (interview 26). The overall mood in the Council however was to introduce general cuts taking account of the national budgetary situations. This commitment was then translated into different budget lines. This approach differs clearly from that of the EP where amendments are formulated in a bottom-up way by each committee based on pre-set political priorities.

³⁴ A Gentlemen's agreement between the Council and the EP on the budgetary procedure includes a provision that both institutions will not touch upon the budget of the other institution during the negotiations (Saarilahti 2011: 195).

Unless it approves the Council's position, the EP thus reacts with its own amendments to the budget. All opinion-giving committees inside the EP draw up amendments for budget lines covering their areas in line with the overall political priorities defined in the EP's guidelines which are adopted when the Commission presents the draft budget (Jedrzejewska 2010). This way of working combines political guidance with expertise. The detail with which the EP position is subsequently spelled out is far greater than that of the Council where the budget is discussed in more general terms (interviews 26, 28 and 30). Several interviewees emphasise that the level of expertise in the EP is therefore different and actually more detailed because of the bottom-up way of defining amendments. These amendments are then discussed in the coordination meetings mentioned above, which take place between August and October. It is the BUDG committee coordinators in cooperation with the rapporteur who assemble the amendments, make the political choices and define the overall approach of the EP's position. The rapporteur and the shadow rapporteur then translate these into detail. Here too, expertise plays a role: the more experienced members are responsible for the political decisions, whereas the shadow rapporteurs implement these across each budget line.

The EP's reaction and position

The European Parliament's approved budget in first reading contained 143 070 million in commitment appropriations and 130 559 in payment appropriations, or respectively 1 300 and 4 000 million higher than that of the Council (see table 6.4 for an overview; EP summary 20.10: 1). In its resolution attached to the vote in plenary (Jedrzejewska and Trüpel 2010: 2), the EP reproached the Council for having introduced "arbitrary" cuts "randomly and radically throughout the whole budget", without having formulated clear policy objectives. The EP contrasted this with its own political priorities (Jedrzejewska 2010a; Jedrzejewska 2010b: 1-2):

- the 'Lisbonisation' of the budget: adapting the budget to the entry of force of the Lisbon Treaty
- the Europe 2020 strategy
- Programmes in favour of youth, education and mobility, with special emphasis on lifelong learning, youth in action and Erasmus Mundus
- the financial crisis
- the reform of the EU's budget
- the external policy of the EU
- and finally, competitiveness policy, including research, development, entrepreneurship and innovation

In concrete terms this meant that most budget lines were brought back to the levels proposed by the Commission, apart from those linked to research, innovation, mobility of students, energy and support for the peace process in the Middle East, which were raised (see table 6.4).

- Under **heading 1a** the EP voted a budget of 13 486 million and 12 128 million in commitments and payments respectively, considerably higher than that of the Council. In doing so it raised several budget lines linked to its priorities: the Lifelong Learning Program with 18 million, as well as 10 million for the Entrepreneurship and Innovation Program. (Jedrzejewska and Trüpel 2010: 4-5; Saarihahti 2011: 203).
-
- Under **heading 1b** the EP voted 50 981 million in commitment appropriations and 42 551 in payment appropriations. By doing so it reinstated all of the reductions made by the Council and added 8 million euros for the creation or continuation of pilot projects. It also created a new budget line for technical assistance in the framework of the EU strategy for the Baltic Sea, good for 2.5 million euros (Jedrzejewska and Trüpel 2010: 5-6; Jedrzejewska 2010c: 4).
- Based on its priorities, under **heading 2** the EP set the budget at 59 876 million and 58 512 million for commitments and payments respectively. This corresponded not only to a re-establishment of the reductions made by the Council, but also included raises of 300 million in the dairy sector fund, 25 million for the programmes in favour of deprived persons, 10 million euros for School Fruit and School Milk schemes and 6.7 million for LIFE+ (Jedrzejewska and Trüpel 2010: 6; Jedrzejewska 2010c: 4).
- Under **heading 3a** the EP voted a budget of 1 139 million and 848 million in commitments and payments respectively. Here too, the EP brought back the cuts proposed by the Council, except for those on the fight against and prevention of crime, penal justice and civil justice. The EP also raised the budget for the Daphne programme on the fight against violence against women and children with 2.35 million, and 1 million for the prevention of terrorism (Jedrzejewska and Trüpel 2010: 6-7; Saarihahti 2011: 205).
- Under **heading 3b** we see similar amendments. The EP voted 683 million in commitments and 649 million in payments by re-establishing the cuts voted by the Council and – in line with its priorities – raising the budget by 3 million for the Youth in Action Program, and 4 million to support the World Special Olympics in Athens (Jedrzejewska and Trüpel 2010: 7; Jedrzejewska 2010c: 4).
- Under **heading 4** the EP voted a budget of 8 683 million and 7 646 million in commitments and payments respectively. Here too, in line with its priorities, the EP based its position on the initial Commission proposal, except for cuts it introduced in two budget lines on cross-border cooperation (20 million) (Saarihahti 2011: 205). Again, the EP also proposed raises in the budget, most notably in the programmes on Latin America and Asia (172 million in commitments and 129 in payments), and an extra 100 million for aid to Palestine in the framework of the peace process. (ibid.: 206; Jedrzejewska and Trüpel 2010: 8; Jedrzejewska 2010c: 5).
- Finally under **heading 5**, the EP voted 8 223 million and 8 224 million in commitments and payments respectively. This means that the budget for the Commission was reinstated. For the other institutions such as the Committee of the Regions and the Economic and Social Committee the EP voted budgets halfway between the position of the Council and the proposal of the Commission (Saarihahti 2011: 206-207). The EP also accepted the budget proposed for the External Action Service in the amending letter of

the Commission (European Commission (Budget) 2010b) as well as the additional posts assigned to the Court of Justice, the Economic and Social Committee and other units of institutions (Saarilahti 2011: 207). Last but not least, the EP created a reserve for the 1.85% salary adjustment refused by the Council on which an ECJ ruling was pending at the time (Jedrzejeweska and Trüpel 2010: 10, 13-15).

Following the vote in the EP, the Council on 25th of October stated that it could not approve all amendments adopted by the EP thereby triggering conciliation negotiations (Council of the European Union (Budget) 2010c: 11). On 26 October, the president of the EP launched the conciliation procedure, which according to the new Lisbon rules would take 21 days. Three formal trialogues were held, on 27 October and on 4 and 8 November 2010. Before, in between and after these trialogues several informal trialogues and contacts at political and technical level took place (see Chapter 4 section 4.3.2).

Conciliation

The first conciliation meeting was the official start of the negotiations. The formal trialogue of 27 October was organised to prepare that first meeting which was taking place on the same day. In this meeting the EP stated that it would link its agreement on the budget for 2011 to several “political, legal and institutional issues” it wanted an agreement on with the Council. These issues were based on a set of seven priorities defined by the Conference of Presidents on 5 October (Saarilahti 2011: 209). These priorities (Conference of Presidents 2010a: 1-2) were the following:

- The need for a strategic dialogue with the Council, which implied that the Council would be represented at a sufficiently high level.
- The overall spending would have to be at an adequate level, which implied that the budget would not be drastically cut as was the case with the Council’s position at first reading
- That priority would be given to ‘European added value’, for instance in creating a proper European financial surveillance mechanism or by investing in the proper functioning of the EEAS
- That the effect of the Lisbon treaty is taken into account, implying that new competences are complemented with adequate resources
- That the budget for 2011 is used as an instrument for holding a mid-term review which was promised when the MFF was approved
- That proposals for own resources would be elaborated to find a sustainable solution for the financing of the Union
- That there would be a real participation of the EP in the negotiations on the future MFF.

The two last points were highlighted as being of particular importance. The fact that the negotiations on the budget for 2011 became tied up with these issues had an important impact on the dynamics of the negotiations (see section below).

On the 2011 budget as such, the Council insisted on the necessity to limit the payment appropriations in the budget, given the economic situation in most Member States (Saarilahti 2011: 210). Payment appropriations are most directly felt by national governments as they constitute the real expenses made in the budgetary year (interviews 25, and 29). The EP agreed to be flexible on this point if the Council would move towards its demands on the MFF and own resources (interview 31).

The second formal triilogue on 4 November was dedicated exclusively to the annual budget of 2011. Negotiations took place on “thematic horizontal blocs” such as the EU’s agencies, the general approach to take per heading in commitment appropriations, the payment appropriations, and the institutions (Saarilahti 2011: 210). The budget lines accepted by the Council in its position at first reading and not modified by EP amendments were provisionally agreed upon. The third formal triilogue on 8 November was mainly dedicated to the political, legal and institutional questions the EP had linked to the 2011 budget (see section below). On the budget as such, the Council’s position on payment appropriations had significantly hardened after the European Council meeting of 28 and 29 October 2010. During that meeting twelve Member States³⁵ had voiced firm opposition in a letter sent to Herman Van Rompuy on going beyond the Council’s position at first reading on payment appropriations (European Council 2010). In exchange, the Council was willing to show flexibility on commitment appropriations. The EP repeated its position, namely that it was willing to concede on the payment appropriations in exchange for assurances on the EP’s future involvement in the MFF negotiations and a new system of own resources (Saarilahti 2011: 211).

Informal triilogue negotiations at technical and political level brought the EP and Council positions on the 2011 budget closer, but the conciliation meeting of 11 November ended without a final agreement. This was remarkable, because the actual negotiations on the 2011 budget had virtually been concluded as the EP had accepted the Council’s position on payment appropriations and the Council moved towards the EP on some of its priority budget lines (interviews 25 and 28). The agreement however, was ‘ad referendum’, because no progress had been made on the other issues (see below). An additional meeting of the conciliation committee on 15 November failed to force a breakthrough within the 21-day deadline set by the treaty. Ten days later, with a budget crisis looming, the EP adopted a resolution

³⁵ These were Germany, Austria, Denmark, Estonia, Finland, France, Italy, the Netherlands, Czech Republic, the United Kingdom, Slovenia and Sweden.

stating that it wanted to agree quickly on the 2011 budget if the matters on own resources and the future MFF negotiations were resolved (European Parliament (Budget) 2010a).

As explained in the previous chapter, the EP had thus mounted pressure on the Council by letting the deadline of the conciliation pass. The threat of a budget crisis was not only symbolic in the light of the entry into force of the new Lisbon Treaty rules, but also very acute for certain new institutions such as the European External Action Service and the reinforced agencies responsible for financial supervision.

New draft budget

Following article 314(8) TFEU the Commission has to present a new draft budget if conciliation fails. This new draft budget (European Commission (Budget) 2010c) was of course based on the agreement found 'ad referendum' and additional new elements that had emerged since³⁶ (interview 28). This meant that for payment appropriations the Council's position at first reading was accepted, corresponding to 126,5 billion euros. The proposal also included the concessions made by the Council in commitment appropriations. More specifically, this meant the following:

- Under **heading 1a** the new Commission proposal included 13 521 million and 11 646 million for commitment and payment appropriations respectively. This constituted a raise of 83 million in commitment appropriations to meet the EP's priorities on youth, SME policy and research, including 18 million for Life Long Learning (European Commission (Budget) 2010b: 8-9).
- Under **heading 1b** the Commission proposed 50 981 million and 41 682 million in commitment and payment appropriations respectively. As with the previous heading, the Commission took account of the agreement 'ad referendum' which met some of the EP's priorities and raised the budget by 11 million, including a new budget line on the Baltic Sea strategy of 2.5 million euros as asked by the EP (ibid.: 9).
- Under **heading 2** the new proposal of the Commission included 58 659 million and 56 409 million euros in commitment and payment appropriations respectively. Here too, several of the EP's priorities were included in the new draft budget: 10 million for the School Milk scheme, 6.7 million for LIFE+ and 4 million for the European Fisheries Control Agency (ibid.: 10).
- Under **heading 3a** the commitment appropriations amounted to 1 139 million euros and the payment appropriations to 814 million euros. This includes a raise of 4.4 million euros in a total of three budget lines: Daphne, the fight against terrorism and a scheme for the prevention of drug use (ibid.: 10-11).

³⁶ These were presented in an amending letter to the budget (European Commission (Budget) 2010d) and included 80 million extra for measures related to rural development under heading 2.

- Under **heading 3b** the Commission proposed 683 million and 646 million in commitment and payment appropriations respectively. This includes a rise of 3 million in the Youth in Action program and 4 million for the World Special Olympics in Athens, as demanded by the EP (ibid.: 11).
- Under **heading 4** the Commission proposed 8 754 million and 7 249 million euros in commitment and payment appropriations respectively. For commitment appropriations this included a rise of 100 million euros for Palestine and the peace process as asked by the EP (ibid.: 11-12).
- Finally under **heading 5** the Commission proposed 8 082 million euros in commitment appropriations and 8 080 million euros in payment appropriations. This did not yet include the 1.85% automatic wage raise which was refused by the Council in 2009, but ruled legally correct by the Court on 24 November (ibid.: 12-13). It did however include the new posts for the Court of Justice, the Economic and Social Committee and the Committee of the Regions as proposed by the EP and agreed 'ad referendum' (Saarilahti 2011: 218).

During a formal trialogue on 6 December 2010 an agreement was found swiftly on the new Commission proposal. Again however, 'ad referendum' pending a solution on the issues of the MFF and the own resources, and with the reserve to include 91.1 million corresponding to the 1.85% automatic wage increase in the budget which was still undecided (Council of the European Union (Budget) 2010d: 2).

Analysis

It is clear from the budget agreement that a trade-off was made between the Council's position to keep the level of payment appropriations low and a number of EP priorities on commitment appropriations. The difference in position can be explained by looking at how the institutions approach the budget. In doing so, it emerges that expertise only partly explains the outcome.

Member States approach the budget negotiations from the point of view of their ministry of finance where the contribution to the EU budget is generally seen as an additional burden on the national budget (interviews 25 and 28). Experts from the ministry of finance prepare the negotiations with the EP. They have a more general approach to the budget compared to the representatives of the other institutions. They do not have the same specialisation and level of technical knowledge as Commission officials and do not go into the same detail as the committees in the EP when discussing amendments. This more general approach to the budget in combination with the economic and fiscal context in the Member States further explains the Council's position. As mentioned above, payment appropriations are most directly felt by national governments as these constitute the actual expenses to be incurred in the following year. Given the context of fiscal austerity in the midst of the economic crisis, the Council's position at first reading was one that

included major cuts and also one that toughened over time, especially after the October European Council meeting (interviews 25, 28 and 29). Unlike the EP, the Council did not formulate any obvious political priorities apart from bringing the annual EU budget in line with the context in the Member States. The main discussion in the Council was thus more on the overall volume of the budget and different headings, rather than on policy-linked amendments (interviews 26 and 28). Apart from certain specific rises, such as the creation of a budget line for commemorative sites in Europe, reductions vis-à-vis the Commission proposal were universal and without exception. Accordingly, in relative terms the deepest cuts took place in administrative spending, which does not touch upon Member States' national interests (interview 28).

The EP, on the other hand, approaches the budget differently, both procedurally and politically. Politically speaking, the EP repeatedly stressed that the budget only amounts to 0.1% of the EU's GDP and should be used to stimulate economic recovery and invest in areas like innovation, research and youth, when Member States cannot. It stressed the 'European added value' in contrast to the budget being perceived as a burden. The EP further argued that the budget is small compared to national budgets, smaller even than the deficit of France's national budget (Lamassoure in Brehon 2010: 4; interview 25). Moreover, it stressed that all of its proposals fell within the boundaries set by the MFF. It then proceeded to formulate policy related priorities, such as implementing the Europe 2020 strategy and investing in youth, innovation and research. These were subsequently translated into the detailed amendments by each committee. This bottom-up approach results in a much more detailed way of working in which a political decision is made on almost all budget lines separately (interviews 26, 28, and 31). This produces a very detailed amended budget underpinned by policy priorities.

Expertise thus plays a role, but not in the sense that it fundamentally changed the outcome. At the bases of the conflict between the Council and the EP lies a different political approach to the budget. The former sees it as an additional burden on national budgets, while the latter sees it as an instrument for investment. It is not the procedure used to formulate a position, nor the level of expertise that explains this difference in approach. Rather – as with the novel foods case – the responsibility for implementation, in this case carrying the costs of the budget. The approach for each institution is a logical result of that: the Member States in the Council approach it from the point of view of their ministries of finance, which focus more on the larger budgetary picture, and think in general terms of reductions and increases. Whereas the EP's starting point allows a bottom-up approach where detailed amendments are made according to policy-related priorities. In the end a compromise was found between these two positions. Much more limited spending in payment appropriations was reconciled with rises in specific budget lines linked to some of the political priorities set by the EP.

However, in order to explain the outcome on the 2011 budget an element of strategy needs to be examined that has not yet been elaborated. The EP, under the influence of its Conference of Presidents, consciously chose to *instrumentalise* the 2011 budget in order to obtain concessions from the Council and the Commission on its involvement in the MFF, and reassurances to establish a new system of own resources (Conference of Presidents 2010b: 15-17). This resulted in a two-track approach in which the BUDG committee had the chief responsibility for the annual budgetary negotiations, but the MFF and own resources negotiations were mainly handled by the President and his entourage under the strict supervision of the Conference of Presidents (interview 25). It is important to realise that this two-track approach was one where the 2011 budget negotiations were subordinated to the second track. Indeed, the rapporteur and chair of the BUDG committee were literally instructed not to conclude a deal before a satisfying agreement had been found on the other issues. Several interviewees reported that the BUDG committee negotiating team was asked to show enough flexibility on the 2011 budget, and more specifically on the payment appropriations, as this could perhaps ease opposition in the other negotiations (interviews 25, 26, and 31). The brief analysis below will show that this approach backfired, leaving many in the BUDG committee wondering what a deal on the 2011 budget might have looked like if the negotiations had not been instrumentalised by the Conference of Presidents (interviews 25, 26, and 31).

Issues linked to the negotiations of the 2011 budget

As mentioned above, apart from the EP's policy-related priorities the Conference of Presidents, whose role in the EP's internal coordination will be discussed in more detail in the next chapter, had put forward seven "political, legal and institutional" points which had to be addressed during the negotiations on the annual budget for 2011. The two most important ones for the EP were the assurances on a new system of own resources for the EU and the involvement of the EP in the negotiations on the future MFF.

Own Resources

With 70% of the EU budget coming from Member State contributions, a longstanding demand of the EP is to establish a new system for own resources that could counter the impression in Member States that the EU budget is a burden for national budgets. Already in 2007, the EP (2007: 214) called upon the other institutions to have a clear and binding timetable to agree on a new system of own resources before the entry into force of the next MFF. In that context, the EP's position in first reading included the creation of two new articles to cover the collection of future potential own resources of the EU (Saarilahti 2011: 202). One article asked the Council to open negotiations on a new system of own resources and another contained a mechanism to facilitate the transfer of unused appropriations (Jedrzejewska 2010b: 3).

As mentioned above, the Conference of Presidents wanted to start talks about new resources as part of the overall agreement on the 2011 budget. Assurances from the Council and the Commission to reform the system of own resources was thus a precondition to agree on the 2011 budget. At the first meeting of the conciliation committee the President of the EP therefore asked the Council and the Commission to agree on a calendar and working method to establish this (Saarilahti 2011: 209). The Council however refused to work towards a legally binding agreement as proposed by the EP. The Belgian presidency instead proposed a 'political agreement' by means of a joint declaration (Saarilahti 2011: 211). The Council's refusal was one of the reasons why the EP did not agree to conclude negotiations on the 2011 budget before the deadline of the conciliation phase.

In order to resolve the matter, the President of the Commission, Jose Manuel Barroso (2010), sent a letter attached to the new draft budget addressed to the Presidents of the EP and the Council. The letter stated that the "Commission will provide the necessary information to the European Parliament, and the Council in order to pave the way for an effective consultation of the European Parliament under article 311 of the Treaty on a new Own Resources draft decision that it will propose together with the multiannual financial framework in June 2011 and to facilitate the implementation of the Treaty provisions in this area". Even though this was not the legally binding agreement the EP was looking for, it accepted the proposal as it was the first time the Commission had promised to propose a draft decision for new own resources. It was also the most the EP could achieve as the Council did not want to prejudice any discussions on this issue.

MFF negotiations

The involvement of the EP in the future MFF negotiations was a second point that became linked to the 2011 budget negotiations. In its resolution attached to the position in first reading the EP (Jedrzejewska and Trüpel 2010: 3) refers back to an earlier resolution (European Parliament (Budget) 2010b: 3-4) of 22 September in which it recalls article 312(5) TFEU which says that "throughout the procedure leading to the adoption of the financial framework, the European Parliament, the Council and the Commission shall take any measure necessary to facilitate its adoption". Like with the question of own resources, at the first conciliation meeting the president of the EP asked the other institutions to agree on a working method and a calendar for future MFF negotiations (Saarilahti 2011: 209). This was refused by the Council, which wanted to concentrate solely on the budget 2011. In the third formal trilogue on 8 November 2010, the question was raised again by the EP and the Commission proposed to draft a joint declaration on the issue (Saarilahti 2011: 211). At the conciliation of 11 November 2010 the EP did not accept this proposal and demanded a legally binding agreement in which the Council would allow the involvement of the EP in the future MFF negotiations. This was refused by a number of net-contributors in the Council including Denmark, Finland, the Netherlands, the UK and Sweden (ibid.). The Council presidency then invited the

Commission to put forward a new joint declaration which would be a 'political agreement' concerning the MFF negotiations. In the last conciliation meeting the Council proposed that this declaration would state that – in full respect of the competences conferred on the institutions by the Treaty – there would be “regular meetings” held between the presidents of the European Parliament, the Council and the Commission in order to promote the consultation and reconciliation of the institutions’ positions (interviews 29 and 31). The EP rejected this proposal as it merely “paraphrased the treaty” and did not constitute a legally binding text (Saarilahti 2011: 212). The Council’s presidency replied it could not agree to this since it did not have the required unanimity to adopt such a declaration. As a result, the conciliation phase ended without an agreement.

At the first triilogue, organised after the Commission had published its new draft budget, the issue was not addressed but discussed in separate negotiations at the highest level between the Council presidency and the President of the EP. The result of these negotiations was a letter sent by the Prime Minister of Belgium – the country holding the rotating presidency (Leterme 2010). In that letter, prime minister Yves Leterme assured EP President Buzek that the current and the next four presidencies (Hungary, Poland, Denmark and Cyprus) confirmed their willingness to negotiate the MFF in full accordance with the treaties and in a spirit of constructive cooperation. The Belgian Prime Minister also recalled the draft joint declaration of 15 November mentioned above, which the Council proposed and highlights article 324 TFEU. This article states that “regular meetings between the Presidents of the European Parliament, the Council and the Commission shall be convened” and that they “shall take all the necessary steps to promote consultation and the reconciliation of the positions of the institutions over which they preside” (European Union 2010a: 188).

This letter was eventually accepted by the EP as a compromise. It is however far from the legally binding agreement it had asked for. The only difference with the joint declaration proposed by the Commission in the conciliation phase, is the explicit political backing of the future presidencies. Something which in fact was already implied in the declaration which was accepted by all Member States in the Council, including of course the future presidencies. The letter still does little more than paraphrase the treaty and was recognized by most involved as a ‘face saver’ for the EP (interviews 25, 26 and 28). The strategy of *instrumentalising* the 2011 budget to obtain concessions on own resources and the future MFF negotiations thus failed and was seen by many inside and outside the EP as a tactical error (Shackleton 2011; interviews 25, 27, and 28). Indeed, not only was the threat to cause a budgetary crisis in the midst of the financial and Eurozone crisis deemed irresponsible. It would also have put the establishment of the External Action Service and the functioning of supervising agencies in the financial sector in peril. Moreover, by linking issues which had to be agreed in the Council by unanimity to the annual budgetary procedure which is decided by qualified majority, the Council

was in a much stronger position to negotiate than the EP (Saarilahti 2011: 237). This also strengthened the position of the hardliners on the payment appropriations in the 2011 budget as they could no longer be side-lined (interview 25). As the analysis above showed, the EP conceded on the issue of payment appropriations hoping that the Council would show flexibility on issues such as own resources and the negotiations on the future MFF. The strategy thus clearly backfired and many inside the BUDG committee felt that they had to give in more on the final outcome than would have been the case if the annual budget had been discussed separately (interviews 29, 30, and 31).

6.4.3 Findings

The analysis above shows that it was not expertise that prevented the EP from getting more out of the budget 2011 negotiations. The EP has set up an internal system fostering new and tapping existing expertise. The way in which all committees submit their amendments based on overarching political priorities is a much more detailed way of working than in the Council. It allows the policy experts to make the link between the political priorities and the means dedicated to them. In addition, the political parties in the BUDG committee itself established a system in which the most experienced members are appointed coordinators and sit in the meetings that decide on the larger political compromises. Less experienced members are appointed shadow rapporteur in order to get to grips with the budget and to eventually become rapporteur. This system results in a very detailed and well-substantiated EP position.

Two other factors however have limited the EP's impact on the budget. One is linked to the different approach the Council has to negotiating the budget, namely by looking at it from the point of view of their ministry of finance, and as a burden to their national budget. This in combination with the economic crisis and fiscal austerity in most Member States led to a tough stance, especially on payment appropriations. In addition, as with the novel foods case, one could argue that the "cost of no agreement" on the budget and the related issues was lower for the Council than for the EP. The threat of the so-called 'provisional twelfths' entering into force the next year is arguably closer to the position of the Council than to that of the EP. This said, a budgetary crisis which had kept provisions on banking supervision and the EEAS from entering into force, would have suited neither of the institutions.

The second factor is related to political strategy. In line with the definition in this thesis, the file was politicised as importance was attributed to issues such as the future MFF negotiations and own resources, which polarised opinions between the institutions. As with the novel foods case, here too, the effect of expertise was tempered to some extent by politicisation. Indeed, the Conference of Presidents decided to use the newly obtained powers in budgetary matters under the Lisbon

Treaty to *instrumentalise* the 2011 budget in order to obtain institutional and legal concessions on certain issues separate from the annual budgetary procedure. This strategy was pushed to the limits by letting the deadline of the conciliation phase pass without concluding the annual budget. It is fair to say that the whole strategy backfired as the Council called Parliament's bluff and it had to settle for a 'face saver' on the issues it had raised. As a result however, the Council's negotiation position on the annual budgetary procedure had strengthened. This was not only because the link with the other issues gave certain hardliners on the annual budget a veto as unanimity was needed to decide on these issues, but also because it forced the negotiators on the 2011 budget to be more flexible on certain issues.

Not necessarily expertise on the substance of the budget, but the strategic political choices made in the highest echelons of the EP had a negative effect for the EP's impact on the final outcome. The EP's internal coordination on the 2011 budget will be the focus of the final chapter of this thesis.

6.5 Conclusion

Given the competences of the EP and the nature of EU decision-making in combination with the findings of past research on the background and seniority of members and staff, the assumption was formulated that a presumed lack of expertise could have a negative impact on the EP's ability influence on the outcome of inter-institutional negotiations. The question raised in the literature as to whether asymmetries in expertise have a negative impact on this ability, remained open as no research on this had been carried out regarding the EP. In order to assess the impact of the EP's expertise on the outcome of the negotiations the background and experience of MEPs and their staff were looked at and the negotiations were analysed by means of process tracing.

First of all, it is important to point out that two of the aspects that were highlighted in the first half of this chapter, namely turnover of members and mobility of staff had little effect on the EP's performance. Turnover did not play a role as almost all of the MEPs that were actively involved in the cases were experienced members. Political groups in the BUDG committee further handle inexperience by giving an important political role to the more experienced coordinators and by 'grooming' inexperienced MEPs in the role of shadow rapporteur.

What the analysis showed in all three cases is that the Council and the EP have a fundamentally different approach to the substance of the negotiations. The EP is much less sensitive to the overall effect and costs of implementing what is negotiated. In all three cases this played out in one way or another. The comitology case showed that the choice to focus on negotiating a Common Understanding and defending and extending the EP's own position in the new comitology regulation, meant that certain effects of implementing the final agreement were not well

considered. This was notably the case for the impact of certain provisions in policy fields such as trade, agriculture and environment. In addition, certain amendments on the Common Understanding did not take account of the administrative resources and expertise necessary to deal with the follow-up of delegated acts. In the novel foods case the full legal and practical implications of amendments on post-market monitoring, labelling, traceability, and a moratorium were not realised when these were submitted. In case of the traceability amendment for offspring of cloned animals, their semen and embryos it was even argued that *implementability* or feasibility was not important as long as the principle was written down in law. Finally, in the budget case the difference in approach was part of the reason why the EP negotiators accepted the Council's position on payment appropriations without amendments. Unsurprisingly in the negotiations that followed on the annual budgets of 2012 and 2013 as well as the MFF the EP *did* address payment appropriations.

The question now is: what is the link with expertise? Did the EP adopt this approach because it does not possess the necessary expertise to be able to fully assess the implications of its amendments and positions, or because it is simply not part of its role to take this into account when negotiating with the Council. The second answer would imply that the EP could still meet its full potential in terms of influence and power without having the technical know-how necessary to assess the implications of its amendments. This would be in tune with Bouwen (2004: 345), namely that the EP should be less in need of technical expertise, because it is the defender of the broader European interest and is simply not responsible for the implementation. The answer to the question is both of the above.

In support of the first answer, the analysis above has shown that the EP possesses in-house expertise, but that in some cases this is rather limited and may lead to certain asymmetries. In the first half of this chapter four types of asymmetries were identified: between members, between staff and members, between committees, and between the committee and the plenary. While the next chapter on Organising Capacity will go deeper into the coordination between the committee and the plenary, the analysis above found that it is mostly asymmetries between members and between committees that affect the outcome of negotiations. MEPs and their supporting staff define their position on the basis of their own background, experience and preferences. This was evident in the comitology case where both the rapporteur and the supporting staff had expertise on the institutional elements of the comitology reform, but less so on the specific effects for certain policy areas. This meant that certain elements were eclipsed from the EP's position and not realised by other members until they had come to grips with the file when it was already too late. This finding raises questions about the representativeness and inclusiveness of first reading agreements – a point that will return in the next Chapter. In the novel foods case too, the most dominant members and staff shaped the EP's position on the basis of their own expertise and interests as the regulation

was framed and approached from an ethical and consumer/animal-welfare perspective. As explained above this meant that certain legal and practical effects of amendments were not fully realised. In the budget case asymmetries in expertise are addressed by an extensive coordination system in which expertise of specialised committees is used, but where the responsibility for the overall budget lies with the BUDG committee. The effect of these asymmetries in expertise – when they persist – have proven to be negative for the EP’s impact on the final outcome. In the comitology case this meant that the EP had no influence on key elements of the agreement. In the novel foods case this meant that differences with the Council had become unbridgeable and that the final outcome (i.e. no agreement, and therefore no rules on cloning and offspring) was unsatisfactory from the point of view of the position defended by the EP.

Expertise is not the only or decisive factor. As the second explanation suggests, not only its limited expertise, but also its institutional role in the decision-making triangle determine the EP’s approach to negotiations. By not being responsible for implementation, and by seeing itself as the defender of the broader European interest, files are approached much more from a political point of view whereby expertise plays a less important role. Indeed, the cases have shown that the effect of expertise is less clear when a file is politicised. It did not matter how much expertise the negotiators of the BUDG committee had, the fact that the negotiations became intertwined with a high level institutional battle over the MFF, cancelled out its impact as the budget negotiators were put in a weaker position vis-à-vis the Council and were forced to show flexibility on points where they wouldn’t have done so otherwise. In the novel foods case the lack of expertise on certain issues and on the side the figures that could bridge inter-institutional divisions such as the committee chair and the vice-president weakened the EP’s position. This in combination with the politicisation of the file around the cloning issue explains the EP’s stance and the final outcome. A lack of understanding of the full implications combined with a firm political position on cloning meant that finding overlap with the position of the Council was an impossible task. Finally, the lack of expertise on certain issues in the comitology case *did* have a negative impact. The file was not very politicised in the beginning of the negotiations and key aspects related to certain policy fields were left out of the Parliament’s position whereby it was weakened at the negotiation table.

The impact of the EP’s expertise on the outcome of inter-institutional negotiations is thus not clear-cut. As was assumed, the technical and complex nature of EU decision-making requires a high level of expertise. The combination of certain players having partial expertise with asymmetries in expertise common to a representative body may lead to one-sided EP opinions and a weaker position at the negotiation table. In addition, another explanatory variable has emerged in the empirical analysis, namely the degree to which a file is politicised. Expertise as a

capability factor is important, but its impact is partly determined by the degree of politicisation.

CHAPTER 7

Organising Capacity: How the EP prepares for inter-institutional coordination

The fourth type of capability defined in the analytical framework is the institution's organising capacity. If the European Parliament wishes to affect the outcome of inter-institutional negotiations it needs to organise itself, including its resources and expertise, so that it has a strong position at the negotiation table. "[O]rganizing capacity (...) allows effective utilization of formal rights and authority, resources, and [knowledge]" (March and Olsen 1995: 95). Indeed, the use and effectiveness of the other capabilities that have been discussed up until now are in part defined by how the institution and its actors in question are organising, coordinating and using them in day-to-day practice. The capacity to organise itself and its assets determines an institution's impact on the outcome of negotiations with other institutions. As Bowler and Farrell (1995: 220) argue, "the external position of the EP depends, in part upon its internal organization, and the degree to which it contributes to unity". Indeed a strong negotiation position not only means a substantively well-prepared and well-argued position, but also one that is broadly backed. Maintaining a strong cohesive block is key for being a strong negotiating partner (*ibid.*: 222). The more unified, the less easy it is to weaken an institution on the basis of its internal division (Costello and Thomson 2013). Both internal coordination and the preparation of inter-institutional negotiations are therefore important to look at. Mechanisms of preparation and coordination are organised within the EP's internal structures and are laid down in procedures. A thorough analysis of these structures and procedures, but also of how they come to life through the EP's members and officials, will allow an assessment of this last capability factor.

The assumption formulated in the analytical framework that the EP is well-equipped in terms of organisation to be a solid and coherent player in inter-institutional negotiations and that this capability factor will not limit its ability to influence the outcome of negotiations will be put to the test in this chapter. The first part will define the concept of organising capacity more elaborately in the framework of the EP's functions and activities. The second part will look at its impact in the three cases.

7.1 Organising capacity as a capability factor in the context of the EP's activities

7.1.1 Introduction: the importance of structures and procedures for organising capacity

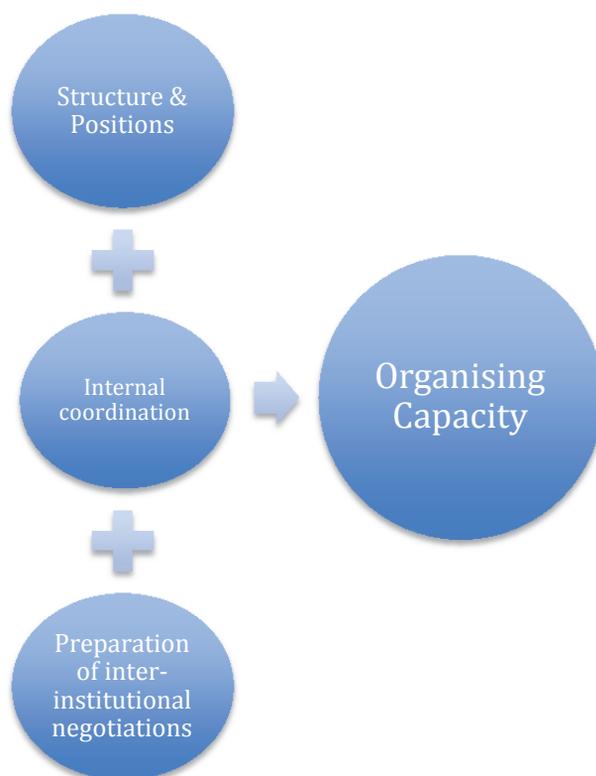
Kenneth Shepsle's (1992) characterisation of the US Congress can be applied to the EP as well: the European Parliament is a "they" not an "it". As every other institution, the European Parliament is indeed not a monolith. Farrell and Héritier (2004: 1185) have called upon researchers to look inside the EU institutions' respective 'black boxes' and analyse the internal processes and structures through which these "collective actors" reach aggregate decisions.

With its committee structure, plenary assembly, and political groups the EP combines both horizontal and vertical structural features (Hix et al. 2003: 197). The horizontal dimension comes back in its committee structure and the way in which different policy areas are laterally de-coupled from each other: "those that are contained in the same organizational unit are more likely to be coordinated than those that belong to different units" (Egeberg 2006: 7). The vertical dimension links back to the division of labour across the different levels in the EP's hierarchy: plenary versus committee, the role of coordinators in the political groups, the role of the Conference of Presidents, etc....

Structure in itself however, does not determine action but defines tasks, goals and *guides* action (ibid.: 6). Indeed procedures have been set up inside these structures to enable the institution to formulate positions and, important for this thesis, to prepare and handle inter-institutional negotiations. The EP has great autonomy to determine these processes, and as Gungor (2009: 4) argues, the way it has done so reflects the "decision-making difficulties of the inter-institutional context within which the European Parliament has operated" – an issue that will be addressed below.

In the next sections these three different aspects that define the EP's organising capacity will be discussed. First, its internal structure and the positions MEPs occupy inside the EP will be considered. Second, the internal rules and procedures by which the EP formulates its position will be examined; and finally, the procedures for the preparation of inter-institutional negotiations will be analysed by looking at both trilogue and conciliation negotiations.

Figure 7.1: Organising Capacity



7.1.2 Structure and positions

The EP is a committee-oriented legislature (Gungor 2009: 5). Its committees are the primary loci of activity and form the backbone of its organisation (Bowler and Farrell 1995; Neuhold 2001; Westlake 1994). Much of the EP’s major work is done in the committees. “They control the formal input of the Parliament into the legislative process” and have a significant impact on the outcome of the decision-making process (Collins et al. 1998: 6). With the European Parliament obtaining more and more competences through treaty reforms, the importance of committees in terms of shaping EU legislation has grown (Mamadouh and Raunio 2003: 333). This trend has also allowed skilful MEPs to exert real influence on the outcome of inter-institutional negotiations (Collins et al. 1998: 1). As explained in the previous chapter this influence is enabled by the development of policy-specific expertise. Yet, it is not always an easy task to identify those members who shape decisions. As Marshall (2010: 555) rightly points out: “[t]he centrality of the

committee system to the parliamentary process is plain to see. But the distribution of influence within the committee is far less clearly defined”.

Influence and authority are often linked to the formal position an MEP occupies (Marshall 2010: 559). The analyses in the previous chapters already touched upon a number of these functions and an overview is given below in table 7.1. First, in light of the cases, it is important to look at some of the higher ranked horizontal positions in the EP, such as that of the President of the EP. He or she is usually elected by the plenary for a two and a half year term. The president directs all activities of the Parliament and its bodies, and opens, suspends and closes its sittings; he or she is also the representative of the EP in international relations, ceremonies and legal and financial matters (Rules of Procedure 2012: 21-22). In practice some of these tasks are delegated to other members (Corbett et al. 2011: 129). One such category of members is the vice-president. The EP elects fourteen of them. They sit in the Bureau of the Parliament which is chaired by the President and deals with the EP’s financial, organisational and administrative matters (ibid.: 141). They also replace the President in presiding over plenary sessions or representing the EP externally (ibid.: 131). In addition to that, vice-presidents get general or specific tasks assigned ranging from chairing conciliation delegations to being responsible for multilingualism in the EP. The President also chairs the Conference of Presidents with the leaders of the political groups. This body meets at least twice a month and is responsible for the broad political direction of the EP, and “the organisation of Parliament’s work and matters of legislative planning” (European Parliament 2012a: 24). It also decides on the EP’s inter-institutional relations, although this role should not be overstated as will be shown below.

Table 7.1: Positions inside the EP

Position	Function
	President of the EP
Above committee level	Group Presidents (Conference of Presidents) Vice-Presidents (Bureau)
Committee level	Chair (Conference of Committee Chairmen) Vice-Chairs Coordinators Rapporteur

However important these horizontal functions may be, for a thorough analysis of negotiations one needs to look at key figures inside a committee. There it is the chair, the group coordinators, the rapporteurs and shadow rapporteurs who shape committee proceedings and the EP’s positions (Neuhold 2001: 5).

Each committee elects a chairman and four vice-chairmen. The chair presides over committee meetings and represents its committee in plenary sessions. The committee chair is said to play an “integrative role in achieving a consensual atmosphere” within the committee and can be very powerful in shaping its agenda (Neuhold 2001: 10; Corbett et al. 2011: 147). He or she is also a member of the Conference of Committee Chairmen which reviews the work of the committees and makes recommendations to the Conference of Presidents for the plenary agenda (Corbett et al. 2011: 142). Other fixed functions inside a committee are the group coordinators, who represent their group in the committee and act as whips to ensure unity in their group (Collins et al. 1998: 6). They also often play a central role during conciliation negotiations when they represent the interests of their groups in informal discussions with the Council (Neuhold 2001: 7). The balance of influence between chairs and coordinators differs from committee to committee and over time (Corbett et al. 2011: 151).

Chairmen and vice-chairs of committees are elected by the committee, based on an overall agreement among political groups (Corbett et al. 2011: 147). Rapporteurs on the other hand are appointed by a unique system in which groups are assigned a number of points corresponding to their size in the committee in question. For each report that is sent to a committee, the group coordinators are supposed to bid points in an auction in which the highest bidder obtains the rapporteurship. Of course there are often trade-offs made between political groups when several files come on the agenda, and putting forward a recognised expert MEP as candidate-rapporteur can also strengthen one’s negotiating position and help obtain a file (Corbett et al. 2011: 158). In certain cases groups also make package deals or set up rotation systems to assign reports. The coordinators who fail to obtain the rapporteurship each appoint a shadow rapporteur, taking account of their members’ preferences and the opinion of national group delegations inside the committee (Mamadouh and Raunio 2003: 340). The role of ‘shadow’ should be seen as a deliberate attempt by political groups to increase their influence in committee proceedings. They have to ‘shadow’ the work of the rapporteur and inform other members of their group of the proceedings in the negotiations with the other institutions (Neuhold 2001: 7). Not only is it a means for groups to keep a check on what the rapporteur is doing, in theory it also increases the representativeness of the positions proposed and defended by the rapporteur.

The importance of the function of rapporteur cannot be stressed enough. He or she is the chief negotiator both inside the Parliament and in an inter-institutional context. The balance of influence between the rapporteur and the chairman however varies from case to case and from committee to committee (Farrell and Héritier 2003b: 24). As explained in the previous chapter, a rapporteurship is often linked to a certain degree of expertise and personal interest of the member in question. Neuhold (2001: 6) for instance found that, the bidding procedure aside, the appointment of rapporteurs is indeed based on two equally important factors:

expertise and political prestige. Specialisation and familiarity with the subject in combination with political support greatly increases one's chances of becoming rapporteur. Being at the heart of the negotiations subsequently gives him or her "a unique position to exert legislative influence" (Shackleton and Rasmussen 2005: 10).

The rise in the number and share of first reading agreements has further enhanced the importance of rapporteurs. Rapporteurs with close links to the large political groups and their power brokers are particularly influential (Farrell and Héritier 2004: 1200). As a result, the influence of other figures, such as the chairmen and members of smaller parties, has decreased as most decisions are made in informal contacts. Formal phases in the committee proceedings such as the submission of amendments have become less important (Farrell and Héritier 2003b: 25). Amendments are still formally voted in the committee, but these are often the compromises found in trilogue negotiations between the Council and the Parliament, and are unlikely to be called into question by other committee members or the chairman. As there are fewer formal checks on the negotiating authority in early agreements, questions are now regularly raised as to the transparency, representativeness and accountability of the process. The analysis in the previous chapter has shown that it also has a potential impact on the EP's position in inter-institutional negotiations – a point that will be elaborated further in the case studies.

7.1.3 Procedures: the importance of internal EP coordination

The costs of coordination are both linked to the number of committees involved and the overall number of MEPs (Bowler and Farrell 1995: 222). Settembri and Neuhold (2009: 147) for instance found that the 6th legislature developed and used new procedures to increase coordination and cooperation between the committees in order to achieve consensus, especially in light of the 2004 enlargement. Its size and multi-ethnic composition make coordination a particularly challenging task in the EP (Tsebelis and Kalandrakis 1999: 137). A fundamental attempt at facilitating the work and coordination inside the EP is its calendar with a system of weeks being dedicated to one particular activity. As explained in the chapter on resources, there are four types of week in the EP: committee weeks, group weeks, plenary weeks and weeks for external activities. "[T]his means that (...) legislative work is done in Committee week and then those involved can provide input into the following Group week discussions, which decide the ideologically based voting lines" (Busby 2011: 7).

Apart from the week system, the EP has its own internal rules of procedure that guide the coordination and the formulation of its positions (European Parliament 2012a). Commission proposals are first of all referred to the responsible committee. In some cases there are opinion-giving committees, but the committee

responsible is not obliged to take their amendments on board. Yet, the system provides a mechanism for taking the views of others into account. Usually the committee starts with an initial exchange of views on the Commission's proposal, whereafter a deadline is set for the rapporteur to submit a draft report (Rasmussen and Toshkov 2011: 76). The rapporteur's draft report is then debated in the committee in the presence of a representative of the Commission who is allowed to comment and answer questions about the proposal and the report. Subsequently, a deadline is set by which members must submit amendments. These are then voted together with the draft report in a committee meeting. Marshall (2010: 572) has argued that this phase has at least as much impact on the final report as the rapporteur's work, because it enables influential and expert members to pose a counterweight to the power of the rapporteur. Political groups therefore usually discuss the report and their amendments before the committee meeting in order to agree, if possible, on a common stance (Mamadouh and Raunio 2003: 342). It is in these meetings that voting lines are debated and information is exchanged between the members, with the rapporteur or shadow rapporteur, and coordinators playing the most important role (Busby 2011: 17). Once adopted the report is sent to plenary. In the light of the many first and early second reading agreements, was introduced in 2008 which stipulates that there should be a period of at least one month between the committee vote and the vote in plenary (Kratsa-Tsagaropoulou et al. 2009: 25). This so-called 'cooling off period' was designed to facilitate deliberations within the political groups, but is not applied consistently in practice.

In the run-up to plenary, amendments can be submitted by the responsible committee, a political group or at least forty members before a certain deadline (European Parliament 2013b). Political groups decide in separate meetings which ones to propose and whether or not to support the report as a whole (Mamadouh and Raunio 2003: 342). National party delegations too, often hold meetings prior to the group meetings in order to agree on a common position (Mamadouh and Raunio 2003: 342). "Typically, although not universally, plenary follows the substantive position of the committee in question" (Farrell and Héritier 2004: 1196). Indeed, MEPs in plenary often follow the voting lists drafted by their political group, which makes the outcome in the majority of cases predictable (Busby 2011: 17). It has led Neunreither (1998: 41) to argue that the plenary has become nothing more than a voting machine. Indeed, with many negotiations happening before the formal votes in plenary and committee, the successful submission of amendments has become somewhat of a theoretical possibility. Reports submitted to the committee and plenary are often pre-negotiated and the consequence of putting additional amendments in the text runs the risk of pushing the file into the next reading as it is unsure whether the Council would accept them (Shackleton and Rasmussen 2005: 17).

Parliament thus has very clear formal procedures to formulate its position. In addition to that, processes have been set up in order to foster cohesion and unity inside groups and between groups. These formal coordination procedures are however only part of the story. As already explained elaborately in Chapter 4, in the context of early agreements and conciliation negotiations a circuit of informal negotiations has been established between the institutions that has had an impact on the EP's internal organisation and formal procedures. Apart from the coordination procedures to establish its position, it is therefore also important to look at the (informal) procedures used to prepare inter-institutional negotiations.

7.1.4 Procedures: the impact of triologue negotiations for the EP's internal organisation

As explained in Chapter 4, in today's EU the majority of legislative and budgetary negotiations between the institutions take place through so-called trialogues. The practice of triologue negotiations finds its origins in the budgetary procedure and was later applied in co-decision (Burns 2006: 235). They were originally used after second reading to prepare conciliation negotiations and build confidence between the vice-presidents, the Council presidency, the Commission, the rapporteur and the chairman of the committee (Farrell and Héritier 2003a: 588). Triologue negotiations are informal meetings between the chief negotiators of the three institutions in which the parties can speak more frankly and explain the underlying reasons for the positions they defend. The many first reading and early second reading agreements (see table 4.1 in chapter 4) however point to a major increase in the use of triologue negotiations. *Informalisation* of negotiations reduces transaction costs and increases the efficiency of the system. The fact that only a limited number of actors are involved, that meetings are not public, nor the documents discussed in trialogues, and that the aim of the process is to conclude an early deal (often at first reading) has raised concerns about the transparency, accountability and representativeness of the decision-making process (Reh 2008: 10-11). This is a side-effect which Reh (2008: 2) calls a "puzzling development, considering that co-decision was originally introduced as a means to bolster procedural democracy".

The Council has long adapted its internal procedures to the practice of first reading agreements by reinforcing its co-decision unit in the secretariat in order to monitor the work of the EP more closely and to look for the possibility of first reading agreements (Shackleton 2001: 174-175). In addition, it is a long standing practice that the Council Presidency consults the Member States at Coreper or working group level to obtain a mandate for triologue negotiations with the EP. The outcome of the triologue is subsequently briefed back to the Member States and a new mandate is discussed. This is done to make sure the Presidency always has the necessary qualified majority or unanimity behind the negotiated positions. In the EP, the position towards triologue negotiations and early agreements is ambivalent,

mainly because of the fact that there are both winners and losers of this practice. As a result, the formalisation of preparing triologue negotiations has been difficult (Farrell and Héritier 2004: 1207).

Interesting to highlight in this respect, is that compared to the Council there is very little central coordination of the EP's external relations with the other institutions (Farrell and Héritier 2004: 1195, 1207). The conciliation and co-decision secretariat has only recently began to oversee and offer assistance in first and second reading negotiations. Moreover, as Shackleton (2001: 175-176) argues, "Parliament does not have a single person equivalent to the Deputy Permanent Representative [of the Council Presidency]". More people involved means a more challenging coordination and potentially diverging practices. It has proven particularly difficult to introduce reforms that would address this and the concerns raised on transparency, accountability and representativeness. A set of practices and informal rules has nevertheless emerged in order to guide informal negotiations and the contacts with other institutions. In the sections below, the EP's rules in preparing triologue negotiations, handling conciliation and coordinating the positions in the budgetary procedure will be discussed.

EP rules concerning the preparation of triologue negotiations

In order to meet some of the concerns mentioned above, Rule 70 of the EP's Rules of Procedure (2012: 45) stipulates that "[n]egotiations with the other institutions aimed at reaching an agreement in the course of a legislative procedure shall be conducted having regard to the Code of Conduct for negotiating in the context of the ordinary legislative procedure". The code was adopted in 2008 and sets out the general principles of how to conduct negotiations "with the aim of increasing their transparency and accountability" (Rules of Procedure 2012: 248). The activity report of the 6th legislature (Kratsa-Tsagaropoulou 2009: 28) calls the full implementation of this code of the highest importance and recommends enhanced assistance for Members in order to do so. The provisions in the code are however not binding, but are best seen as a yardstick to judge the behaviour of negotiators and their ability to retain the confidence of other MEPs (Shackleton and Rasmussen 2005: 20). The inferior legal status as compared to the rules of procedure and more specifically its non-binding character has led to inconsistent implementation (Obholzer and Reh 2012: 3).

The first part of the code concerns the opening of triologue negotiations, the composition of the negotiating team and the initial mandate. According to the code, entering triologue negotiations should be "politically justified" and based on a case-by-case decision (Rules of Procedure: 248). It is the rapporteur who has to present the possibility to enter into negotiations with the Council to his or her committee. The decision can either be taken "by broad consensus" or if necessary by a vote. However, Obholzer and Reh (2012: 5) observed that practice differs

between committees and that trilogue negotiations are more the rule than the exception. The fact that there is a considerable margin of discretion in obtaining approval – by vote or “by broad consensus” – means that a lot depends on the goodwill of the negotiators which in turn raises questions in terms of inclusiveness and transparency. The code of conduct further specifies that the decision to start negotiations “shall also include a decision on the composition of the EP negotiating team” (Rules of Procedure 2012: 248). Political balance is taken as a general principle as all political groups are required to be represented “at least at staff level” (ibid.). Shadow rapporteurs and staff of the political groups are invited, and the chairman of the committee often attends. “Still, the composition of the negotiating team varies with files, committees, the rapporteur’s party, experience and trust, and the cohesiveness of the committee’s position” (Obholzer and Reh 2012: 7). This leads to very different ad hoc compositions as we will see in the case studies. This again raises questions in terms of transparency and representativeness as it is difficult to identify who is present and who is representing who in trialogues (ibid.). Finally rule 70 of the rules of procedure (European Parliament 2012a: 45) stipulates that “[b]efore entering into such negotiations, the committee responsible should, in principle, take a decision by a majority of its members and adopt a mandate, orientations or priorities”. The code of conduct on the other hand speaks about a mandate composed of the amendments adopted in committee or in plenary (European Parliament 2012a: 248). In the case of negotiations *before* the vote in the committee takes place, the code prescribes “committee guidance” to the EP’s negotiating team. First, there is the basic presumption in the rules that negotiations will not start before the EP has established its own position (Shackleton and Rasmussen 2005: 19). Second, the inconsistency between rule 70 and the code of conduct leaves much room for interpretation and manoeuvre for the rapporteur. Obholzer and Reh (2012: 6) for instance have observed that it is rare for plenary amendments to be the basis of negotiations. Again, practice seems to differ, and mandates are more often formulated broadly, rather than on the basis of concrete amendments.

Triologue meetings themselves are organised by the EP’s secretariat and should be announced according to the code in order to enhance transparency (Rules of Procedure 2012: 249). The code also specifies that

[a]fter each trilogue, the negotiating team shall report back to the committee on the outcome of the negotiations and make all texts distributed available to the committee. If this is not possible for timing reasons, the negotiating team shall meet the shadow rapporteurs, if necessary together with the coordinators, for a full update. The committee shall consider any agreement reached or update the mandate of the negotiating team in the case that further negotiations are required. If this is not possible for timing reasons, notably at second reading stage, the decision on the agreement shall be taken by the rapporteur and the shadow rapporteurs, if necessary together with the committee chair and the coordinators.
(European Parliament 2012a: 249)

This again leaves much room for manoeuvre for the rapporteur and the negotiating team. In practice it rarely happens that trialogue meetings are debriefed in the committee, more often it is the shadows and the staff of the political groups who get a debriefing, sometimes even in writing (Obholzer and Reh 2012: 8). Often, the full committee is only briefed when negotiations have already progressed substantially. This again raises concerns of transparency and accountability.

It is clear that the EP's rules of procedure and code of conduct attempt to address a number of concerns, but fail to remove them in practice because of their non-binding nature and their ambiguity. In recent years, new attempts to reform these rules have been undertaken. The Guerrero report of 2012 (Guerrero Salom 2012) for instance, shows that the EP is conscious of the persistent problems and has incorporated some of the elements of the code, such as the provisions on mandates, in rule 70. These reforms were undertaken after the period in which the cases studied in this project took place and will therefore not be further considered.

EP rules for conciliation

Not only first or second reading agreements are subject to internal rules. Evidently also conciliation negotiations follow certain fixed internal procedures. As already indicated in the previous chapter, formal conciliation meetings are preceded by informal trialogues as well. This practice is recognised by a joint declaration of all three institutions from 2007 which says that “[t]riologues shall take place throughout the conciliation procedure with the aim of resolving outstanding issues and preparing the ground for an agreement to be reached in the Conciliation Committee” (European Parliament 2012a: 245).

The first important difference with trialogues for early agreements is the negotiating team and attendance at trialogue meetings. In the light of the preparation of a conciliation meeting, the vice-president as leader of the delegation, the committee chairman and the rapporteur are always required to attend for the EP (Collins et al. 1998: 8). They are the key figures from the EP's delegation which is composed of an equal number compared to the Council. The rules of procedure on conciliation attribute great importance to the EP delegation. It is the main body for giving feedback to the negotiating team and takes decisions by majority. It has to be composed of members equal to the number in the Council delegation and its composition should reflect political balance – the exact distribution being determined by the Conference of Presidents (European Parliament 2012a: 44-45). The chair of the responsible committee and the rapporteur have to be members, as well as one of the three appointed vice-presidents. He or she is the leader of the delegation and the chief negotiator. As Shackleton and Rasmussen (2005: 11) argue, his or her role is different from the

other members, or from that of the rapporteur as they are supposed to transcend specific interests and defend the overall opinion of the Parliament.

Another important difference is that mandates in these trialogue meetings are more clearly circumscribed than those for early agreements. The positions of both institutions are of course known and voted in second reading, constraining negotiators much more (Collins et al. 1998: 8). As soon as it is clear that a file is going into conciliation, a decision is taken on the mandate by the EP's delegation. This is usually the confirmation of the position in second reading. Subsequently, "[a]fter each conciliation and trialogue meeting the delegation receives written information about the results (...) and prior to each delegation meeting, members receive a note about the aim of the meeting and the status of the negotiations" (Shackleton and Rasmussen 2005: 14). Conciliation negotiations contain much more checks and balances, and the evolution of the mandate is more formalised than in the context of early agreements.

The function of trialogues varies over time. Trialogues in the first stages of the conciliation process are usually held to relieve pressure and 'clean up' less controversial amendments, "so that the conciliation 'proper' involves only those amendments on which there is significant disagreement" (Collins et al. 1998: 8). In more advanced stages in the negotiations trialogues are used to test and agree on compromise amendments on the most contentious issues so that the actual conciliation meeting merely has to approve the deal found in trialogue sessions.

It is fair to say that the process of preparing conciliation negotiations is much more formalised than that of early agreements. This will also be reflected in the cases as one of the two legislative files ended in conciliation.

EP rules in budgetary negotiations

The above analysis of rules and practices only concerns negotiations in the framework of the ordinary legislative procedure. As explained before, the budgetary negotiations follow a similar though slightly more constrained process. Here too, as set out in Chapter 4 (section 4.3.2), trialogues and conciliation meetings are organised. The only differences with legislative negotiations are the rules concerning the so-called 'financial trialogue'. These stipulate that the EP's president shall participate. He or she "shall take all necessary steps to promote consultation and reconciliation of the positions of the institutions in order to facilitate the implementation of the procedures aforementioned", but may delegate his task to a vice-president with experience in budgetary affairs or to the chair of the BUDG committee (European Parliament 2012a: 51). The president is however the formal leader of the negotiations and the EP delegation. Here too the delegation for conciliation negotiations is composed of an equal number of members compared to the Council and members of the delegation are appointed

each year with a preference for members of the BUDG committee or members who deal with budgetary matters in their own committee.

7.1.5 Concluding remarks

It is clear from this brief analysis that the EP has a well-built structure and an extensive set of rules and procedures to organise itself internally so as to formulate its positions in inter-institutional negotiations. These structures and procedures try to find a balance between efficiency on the one hand and accountability and inclusiveness on the other hand. Both are important for the EP's effectiveness in inter-institutional negotiations. They impose limits on certain players and offer opportunities to others. The fact that the horizontal dimension is most dominant in its structure as most work happens in the committees and that there is very little central coordination of the EP's relation with other institutions offers considerable leeway to rapporteurs. This trend has been amplified by the consistent rise in early agreements and informal negotiations between the institutions. The increased influence of members such as rapporteurs, shadows, and coordinators has diminished that of committee chairmen and ordinary members of the committee. Even if this evolution has increased efficiency, concerns have been raised about transparency, accountability and representativeness. Attempts have been made to formalise the formulation of positions and the handling of triologue negotiations. However, the non-binding character and often contradictory or ambiguous rules contained in the EP's rules of procedure and code of conduct have not managed to address these concerns fully.

We will see through the case study analyses that the current setup of the EP's organising capacity not only raises questions regarding accountability and inclusiveness, but also about the EP's ability to influence the outcome of inter-institutional negotiations. The assumption that the EP is well-equipped in terms of organisation for inter-institutional negotiations and that this capability factor will only have a marginal impact in accounting for any mismatch between powers and the EP's performance in inter-institutional negotiations is therefore called into question.

7.2 The role of organising capacity in the case of comitology

In order to assess the EP's organising capacity the three components as discussed above will be examined by analysing the formulation of its positions and the handling of negotiations with the Council and the Commission by the key negotiators. Were the internal procedures followed, did this contribute to a well-substantiated position and internal unity? And what was the effect of this on the final outcome of the negotiations?

7.2.1 *The formulation of its position and the EP's handling of the negotiations in comitology*

Appointing rapporteur and shadow rapporteurs

Two weeks after the Commission had published its proposal on the new comitology regulation the EP officially communicated that JURI would be the lead committee and that Szajer would be its rapporteur. The previous chapter already briefly touched upon the appointment of Szajer as rapporteur. Each committee normally has a standing rapporteur for comitology. Back in 2006-2007 when the previous comitology decision with the regulatory procedure with scrutiny entered into force, the JURI committee had to coordinate the alignment of 225 acts to the new procedure. As this was considered an important file, the EPP as the largest group successfully negotiated to obtain the rapporteurship. Szajer as the standing rapporteur at that time became responsible for that process (interview 21). Because of this experience and as a former member of the Convention's working group on simplification that dealt with the new articles, he was an obvious candidate. The EPP obtained the rapporteurship easily again in 2010, partly because of Szajer's candidacy and because few other parties showed an interest (interview 20).

As already indicated in the previous chapter, the JURI committee does not have the tradition to always appoint shadow rapporteurs. Partly because of that, and because the file was considered uncontroversial in the JURI committee, only one shadow rapporteur was actively involved in the negotiations, namely the Greens/EFA member, Eva Lichtenberger. All other members relied on their group advisers to follow-up on the negotiations. Also the committee chair was not actively involved in the negotiations and only intervened at the very end of the process (see *infra*). The chief negotiator was thus the rapporteur assisted by his group staffer and the committee secretariat.

Internal coordination on the mandate

As already indicated in the chapters on resources and expertise, the work on the rapporteur's draft report was mainly done by the supporting staff (interviews 18 and 21). The bulk of the drafting was done by the secretariat, because of their particular expertise in the subject matter (interviews 18, 20 and 21). The draft report was presented on 20 May 2010 and discussed in the committee on 23 June 2010. Reactions to the report included the INTA amendment of MEP Fjellner arguing for a carve out of common commercial policy, which was later discarded (see Chapter 6 section 6.2.2), and a right of objection for the EP and the Council on implementing acts as proposed by Juri's Greens/EFA shadow rapporteur Eva Lichtenberger (JURI 2010c). Because there was no formal vote on the text, the draft report constituted the basis for informal discussions with the Council. The draft

report was later confirmed as the “broad mandate” for opening triilogue negotiations at the JURI meeting of 2 September 2010 where the opinions of the opinion-giving committees were on the agenda as well (interviews 18 and 20).

The draft report, dating from 20 May 2010, was however only partly based on input from the opinion-giving committees as not all had been received yet – committees sent their reports between the beginning of May 2010 and mid-June 2010. It was ECON (Sanchez Presedo 2010) and ENVI (Leinen 2010) that were most influential. Many of their key amendments, such as opposing automatic alignment, the idea to have EP observers in comitology committees, a binding right of scrutiny, and making the distinction between delegated and implementing acts in the regulation were almost literally copied by other committees (interview 18). Table 7.2 shows that these amendments and opinions were almost unanimously supported by all opinion-giving committees. The analysis in the previous chapter however demonstrated that many of these were unsuccessfully defended in the negotiations with the Council and the Commission.

Table 7.2: Results of the vote on the comitology regulation in opinion-giving committees

Committee	Direction	Vote	Committee	Direction	Vote
AFET	+	53	AGRI	+	32
	-	1		-	0
	0	1		0	0
DEVE	+	26	IMCO	+	36
	-	0		-	0
	0	0		0	0
ENVI	+	52	TRAN	+	39
	-	0		-	0
	0	2		0	0
INTA	+	24	REGI	+	40
	-	2		-	1
	0	0		0	0
LIBE	+	42	ECON	+	32
	-	2		-	0
	0	1		0	0
PECH	+	18	AFCO	+	20
	-	0		-	0
	0	0		0	0

Source: Szajer 2010d

Preparation and handling of triologue negotiations

The coordination inside the JURI committee was handled by the group staffer with the purpose to see whether the proposed draft report was acceptable for the other committee members (interviews 20 and 21). As indicated above, most of them “took a back seat” and left the follow-up during the triologue negotiations with the Council to the staffers of their respective political groups (interview 20). The full committee was debriefed twice during the negotiations with the Council under an information point on the committee agenda (JURI 2010d; JURI 2010e). The approach to work with a mandate, be it a rather broad one, and to include debriefings on the agenda of the committee was a purposeful strategy in order not to have “any surprises” at the end of the negotiations (interview 18). As coordination inside the JURI committee ran smoothly, it was the coordination between the other committees that proved to be especially challenging

As shown in the previous chapter, members of the AGRI, DEVE, ENVI and INTA committees did not fully realise all the implications of the negotiations at the start of the process. It was only in the final stages of the negotiations, in October 2010, when the full implications of what was being negotiated were realised by the other committees that coordination became intense. The rapporteur attended six meetings of the Conference of Committee Chairs to brief them about progress in the negotiations. Even though the S&D shadow rapporteur or his staff had not raised any concerns in the JURI committee, two of the three chairs that had problems with the proceedings belonged to the S&D group (interview 20). They felt left in the dark and raised concerns about the intransparency and the pace of the negotiations even though Szajer regularly debriefed them in these meetings (interview 19). The main complaint was that it was difficult to track negotiations: no report had been adopted by the JURI Committee and Szajer’s draft report did not cover every aspect while the negotiations with the Council were ongoing.

Internal coordination peaked near the end of the negotiations, when the issue of the distinction between delegated and implementing acts was at the heart of the discussions on four financial instruments in the DEVE committee. As explained by one interviewee, this came quite late in the process:

People only started waking up with these financial instruments, [and] then there was the trade issue for INTA, and the AGRI issue for the alignment. Only by the end they drew the attention of their JURI colleagues to the[se] issue[s] (...) Szajer is quite high up in the EPP so he was trusted, and apart from that no one really cared about the file until the rest woke up of course
(interview 20)

This not only raises questions about the representativeness of the position that was defended and the accountability of the rapporteur. The analysis in the previous

chapter has shown that it also had an impact on the substance of the position defended in the negotiations. Certain points such as alignment and the distinction between delegated acts were indeed brought up in the triologue negotiations, but not accepted by the Council and the Commission. Others, such as the point on trade defence were not discussed, as the Council Presidency did not wish to open negotiations on the compromise it had found with the Member States. The coordination with INTA, AGRI and DEVE was therefore more about making sure no objections would be raised against the final compromises, rather than asking for input into the negotiations. As these compromises went largely against the positions of these committees (see Chapter 6 section 6.2.2), frustration with how things were handled grew inside the EP as it was felt that important aspects of the new regulation had not been addressed by the negotiating team (interviews 18 and 21).

Unity and voting results

That voting results only tell part of the story is exemplified by the following account. The final compromise in JURI was approved by 23 members in favour and one abstention, but this was not the end of the story (JURI 2010f). Italian S&D member of the JURI committee Baldassare raised concerns about the compromises found on trade and agriculture for the reasons explained above and it became possible that the S&D group would submit amendments in plenary or be ready to vote against (interview 20).

Important to mention here is that the ‘cooling off’ period of one month between the vote in committee and the vote in plenary, was not respected even though there were clearly still concerns in the other committees and in the S&D group with the compromise negotiated with the Council. The fact that the December plenary session still voted on the text is largely due to pressure from the Belgian Council presidency which wanted to conclude the deal during its term in office (interview 20). This had however required an additional effort by the JURI committee secretariat, the rapporteur and his group adviser, to make sure the text would pass, especially in light of the opposition in the S&D group. In the end a deal was struck inside the S&D group between President Schulz and AGRI chair De Castro who was still dissatisfied with the outcome on automatic alignment. The agreement was that there would be free voting on AGRI amendments regarding automatic alignment, but that the S&D members would be instructed to vote yes on the overall text (interview B). The AGRI amendments were voted down. One interviewee (interview 19) explains: “there were maybe five MEPs who knew what it was about, but the rest did not, voted yes and is only now waking up”. The fact that only a few MEPs fully understood the implications of the new comitology regulation at the time of the vote led some interviewees to argue that the outcome of the negotiations could have been different if this hadn’t been the case (interviews 18 and 23).

Nevertheless, the regulation ended up being adopted by a majority of 567 in favour, 4 against and 18 abstentions (European Parliament 2010b) .

One thing that failed, at least from the rapporteur's perspective was keeping the link between the Common Understanding and the comitology regulation, which was a key objective for the JURI committee negotiating team at the start of the negotiations (see Chapter 6 section 6.2.2). The Common Understanding was submitted together with the regulation, but as other committees had not been briefed extensively, the ALDE group raised concerns and the chair of the JURI committee Lehne agreed to untie both texts and put the Common Understanding before plenary at a later stage (interviews 18 and 20). This was the only point where the chair of the committee actively intervened in the course of the negotiations.

7.2.2 Findings

The analysis above shows that the JURI negotiators – the rapporteur, an EPP group staffer and officials from the committee secretariat – largely followed the code of conduct for inter-institutional negotiations. The lack of tradition to appoint shadow MEPs in JURI meant that the negotiating team mainly consisted of political group staffers. A 'broad mandate' on the basis of the rapporteur's draft report was approved in a committee meeting before the start of the trilogue negotiations and a debriefing of these negotiations was scheduled twice on the committee agenda as an information point. This approach linked with the uncontroversial nature of the line taken by the JURI negotiators, namely to defend the EP's rights as an institution, meant that coordination ran smoothly. The compromise found was approved by a large majority.

Looking at the result of the vote in plenary, one could come to the conclusion that the wider coordination with the groups and the other committees had been unproblematic as well. However, the analysis above has shown that all opinion-giving committees had issued a number of amendments which were almost unanimously supported. In addition, there were serious concerns in three of the opinion-giving committees on specific issues related to their policy fields. These concerns politicised the file to some extent, but this came late in the course of the negotiations. The rapporteur had debriefed the Conference of Committee Chairs regularly and extensive coordination took place between the committees in the run-up to the vote in plenary. The attempt of one political group in the parliament to stop the vote from taking place over the implications of the regulation on some policy areas failed. The coordination efforts undertaken by the rapporteur and his staff therefore mainly functioned as a means for exchanging information and making sure the text would pass the plenary stage, rather than giving instructions or input into the negotiations (interview 22). There are no binding rules on the input given by opinion-giving committees in the Rules of Procedure, and the code

of conduct is silent on their role in triologue negotiations. Practice thus goes little further than keeping them informed. Indeed, opinion-giving committees have no veto power and tensions between them and the responsible committee are quite common (interview 20).

The fact that three committee chairs raised concerns about the negotiations going too quickly and being intransparent so that it was impossible to give others the time to fully grasp the file, not only show that the internal EP rules still fail in terms of accountability and inclusiveness, but that a deficient organising capacity also has an impact on the outcome of the negotiations. The approach was definitely efficient, and the agreement was broadly supported. However, several people inside the EP are convinced that if negotiations had not gone as fast as they did and if time was taken to inform members better both inside JURI and in other committees of the implications of certain provisions for specific policy fields, the negotiators could have had a much broader mandate, covering not only the elements supported by JURI. Consequently the EP could have had a real impact on key elements of the new regulation (interviews 18 and 22).

Important to note is that the involvement of other actors inside the EP is connected to the degree of politicisation. The more politicised a file becomes, the more members are – or want to be – involved. The approach taken by the negotiating team to only focus on the EP's own role in the negotiations, the limited involvement of other JURI committee MEPs, and the complaint of several members of other committees that they were not aware of some of the political implications of the new regulation point to a relatively low degree of politicisation. A better functioning organising capacity could have alerted members in a more timely manner on the full implications of the regulation and could have resulted in broader input into the negotiations.

7.3 The role of organising capacity in the case of novel foods

7.3.1 The formulation of its position and the EP's handling of the negotiations in novel foods

Appointing the rapporteur and the first informal inter-institutional contacts

Three days after the Commission published its proposal, the EP referred it to the ENVI committee with IMCO and AGRI as the designated opinion-giving committees. As it was the end of the sixth Parliamentary term, the far left GUE/NGL group still had a considerable amount of votes left in the auction system for obtaining the rapporteurship on files (interview 12). Smaller groups are more easily outvoted in the beginning of a legislature as they have fewer votes. The file was also not considered a priority by the other groups, so it was not very difficult for GUE/NGL to obtain it (interviews 1 and 12). As Liotard herself was the group coordinator for GUE/NGL and the member with the best matching profile, she became rapporteur

for her group (see background in Chapter 6 section 6.3.1). This course of events will prove to be very important as the rapporteur dominated the file and the position defended by the EP as a whole throughout the proceedings. Several interviewees are of the opinion that the outcome of the negotiations would have been different, if there had been another rapporteur (interviews 1, 2, 4, 6, 9, and 10).

As already reported in Chapter 6 (see section 6.3.2), there were initial informal contacts between the rapporteur and the Council presidency in the first half of 2008, but this was merely to identify the most important issues for each institution as it was decided not to go for a first reading agreement (interview 4). As explained before, remarkably enough, the issue of cloning was not one of the issues identified. The European elections of June 2009 and a delay with the transmission of the EP's position in first reading meant that the first two trialogues took place under Spanish Presidency in the first half of 2010 (interview 1). No explicit decision was taken by the ENVI committee to start informal negotiations. Yet, the fact that informal contacts began taking place was no secret or surprise either. Both co-legislators had formulated their position in first reading, and it is common practice to have such contacts in order to come to a second reading agreement. On the side of the EP its position in first reading constituted the rapporteur's mandate for negotiating with the Council and the Commission. The EP's negotiating team during second reading consisted of the rapporteur, the shadow rapporteurs and the chair of the committee. Not all shadows were present during the first two trialogues; their assistants or political group advisers attended. The chapter on resources showed how the second reading did not bring the positions closer together. One of the factors in that respect was the lack of involvement of the committee chair in second reading, a figure who can bridge divisions between the institutions (interviews 1, 2 and 6).

The informal contacts under the Belgian Presidency in the second half of 2010 did not advance the negotiations either. Actual dialogue negotiations therefore only began under the Hungarian Presidency in January 2011 when it was already clear that the file would go into conciliation. Consequently, the negotiating team was expanded with vice-president Pitella of S&D as leader of the EP's delegation in conciliation, and a delegation of 27 MEPs was established.

The composition of the negotiating team

The 27 MEPs in the delegation included the vice-president, the committee chair, the rapporteur and the shadow rapporteurs, supplemented with a number of other MEPs reflecting the political balance of the EP. Most political groups sent a mix of ENVI members and experienced MEPs with a particular interest in the file (interviews 13 and 14). As mentioned above, not all 27 MEPs play an equally important role during dialogue negotiations and conciliation. Conciliation negotiations are in fact best described as 'shuttle diplomacy'. The negotiating team

of both co-legislators first meet their delegation to establish the mandate or debrief about the proceedings in the negotiations. They then go into trialogue negotiations with the other side's negotiating team, before coming back to their delegation. The reason for this is efficiency and feasibility. 27 MEPs negotiating with 27 (now 28) representatives of the Member States, multiplied by three or four to add advisors and assistants means a conciliation meeting room has almost 200 persons in it. But even trialogues are often too crowded. Indeed, it is very common in conciliation negotiations that – in order to get the most difficult issues resolved – the chief negotiators of each side (Council, Commission and EP) meet in a small so-called “huddle”, a sort of mini-trialogue, to hammer out a deal (interviews 2, 12 and 14). Here this was tried as well, though with little success. On the side of the EP the rapporteur, the vice-president, the EPP shadow rapporteur and the committee chair sat together with representatives of the Council presidency and the Commission (interview 12). Such small groups, like trialogues, bring the opportunity to negotiate more freely and explain the reasons behind the defended positions. When looking more closely at these negotiations, it emerges that apart from the fact that the positions of both co-legislators were too far apart, also the composition of the negotiation team had a considerable impact on the outcome of the negotiations.

The analysis in the previous chapter showed that the rapporteur managed to frame the file on animal welfare and ethical objections to cloning and that her point of view dominated the overall EP position. Coming from a small political group it is far from evident to accomplish this. Yet several interviewees confirm that Liotard dominated the file and the direction taken by the EP (interviews 1, 2, 6, 10, and 12). There are a number of reasons why this was so. Even though the vice-president is supposed to be the EP's chief negotiator, it was the rapporteur who led the negotiations (interviews 1 and 6). The vice-president opened and chaired the trialogues, but as soon as the actual negotiations on substance began, it was mostly the rapporteur who spoke and set the scene (interviews 1, 12 and 14). Most other MEPs in the delegation reportedly did not get into much detail on the file and therefore weren't ready or willing to negotiate compromise proposals with the Presidency and the Commission (interviews 1 and 2).

The way in which the trialogue negotiations were prepared also clearly shows who were the leading actors in the EP. Commission and Council officials discussed the trialogue agenda, the items to cover and possible compromises mainly with the rapporteur's assistant and the secretariat's co-decision unit, not with the vice-president or his staff (interviews 1, 2, 6 and 14). The lack of in-depth involvement of the committee chairman and vice-president is remarkable. The reason vice-presidents chair the EP's delegation, is the same as why the committee chair is always a member of the core negotiating team, namely that he or she represents a broader interest than that of the rapporteur. The chairman represents that of his or her committee, the vice-president that of the institution as a whole (interview 12).

Yet neither pulled the file towards them, the chair in early second reading, the vice-president after the crucial moment in the negotiations when the Commission published its report on cloning and conciliation had become inevitable (see Chapter 6 section 6.3.2). By that time, the position of the EP had already toughened, and a deal had become very difficult indeed. However, the fact that the file was not pulled to a higher level meant that less distance was taken from the initial EP's position and also that fewer linkages could be made in order to bridge the gap between the Council and the EP (interview 1).

The reasons for the limited involvement of figures that could bridge the divisions in the EP are threefold. First, there is the matter of expertise: as shown in the previous chapter, the fact the negotiations were left in the hands of the rapporteur was partly because she had greater expertise (interviews 1 and 14). Second, all interviewees acknowledge that the rapporteur had broad support in the EP for the positions she defended. The EP's position in first reading was adopted with respectively 41 MEPs in favour in the Committee and 667 in plenary, 2 abstentions in the Committee and 9 in plenary, and no one against in the committee and 16 in plenary (Liotard 2008; European Parliament (Novel Foods) 2009). For second reading this was 49 in favour, 3 abstentions, and 3 against in the committee. For plenary no records of an overall electronic vote were found, yet the results of the votes on separate amendments suggest similar figures as in first reading (European Parliament (Novel Foods) 2010). Indeed, all the major political groups supported the positions proposed by the rapporteur, which brings us to the third reason. Because the rapporteur had framed the regulation by focusing on cloning as the central element in the novel foods regulation, it had become politically very difficult to argue for a more flexible EP position, given the ethical and consumer protection aspects involved. This was even more the case right before the Parliamentary elections of 2009 when the first reading was concluded (interview 1 and 6). The reason the divisions between the Council and the EP were not bridged by EP negotiators was therefore also because the vice-president did not think a deal in which the EP showed more flexibility would survive a vote in the delegation, let alone in plenary (interviews 2, 10, 13 and 14).

It is therefore interesting to look at those political players who supported and defended the position of the EP as advocated by the rapporteur.

- Shadow rapporteur Stevenson for ECR reportedly changed position several times, adopting a more industry oriented approach at one point and playing the ethical animal welfare card at another. However, when it was reported that semen of cloned animals had entered the UK market (see Chapter 6 section 6.3.2) he and his group became staunch supporters of the rapporteur's line on consumer protection (interviews 1, 10, 12 and 13). Given his own background and connections with the farming business in Scotland, his main aim was to restore the reputation of the meat sector.

- With her background in GMOs and as a former minister of the environment ALDE's shadow Corinne Lepage consistently defended the consumer protection line (interview 13). She was reported to be 'more consumer minded' than most of her ALDE colleagues, but nevertheless managed to carry her group.
- Green shadow Bart Staes also consistently followed the rapporteur's line, which is unsurprising from the Green's perspective which is traditionally to defend animal welfare and consumer protection (interviews 10 and 13).
- S&D was well represented in the negotiations with Pitella as vice-president, and Leinen as committee chair. They had overarching roles, but as shown above, never pulled the file towards them. In the delegation important figures such as Roth-Berendt also approached the file from a consumer protection perspective (interviews 1, 10, 13). The S&D members were however reportedly ready to show more flexibility in order to reach a compromise, but given the positions taken in the delegation by the other groups (and especially by the EPP), backed away (interviews 1, 2 and 6).
- This leaves us with the largest political group, the EPP. As already briefly touched upon in the previous chapter, an internal struggle took place for the shadow rapporteurship. The EPP's presence in the delegation was important since both the vice-president and committee chair were members of the S&D group. This in combination with a far left rapporteur meant that someone from the EPP had to be kept closely involved. Because MEP Ayuso took a more industry oriented position, which was more in line with the position of the majority in the Council, she was well positioned to function as a bridging figure that could bring the institutions closer together. Given the willingness of the S&D group to show flexibility, the chances of reaching an agreement would have increased. However, German EPP member Liese of the ENVI committee took a different stance and approached the file from a religious and ethical point of view leading to a position that was almost fully in line with the rapporteur's (interviews 1, 10 and 13). Ayuso reportedly did not have the political standing to carry her group against Liese's opinion, and also did not know all the details of the file as she is a member of the AGRI committee, not ENVI which was the committee responsible (interviews 1, 3, 6, 12 and 13).

The specific composition of the negotiating team therefore determined to a large part the success of the rapporteur's strategy to frame the regulation on animal rights and ethical grounds. This not only led to EP's firm position on cloning but consequently also had an impact on the final outcome of the negotiations as few MEPs in the negotiating team were willing to show flexibility (interview 11). The politically sensitive nature of the cloning issue combined with the fact that MEPs who have less expertise in a specific subject matter and are not closely involved in the negotiations, tend to follow their group colleagues with whom they consider

they share policy preferences explain the large majorities in the EP backing the reports in first, second and third reading. In this way, a rather one-sided position to focus the novel foods regulation on the issue of cloning could rally wide support.

Internal coordination and handling of the negotiations

Other organisational aspects during the negotiations went largely according to the rules of procedure. The mandate the EP started to negotiate from was its position in second reading. In the delegation meetings, this position was restructured into different topics, such as cloning, delegated or implementing acts, the procedure for traditional food coming from third countries, and nanomaterials. On each topic the EP's flexibility, fall-back positions and bottom lines (such as a moratorium on the cloning technique and a ban on bringing cloned meat on the market) were defined (interview 12). Throughout the negotiations the mandate was of course adapted, but fall-back positions or bottom lines were never put on paper explicitly. This was mainly for reasons of strategy, as one of the EP's weaknesses in inter-institutional negotiations is considered to be its relative transparency in comparison with the Council whose internal positions and divisions are much more difficult to distinguish (interviews 4 and 14; Costello and Thomson 2013). The EP negotiators worked on the basis of the so-called four-column document which shows the positions of each institution, their proposals, and reactions (see annex 1 for an example). The delegation therefore discussed the progress of the negotiations orally and the vice-president summarised the most important strategic points for the negotiators (interview 13). After each trialogue the delegation was briefed and consulted, and sometimes even during trialogue negotiations – when discussions were going beyond the mandate – a break was held to check with the shadows rapporteurs on how to proceed strategically (interview 12). It is therefore fair to say that the internal rules of procedures were abided by. This is because conciliation negotiations are much more formalised than informal negotiations during first reading, and in this specific case because the EP's rapporteur belonged to a small political group. Following these rules nevertheless contributed to the unity of the EP's position.

Finally, in order to fully assess the EP's organising capacity, it is important to highlight the role of the secretariat. A key function in organising the trialogue negotiations lies indeed with the secretariat officials of the co-decision and conciliation unit. They not only schedule the dates for the delegation meetings but also coordinate with the other institutions to hold informal negotiations (interviews 1, 2 and 15). One example shows the importance of their role played as one interviewee explains that at one point during the negotiations the Council Presidency wanted to organise an informal meeting at their Permanent Representation in order to discuss sensitive issues in a smaller circle. It was the EP's secretariat who made sure that all the important political groups were represented, which meant that the Presidency's intent failed (interview 1).

7.3.2 Findings

The analysis of the EP's organising capacity in the case of novel foods confirms that conciliation negotiations are highly formalised when compared to negotiations in first or second reading. The applicable rules on working with mandates and debriefing the delegation were strictly followed. There thus seems to be a link between the intensity of internal coordination and the degree of politicisation of a file. Files that reach the conciliation phase are by definition highly politicised and demand extensive internal coordination. This was also partly reinforced by the fact that the EP's rapporteur belonged to a small political group, and that extensive coordination was necessary in order to make sure the position defended by the negotiating team was carried broadly in the EP's delegation. Following these rules enhanced the EP's unity and thus its strength as a party around the negotiation table.

The second finding is that within the boundaries of the EP's internal rules and procedures there are opportunities, even for rapporteurs from smaller groups, to have a considerable impact on the file. The composition of the negotiating team is crucial in that respect and was shown to have affected the outcome of the negotiations significantly. Indeed, looking at the substantive points of negotiation in this file, it could be argued that it is far from evident that the EP would be as united as it was. The ALDE group traditionally takes a more industry minded approach (Votewatch 2010), whereas the EPP is known for its support for the farming industry (*ibid.*). Yet, even though some MEPs were willing to show more flexibility and move towards the Council's, the hard line position of the rapporteur dominated the file. This was largely due to a successful framing strategy and the negotiating team being composed with Members who were either sensitive to ethical or animal welfare arguments, and those advocating consumer protection. Consequently it had become politically very difficult to go against this. In addition, key figures who could bridge the divisions between the institutions, such as the committee chairman and the vice-president in charge of the conciliation did not pull the file towards them for reasons of timing and expertise as was shown in the previous chapters.

7.4 The role of organising capacity in the case of the 2011 budget

As explained above and in the previous chapters, internal coordination in the annual budgetary procedure is much more formalised than that in the ordinary legislative procedure, especially when compared to first and second reading. Here too the composition of the negotiating team, the internal coordination and the handling of triilogue negotiations will be discussed.

7.4.1 The formulation of its position and the EP's handling of the negotiations in the 2011 budget

As explained in the previous chapter (see Chapter 6 section 6.4.1) apart from the rapporteur and the shadow rapporteurs, key figures in the budgetary procedure are the committee chair and the group coordinators. The rapporteur takes the lead when it comes to internal coordination. The annual budgetary procedure is one of those cases in which an informal rotation mechanism for the rapporteurship has been established between the main political groups. As it was the first budget to be discussed under Lisbon Treaty rules, the EPP as the largest group successfully obtained the rapporteurship for the 2011 budget.

Between January and October 2010 rapporteur Jedrzejewska was therefore in charge of defining the EP's position in first reading, forging compromises and determining priorities with the shadow rapporteurs and the coordinators (interview 31). The latter are in charge of the broader, more political decisions, while the former translate these into detailed amendments on the budget lines (interview 32). After the EP's position in first reading was voted, the committee chair traditionally becomes more important as the negotiations with the Council start (interview 31). In 2011, committee chair Lamassoure took a great interest as it was the first budget that was negotiated under Lisbon Treaty rules in the midst of the economic crisis (interviews 25 and 30). Important to stress again is that, as committee chair he represents the interest of the committee and the institution as a whole rather than that of his political group (interview 32). He therefore plays much more of an 'overarching' role than the rapporteur.

The composition of the negotiating team

After the EP's first reading is concluded the conciliation phase immediately starts. As with the novel foods conciliation, a delegation of 27 members was composed consisting of the committee chair, the rapporteur, the shadows, the group coordinators and a number of other MEPs coming from committees with a certain spending capacity such as AGRI and REGI (Regional Development) who usually have a particular expertise in the budgetary affairs of their committee (interview 32). Here too political balance is respected when the delegation is composed. As explained above, the Lisbon Treaty stipulates that the EP's delegation is headed by its president. Traditionally the actual negotiations on the annual budgetary procedure had handled by the committee chair, but in 2010 for the annual budget of 2011 president Buzek took up the role foreseen by the treaty. While the key figures in the BUDG committee had preferred to handle the negotiations themselves, the Conference of Presidents – which is hierarchically in a higher position – pushed firmly for the involvement of the President (interviews 25 and 31). The fact that it was the first time negotiations were held under Lisbon Treaty rules and that precedents could be created was reason enough for the Conference

of Presidents to demand his presence. As explained in the previous chapter, at the time of the vote in first reading, the 2011 budget negotiations became tangled up with wider institutional and political questions, advocated by the Conference of Presidents, regarding the next multi-annual financial framework (interview 28; Conference of Presidents 2010b) (see Chapter 6 section 6.4.2). The fact that there was a strong mandate from that Conference to push for these issues, meant that Buzek was not only required to be involved, but was also under tremendous pressure “not to give in” on the 2011 budget (interview 25). This strategy was however not supported unanimously in the EP, especially not by members of the BUDG committee (interview 31). This reportedly weakened the EP’s position in the negotiations. Not only because it meant that unanimity was required in the Council in order to decide on such matters, whereas the annual budgetary procedure is decided by qualified majority. Buzek was also not experienced in budgetary affairs and did not master the jargon and the particularities of such negotiations (interviews 27, 28 and 31). It could therefore be argued that pursuing this strategy was a tactical error on the front of the Conference of Presidents (interviews 25, 27 and 28). It did not lead to the desired results and weakened the EP’s negotiating position in the annual budgetary procedure.

Internal coordination

Budgetary coordination inside the EP develops step-by-step. Coordination in 2010 started with the BUDG committee adopting political guidelines, approved by the plenary, which highlighted the EP’s priorities ahead of the Commission’s draft budget (interviews 29 and 32). On the basis of that draft budget the EP then adopted a broad mandate for the first triologue which was held at the end of May and dealt with the general political reactions to the proposals of the Commission for each heading (Jedrzejewska 2010a; interview 29). This mandate was drafted on the basis of contacts which the rapporteur had with each opinion-giving committee, and one general meeting with all the advisory rapporteurs (interview 32). After this triologue the Council adopted its position and the BUDG committee’s secretariat drew up a table comparing the Commission’s draft budget with the Council position in first reading. On the basis of that position the rapporteur drafted a general resolution containing the EP’s priorities and a reaction to the Council’s draft budget (Jedrzejewska and Trüpel; interviews 32 and 26). After this, the detailed work in the committee started as the points addressed in the resolution were translated into numbers and concrete budget lines (interviews 26, 28, 29, 30 and 31). By the end of August all opinions of the opinion-giving committees were sent to the BUDG committee which drafted its report that was adopted in October. This report used to be voted amendment per amendment, but since this process could take up to three days, coordinators decided to synthesize certain elements and vote in blocks (interview 32).

It could be argued on the basis of this brief overview that the EP's internal coordination procedure for formulating its position on the 2011 budget has both a vertical and horizontal dimension. In the vertical dimension, there is a mix between bottom-up and top down work: the opinion-giving committees first give general, and later, very detailed input to the BUDG committee. At the same time, the BUDG committee sets out the political lines which are approved by the plenary and which have to be followed by the opinion-giving committees (interview 28). On the horizontal dimension, there is coordination between the committees and the BUDG committee, but also inside and between the groups who try to define their political priorities and strategies (interview 29). Most of this coordination took place between September and mid-October just before the plenary vote. Finally, it was up to the plenary to vote the position of the EP in first reading which can take up to 2.000 amendments (i.e. committee amendments, group amendments, individual amendments on the budget lines, and amendments containing the more political messages) (interviews 30 and 31).

This extensive system of coordination was not only set up to make sure the positions as proposed by the BUDG committee pass plenary easily, but also to have as united a position as possible (interview 29). As in legislative negotiations, the EP's work is much more transparent and open than that of the Council, which makes it easy to identify divisions and play on them during negotiations (Costello and Thomson 2013). The Council's position is also considered to be much more water tight, as EP negotiators often need to interrupt discussions in order to check and consult on the compromises discussed in trilogue meetings (interview 28). The rapporteur of the BUDG committee therefore always strives towards very large majorities, focusing first of all on the largest political groups: EPP, S&D, ALDE, and Greens/EFA in order to have a comfortable majority of around 80% of the votes (interviews 26 and 31). In the 2011 budget case, most of the members of these groups voted in favour, with mainly the ECR and EFD (European Freedom and Democracy) group, as well as the non attached members voting against (European Parliament (Budget) 2010c: 120-121) A broadly supported position makes it more difficult for the Council to play on the divisions, but also entails a significant coordination effort as was explained above (interview 31). For the 2011 budget case the table below shows how united the EP's position was.

Table 7.3: EP votes in first reading on the 2011 budget

Committee	Votes in favour	Votes against	Abstentions
BUDG	36	2	4
PETI	18	0	0
AFET	40	6	4
DEVE	28	0	0
INTA	19	0	1
CONT	25	1	1
ECON	30	3	0
EMPL	35	0	2
ENVI	58	1	0
IMCO	26	0	2
TRAN	31	4	1
REGI	34	1	4
AGRI	28	1	0
PECH	18	0	2
CULT	26	2	0
LIBE	38	2	1
AFCO	18	2	0
Plenary 1st reading	546	88	39

Sources: Jedrzejewska and Trüpel 2010, European Parliament 2010c

Preparation and handling of triologue negotiations

The annual budgetary procedure differs from the ordinary legislative procedure in that first reading agreements do not take place. Both institutions first define their position separately and subsequently go straight into conciliation. Therefore, not much negotiation took place before the conciliation phase started. One interviewee reported however that even before the Commission published its draft budget contacts were made between the Council and the EP negotiators: “They were after all the men and women we had to spend the rest of the year with, so it was important to have a good personal relationship with them” (interview 25).

As in both other case studies, the EP’s secretariat had an important function in organising triologue meetings. Not so much the assistants, but rather the BUDG committee secretariat set the agenda together with the Council presidency and determined which issues were to be discussed at what point (interviews 25 and 28). Even though no negotiations took place in these preparatory contacts, ideas were “floated” on possible compromise solutions in order to “prepare the playing field” (interviews 28 and 30). The importance of the role played by the secretariat was further facilitated by the fact that its director had a direct line to the

committee chair and has extensive expertise and experience with budgetary negotiations as explained in the previous chapter (see Chapter 6 section 6.4.1).

Unlike the ordinary legislative procedure, the budgetary procedure has fixed trialogue negotiations, the so-called formal trialogues. One took place in March when the resolution containing the EP's political priorities was introduced (interview 31). Subsequently a trialogue was held between the publication of the draft budget of the Commission and the Council adopting its first reading. During this trialogue no negotiations took place, as the Council had not yet adopted its position and had no mandate. Instead, an exchange of views was held on the respective positions in reaction to the Commission's draft budget. For this trialogue the EP adopted a broad mandate as mentioned above (Jedrzejewska 2010a). Subsequently there were informal trialogues in between the vote in committee and the position of the EP as voted in plenary. These trialogues were held in order for both branches of the budgetary authority to explain their respective positions. It was also the forum where the first problems and potential ways out were identified (interview 32). After the EP rejected the Council's position in first reading, the conciliation was launched by the EP's president, sending a letter to the Council's presidency and the Commission.

During the conciliation phase, two meetings of the conciliation committee were held, one to open the negotiations and a closing meeting. In between, trialogues were organised, and on the days of the conciliation meetings 'shuttle diplomacy' similar to that described above in the novel foods case took place. Here too, the chief negotiators worked with a mandate that was not too detailed but marked red lines and political principles. The delegation was debriefed on trialogue negotiations in order to update the mandate and determine the strategy (interviews 30 and 32). The golden rule in any inter-institutional negotiation, but definitely in budgetary negotiations is that "nothing is agreed until everything is agreed" (interview 31). This is however relative. It was shown in the previous chapter that the EP made concessions earlier in the negotiations on payment appropriations in order to obtain reassurances on a new system of own resources and its involvement in the future MFF negotiations, which it never obtained.

It is also important to note that the level of trialogue negotiations changed. There were technical meetings which aimed at "cleaning up" amendments as much as possible (interview 25). In these the Council Presidency was represented at civil servant level, alongside officials from the Commission's Directorate General responsible for the budget, and the EP's chair of the BUDG committee, the rapporteur, shadows and the secretariat. Apart from that, these trialogues were also used to further work out the decisions that were made on the higher political level. Unlike technical trialogues in the ordinary legislative procedure, here, all shadow rapporteurs as well as the chair of the committee were represented. The so-called 'political trialogues' were held at ambassador's level on the Council side

and at director level for the Commission. Finally, the high level dialogues had the minister or prime minister of the Council Presidency and the President of the EP present. As explained in the previous chapter, the negotiations followed two tracks. One (at the highest level), on the MFF involvement and own resources, in which the President of the EP took the lead; and one (at political level) where the chair of the BUDG committee took the lead.

From this brief analysis, it can be argued that the handling of dialogue negotiations is much more regulated in the annual budgetary procedure than in first or second reading under the ordinary legislative procedure. The repetitive nature of these negotiations – MEPs run through the same process each year – and the fact that broad majorities are strived towards mean that coordination and preparation is meticulously mapped out. The result for the annual budgetary procedure in 2010 was a solid position that was supported broadly across the political spectrum, but which still yielded underwhelming results, because negotiations were disturbed by the Conference of Presidents' strategy to instrumentalise the file.

7.4.4 Findings

Overall the internal coordination in the annual budgetary procedure is much more formalised than that in the ordinary legislative procedure, when compared to first and second reading. Here too, there is a connection between the intensity of the internal coordination and the degree of politicisation. Budgetary affairs traditionally top the EP's agenda. The fact that this was the first annual budget to be negotiated under the Lisbon Treaty rules was an additional factor that politicised the file. The primary rationale behind intense coordination is to have as unified a position as possible. This is reflected in all aspects of the EP's organising capacity. Its internal coordination system on budgetary matters has both bottom-up and top-down elements to ensure broadly supported and well-substantiated positions. Key figures are kept closely involved during dialogue negotiations in order to keep them briefed and check whether a broad majority is still in place. Both coordinators, shadow rapporteurs and rapporteurs of the opinion-giving committees play an important role in defining the position. The rapporteur is much more constrained than in the ordinary legislative procedure and is obliged to consult them constantly. Even though this leads to a well argued and researched position that is broadly supported which is the result of a strong capacity to organise itself, other elements in the EP's organising structure undermined this.

Formally speaking the EP's president leads the negotiating team as representative of the interests of the EP as a whole. In reality much of the actual negotiations is delegated to the chair of the BUDG committee, because of his expertise and perceived neutrality in the BUDG committee. In the 2011 budget case however, the Conference of Presidents tied the negotiations up with broader political and institutional questions on the future MFF negotiations and a system of own

resources. This meant that the EP president was forced to play a very prominent role, arguably weakening the Parliament's negotiating position, not only because of the President's lack of expertise in budgetary matters, but also because it changed the voting requirements in the Council and weakened the hand of the negotiators on the 2011 budget.

It is therefore fair to say that the EP's organising capacity in budgetary affairs is well established, but is sensitive to political games. Its strong organisation can be undermined by political strategies pushed at the highest level of the EP which can potentially weaken its position in the negotiations and its influence on the final outcome.

7.5 Conclusion

An effective organising capacity was defined as the structures and internal procedures that lead to well-substantiated and broadly defended positions in inter-institutional negotiations. The fact that all three cases had very broad majorities in favour of the positions proposed by the rapporteurs could lead to the conclusion that the EP's organising capacity is indeed well-developed in accordance with the assumption out as put forward by the assumption. Defending a unified position is key for the EP's strength at the negotiation table. Its transparency compared to the Council is considered a weakness as divisions are much more easily visible. Investing in internal coordination and procedures therefore is not only necessary to make sure the positions defended by the negotiators reflect a majority of the members in Parliament, but is also key in terms of negotiation strategy.

Yet, this analysis has also shown that voting figures alone only tell part of the story. In order to fully assess the impact of organising capacity on the outcome of negotiations one needs to look more closely at the internal coordination processes and the handling of triologue negotiations. How structures and procedures come to life through members and officials is as important to assess the impact of organising capacity on the outcome of negotiations. In the ordinary legislative procedure, internal coordination processes in first and second reading were – up until recent reforms – hardly formalised. A non-binding code of conduct for negotiations with the other institutions at points contradicted itself or left matters such as defining a mandate, the direct involvement of shadow rapporteurs, and providing feedback vague. This left much discretion to the rapporteurs as we have seen in the novel foods and comitology cases. The lack of clear enforceable rules can still lead to one-sided positions where the EP is either missing out on certain elements in its position (as with comitology) or adopts a very extreme position making it harder to show flexibility in negotiations with the other institutions (as with novel foods). The fact that these positions still rallied broad majorities behind them is case specific. In comitology Nils Ringe's (2010) concept of perceived policy preferences seems to be the explanatory factor: MEPs who have no particular

knowledge about the file follow their peers (usually from their own political group) with whom they consider they share policy preferences. The novel foods case showed how a regulation can be framed in one particular way and limit the room for other MEPs to show flexibility. Framing here is best described as the “process of selecting, emphasizing and organizing aspects of complex issues according to an overriding evaluative or analytical criterion” (Daviter 2007: 654). The budget case on the other hand, showed that a well-built system of consultation and deliberation in which both political guidance (top-down) and expertise (bottom-up) have a place, strengthens the position of the EP at the negotiation table. It not only contributes to greater accountability but also to a more solid basis to defend positions. Formal requirements to debrief and work with mandates help overcome the disadvantage that divisions are much more visible in the EP and actually strengthen its position at the negotiation table.

Important to note is that another explanatory variable seems to be in play, namely the degree of politicisation. The more politicised a file becomes, the more intense internal coordination becomes. Both the budget case and the novel foods case were highly politicised and were characterised by intense coordination. Timing however, also has an impact. The comitology case showed how a file that was not very politicised in the beginning of the negotiating process only raised concerns about the internal coordination when other members understood the implications for their respective policy fields. This however came too late in the process, as the negotiations had almost been concluded. A better functioning organising capacity could have alerted members in a more timely manner on certain implications of the regulation and could have resulted in broader input into the negotiations.

Another important element emerging from the cases in terms of organising capacity is the role of bridging figures. Committee chairs, vice-presidents and the EP president all represent broader interests than party politics, namely that of the committee or the institution as a whole. They can potentially keep a check on the negotiator and even take over negotiations in order to bridge internal divisions or those between the institutions and forge compromises. All three cases showed that these are indeed potentially important figures, but that they do not always play their role well. Both the novel foods case and the comitology case showed that the absence of intervention by either the committee chair or the vice-president contributed to the formulation of a one-sided position as explained above. The budget case on the other hand, showed that a committee chair can play an important role in consolidating the EP’s position and negotiating with the other institutions, especially when that person has expertise. At the same time however, that case also showed that negotiations can be disturbed by politics when the EP president was pushed into the game by the Conference of Presidents. Here, a bridging figure, high up in the hierarchy but with little expertise and an impossible stance to defend, weakened the EP’s position in the negotiations.

The role played by bridging figures in the three cases therefore shows that no single capability factor can explain the EP's performance in inter-institutional negotiations. Other factors such as time allocation and expertise have an effect on the organising capacity, and can strengthen or weaken certain aspects. This brings us to the conclusion of this thesis in which all capability factors and their interdependence will be assessed in the light of the EP's performance in inter-institutional negotiations.

CHAPTER 8

Conclusion

8.1 The importance of studying capabilities

The European Union was founded on the values of freedom, democracy, and equality (European Union 2010a: 17). As more powers were transferred to the European level, the European Parliament became one of the corner stones in the EU's institutional set-up. With every treaty reform more competences were given to the European Parliament with the aim of making the European Union's decision-making system more democratic, accountable and legitimate. Indeed, its *raison d'être* is to directly represent the European citizens and help ensure the democratic legitimacy of the EU's decision-making process. This stems from the idea that the democratic nature of the EU can be enhanced by 'parliamentarising' the decision-making. By giving Parliament more powers and competences, the decision-making process would become more transparent and more democratic. The EP has thus been transformed over the years, from an unelected Assembly in the 1950s to a full-fledged co-legislator on an equal footing with the Council of Ministers. It is arguably one of the most powerful parliaments in the world and constitutes an unprecedented experiment in transnational democracy.

Academic research has followed suit: scholars have looked into its growing powers, the European Parliamentary elections, left-right cleavages, party organisation and cohesion, and the voting behaviour of its members. They have compared the different decision-making procedures, analysed the functioning of its committees, and assessed the Parliament's accountability and democratic legitimacy to name just a few issues. Yet, a thorough evaluation of its capabilities to exercise the powers it obtained had been lacking so far. The question of a potential imbalance between its powers (both formal and informal) on the one hand, and the capability to exercise it in practice not only deserved further research in order to fully assess the EP's actual power, but also to understand its position in the EU's inter-institutional context. Finally, in light of the many treaty changes that have empowered the Parliament in order to strengthen the Union's democratic legitimacy, it is vital to know whether the EP fulfils its role professionally. The legitimacy of the EU as a whole depends on the trust in its institutions. The Parliament therefore has to live up to its role if it is to be accepted by the citizens as a vital player in shaping European society.

The European Parliament is a co-legislator and a branch of the budgetary authority on an equal footing with the Council of Ministers. Even though it has extensive

powers, questions can be raised about its capabilities to exercise them in practice. Elected members are expected to deal with a vast range of different issues – both budgetary and legislative – that are often of a technical nature. Whereas the Member States in the Council and the European Commission have extensive administrations to tap into for expertise, the European Parliament only has a relatively small in-house administration. In addition, its high turnover rate makes experience and expertise a highly rated asset. Members who have the time to build up their expertise over more than one legislative term are generally speaking more effective. Resources in terms of staff and budget are small compared to legislatures with similar powers such as the US Congress or the German Bundestag, yet large compared to most national parliaments. The EP is often forced to rely on external actors for input and information. Finally, its relative openness compared to the Council makes it easier to identify divisions and play on weaknesses during negotiations. To sum up, factors such as resources, expertise, and organising capacity are crucial capabilities for the role of the European Parliament as a co-legislator in the decision-making process.

The central topic of this study is the potential gap between the European Parliament's powers (i.e. both formal and informal powers) and its capacity to exercise them in practice. A lack of capacity would have a negative impact on the political weight of the European Parliament in negotiations with the Council. The main research question therefore was: **Under what conditions are the European Parliament's capabilities to influence the outcome of inter-institutional negotiations falling short of its powers?**

The research question addressed two lacunas in the existing literature. First, it not only looked at the Parliament's formal powers, but also took account of the informal rules and practices that exist within the formal framework. Until recently, practices such as trilogue negotiations or internal coordination mechanisms between EP committees had not received much academic attention. At the same time, these practices have to be understood if one wants to assess the Parliament's influence and position in the EU's inter-institutional context. Through the method of process tracing this thesis has uncovered these practices and revealed that they too hold risks for the Parliament. The fact, for instance, that negotiations in trilogues are hardly formalised in the Parliament gives considerable leeway to the rapporteur. This in turn can lead to one-sided positions being defended, a point that will be addressed extensively below. Second, this thesis addressed the gap in the literature that the Parliament's *capabilities* to exercise the powers it has, had largely been overlooked by academia. Very little research had been done on the Parliament's resources, expertise and the way it organises itself. Assessing Parliament's capabilities will show whether there is a gap between its powers and its capacity or whether it is able to fully exercise the powers it has in practice.

In order to guide the analysis an analytical framework was developed. Based on observations and insights from the US political system and the literature on the administrative capacity of legislatures, a typology brought forward by March and Olsen was used to define a framework. This framework identified four key capabilities: rights and authorities, resources, expertise, and organising capacity. Rights and authorities – or the powers and competences of the EP – were taken as a baseline factor. It is a factor that does not vary in the period of analysis, and in which the EP has effectively reached its full institutional potential. Indeed, in both the ordinary legislative procedure and the annual budgetary procedure, the EP is on an equal footing compared with the Council of Ministers. The three other capabilities that could account for the potential gap between powers and the EP exercising them in practice were defined as resources (i.e. budget, information, time and staff), expertise, and organising capacity. They were defined and operationalised in the context of the European Parliament's activities and based on the following assumptions:

- **Resources:** past research into the EP's resources led to the assumption that a lack of resources such as staff and time could limit the EP's capability to influence the outcome of inter-institutional negotiations.
- **Expertise:** past research on the background and seniority of members and staff led to the assumption that a lack of expertise could have a negative impact on the EP's ability to influence the outcome of inter-institutional negotiations.
- **Organising capacity:** the analysis of existing literature into the EP's organising capacity led to the assumption that the EP is well-equipped in organisational terms in order to be a solid and coherent player in inter-institutional negotiations and that this capability factor would not limit its ability to influence the outcome of negotiations.

In order to determine the conditions under which the EP's capabilities to influence the outcome of inter-institutional negotiations actually match its formal and informal powers, the method of process tracing in combination with in-depth interviews was applied to a 'most different case study'-design with three cases from different policy fields. A qualitative approach was chosen because it enables in-depth analysis and is useful in exploring new areas of research, which is the case for studying the EP's capabilities. It is also particularly suitable for identifying and assessing the impact of different factors involved in a process. Process tracing enabled us to assess the EP's influence by mapping out the entire decision-making process of each case from the Commission proposal to the final outcome. Guided by the three capability factors, the analysis identified the intermediate steps and causal mechanisms and interactions that led to amendments, strategies and decisions adopted by the EP. Process tracing therefore allowed us to make an assessment of the causality of a particular factor (an independent variable) and

enabled the identification of the conditions under which similarity or variance in that independent variable led to different outcomes, i.e. which factors influenced the outcome of the negotiation process.

This method enables in-depth analysis and is especially useful in exploring new areas of research, as is here the case with the EP's capabilities. It also allows for a detailed investigation of issues, and enables the inductive identification of the factors involved in a process and of their impact on the outcome of that process (Nicholls 2011: 3). The conceptual framework defined three key variables: resources, expertise and organising capacity, but this research design forces the research to explore all causal effects. In this way, alternative explanations may emerge, and other independent variables than the ones defined beforehand can be identified.

Case studies in combination with process tracing make it possible to determine the sequence of events that led to the outcome, rather than just focussing on the outcome as an event (Peters 1998). This thesis used a least-likely case study design, or a 'most different cases' design. The cases were selected to see whether the findings are, as expected, similar across different policy areas in order to draw broader conclusions about the European Parliament's capabilities in inter-institutional negotiations. They fall into to Lowi's categories of constitutive (i.e. setting out new rules and procedures), distributive and regulatory policy fields (Lowi 1972). Lowi's typology was not chosen to assess the effect of each policy field on the EP's capabilities but rather to come to a comprehensive understanding of the Parliament's capabilities in inter-institutional negotiations and to see whether findings are similar in contrasting policy fields with different types of procedure. Indeed, the choice to look at three different areas of inter-institutional negotiation not only allows us to make statements about the individual cases, but also about EP performance in general. A 'most different cases' design combined with the right conceptual framework shows the robustness of relationships of variables in a different setting and makes sure that there are no other unmeasured variables confounding the research in order to isolate the pattern of relationships that explains similar outcomes.

The three cases falling into Lowi's categories of constitutive, regulatory and distributive policy were respectively 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 (TFEU) (i.e. formerly known as comitology), the budget 2011 negotiations, and the regulation on novel foods. Not only do they belong to different policy fields, their outcomes, decision-making procedures and the nature of the negotiations differed as well.

8.2 Findings

First of all, the analysis showed if and where the European Parliament managed to influence the outcome of the negotiations with the other institutions. In the case of comitology the EP's impact was rather limited as the position defended by the rapporteur focused primarily on the EP's own role in the new system of delegated and implementing acts. As a consequence, key elements such as voting arrangements and the inclusion of the common commercial policy in the new system were left for the Council and the Commission to decide. In the novel foods case, the analysis showed how the positions of the three institutions were irreconcilable. Notwithstanding the time pressure in the conciliation phase and the pressure exerted by the two other institutions, the EP stuck to its principled position. Both co-legislators' unwillingness to concede led to the failure of the negotiations. The result however is that the process which Parliament wished to constrain, namely the cloning of animals and the use of food products derived from clones or their offspring, remains unregulated. Finally, in the budget case, the EP's influence on the final outcome of the negotiations was rather limited. It managed to introduce increases on a small number of budget lines, but the overall cuts made by the Council remained in place. The EP also did not obtain the other institutions' assurances on its involvement in the negotiations on the next multiannual financial framework or on a new system of own resources for the EU.

The overall picture of EP influence in these cases is therefore mixed and rather bleak. This brings us back to the central topic of this thesis: the potential gap between the EP's powers and its influence in practice. It is clear that (formal and informal) powers alone cannot fully account for the EP's influence and performance in negotiations. The conceptual framework used in this thesis proposed to look at capabilities such as resources, expertise and organising capacity and assess whether or not these could explain the potential gap.

The assumptions formulated in the analytical framework were different for each capability factor. Resources were said to be crucial for the EP's capability to influence the outcome of inter-institutional negotiations. Given the lack of time and overload of information, as well as a limited budget and number of staff compared to legislatures with similar powers and to other institutions, the EP was expected to struggle with this factor to be able to match its formal and informal powers. Expertise was said to play an important role for the EP given the nature of EU decision-making, but not decisive to account for a potential gap between the EP's powers and its capabilities to exercise them in practice. The institution's role in representing EU citizens and the broader European interest, rather than specific national interests, and the fact that expertise in part depends on resources such as access to information and staff led to the presumption of it not being decisive. Finally, for organising capacity the assumption was that this is indeed an important factor, but one where the EP is fairly well-equipped. With its horizontal committee

structure, strong political groups and an internal organisation adapted to its role as co-legislator and branch of the budgetary authority, the EP is structurally and procedurally well organised for inter-institutional negotiations.

The findings from the case studies present a more nuanced picture. First of all, we found that there is indeed a gap between the European Parliament's powers (i.e. both formal and informal powers) and its capacity to exercise them in practice. Certain capabilities hamper the Parliament from fully playing its role. Yet, as opposed to what the literature suggests, it has been observed that it is not so much the actual possession of the capacity to influence the outcome of negotiations, but rather the way in which this capacity is handled which can explain a mismatch between the EP's powers and its capability to exercise them in practice. Indeed, with the exception of expertise where the assessment was mixed, the EP seems to possess – or at least have access to – all necessary capabilities, but the way in which they are put to use can weaken its position at the negotiation table. In other words, all the necessary ingredients are there, but they are often not used in a way to cook the best meal.

In addition, it was found that, as assumed in the analytical framework, capability factors interact. Some strengthen each other, but others may pull against each other, raising the challenge of finding the right balance between all three capability factors. Because this interaction is crucial to make a comprehensive assessment of the EP's power in an inter-institutional context, the best way to draw the final conclusions from the case studies is to look at the factors in relation with each other.

Resources and Organising Capacity

On resources, it was posited that influence is related to the size of and access to resources as they limit or facilitate the capacity to act (Egeberg 2006). The assumption was that because of an overload of work and information and limited resources in terms of budget, time and staff, this factor would have a negative impact on the European Parliament's ability to influence the outcome of negotiations and thus account for a mismatch with its powers. The case study analysis partly contradicts these assumptions and presents a more nuanced picture in which other factors play a role.

Time has indeed proven to be a type of resource that the EP is struggling with. MEPs have very little time at their disposal and how they prioritise that time affects the EP's position in negotiations with the Council and the Commission. The cases showed that when a file is low on the priority list, less time is dedicated to it, thereby giving more freedom to the rapporteur to define the direction taken. For instance, due to the lack of time dedicated to the new comitology regulation and the novel foods regulation by other MEPs, the EP's position was markedly weaker

than it could have been. This is partly because of a lack of input, which led to a one-sided position being adopted, and partly because figures that could bridge divisions such as committee chairs or the vice-presidents in charge of conciliation did not dedicate enough time to this role. Individual time management therefore can have a negative impact on the EP's position. However, the budget case demonstrated how organising capacity *can* help to overcome this weakness. It showed that even when time is scarce, if an internal procedure is in place which forces all key players (rapporteurs, shadow rapporteurs, coordinators and members of other committees) to prioritise the substantive preparation of the EP's position, and gives an important role to a bridging figure such as the committee chair, a well-substantiated and broadly supported position can be formulated.

The same conclusions can be made with relation to information. The cases have shown that it is neither access to information, nor the processing of large volumes of information that is a problem, but rather the handling of different sources of information. Both the comitology and the novel foods case showed how legal or scientific information that could have strengthened the EP's position in the negotiations was available but (consciously) not used. This in combination with few members dedicating time to a file and thereby not actively seeking available information meant that the positions defended by the EP can lack certain elements or background and consequently weaken its position at the negotiation table. Again, the budget case showed how organising capacity *can* help to overcome this flaw by establishing a procedure in which both top-down political priorities can be formulated and bottom-up information can be tapped from other members and committees. This of course means the rapporteur loses some of his or her influence, but it ensures a better-proposed position in the negotiations with the other institutions.

Resources and Expertise

Contrary to what was assumed, the case studies have demonstrated that the access to and the number of staff in the EP is at a sufficiently high level and has no negative impact on the outcome of the negotiations. The only condition under which staff as a type of resource might influence the EP's impact on negotiations negatively is related to expertise. Supporting staff play a crucial role in the EP's day-to-day business. All cases have shown the importance of the secretariat and group staffers in supporting the members. Staffers are asked to prepare background notes, draft amendments or even write whole reports. Expertise to carry out these tasks is therefore a crucial asset. Analysis showed that most staffers in the EP are generalists who build up their expertise in the job, rather than policy specialists recruited for certain positions. While they are often procedural experts, their capacity to provide substantive expertise is limited. This lack of expertise can be seen as a considerable weakness in the context of EU decision-making, and staffers very often have to rely on their own ability to build up knowledge and extract

useful information from a plethora of sources. Finally, internal mobility rules (in the case of the secretariat) and turnover (in the case of assistants and group staffers) further hamper the development of expertise. Therefore not the number of staff, but rather their limited substantive expertise in light of the tasks they are assigned has the potential to be a source of weakness for the EP in its ability to exercise its powers.

Budgetary means as the last element analysed under resources, seems to play only a minor role in the day-to-day inter-institutional negotiations the EP is involved in. In constitutive or distributive policy fields it virtually has no impact as the formulation of positions does not depend on obtaining information through the organisation of studies, workshops or hearings. The novel foods case confirmed that in regulatory policy the budget for ordering studies or organising hearings plays a larger role. Here too, there is a strong link with expertise in the sense that this budget is supposed to be used for the acquisition of new expertise. Yet again, neither access to nor the volume of the budget seemed to be problematic, but rather the handling of that budget. The analysis indicated that most of the budget under the heading of expertise goes to communication, and all cases showed that the budget available for committees to acquire external expertise is not necessarily directed to deliver input that can be used in negotiations. In addition, studies and hearings are not always up to the mark in terms of quality and neutrality, and often reflect political preferences rather than an objective quest for neutral input. Even though its potential impact on the EP's position in inter-institutional negotiations is limited, it is fair to conclude that the budget for acquisition of expertise at the disposal of committees is not used to its full potential.

Expertise and Organising Capacity

All three cases have shown that the EP has a fundamentally different approach to negotiations than the Council, which can be linked to expertise. Parliament was shown to be much less sensitive to the specific and detailed effects and costs of implementing what is negotiated. Part of the explanation is that the EP needs less technical expertise compared to the Commission or the Council's Member States as it is not responsible for implementation. Indeed, its role in the decision-making triangle, namely to represent citizens and defend broader European interests, means that files are approached much more from a political point of view where detailed expertise plays a less important role. Crucially, the cases also confirmed that the potentially negative impact on the EP's ability to influence the outcome of negotiations arising from a lack of expertise is weaker when a file is politicised.

Yet, this is not to say that the effect of expertise is to be neglected. The analysis showed that a lack of expertise – even in a highly politicised situation – still has a negative impact on the EP's ability to influence the outcome of negotiations. "A well-designed legislature is a producer, consumer and repository for policy

expertise (...)" (Krehbiel 1991: 62). A good use of expertise thus goes hand in hand with organising capacity, which was defined as the structures and internal procedures that lead to well-substantiated and broadly defended positions. All cases showed that the organising capacity can work well in delivering broad support. The three files rallied large majorities in favour of the positions proposed. This is important as a unified stance strengthens the EP's position at the negotiation table. However, broad majorities alone are not enough. Tapping expertise from members and fostering the development of expertise is crucial for a legislature such as the EP in need of well-substantiated positions. However, the analysis has shown that in-house expertise is limited and often concentrated, whereby it may lead to certain asymmetries. Asymmetries in expertise between members and between committees have proven to affect the outcome of negotiations. MEPs and their supporting staff define their position on the basis of their own background, experience and preferences. This however means that certain elements were left out of their position. This in combination with insufficient coordination with other members and committees may lead to one-sided positions being adopted and defended in negotiations. This not only raises questions in terms of representativeness and accountability, but also in terms of effectiveness.

The budget case showed that asymmetries in expertise can be addressed by an extensive coordination system in which expertise and input of specialised committees is used, leading to a well-substantiated position. The ordinary legislative procedure however, is much less strict and formalised in terms of coordination. Especially in the case of first reading agreements, rapporteurs enjoy significant leeway, and apart from them very often only a handful of members are involved in the formulation of the EP's position. This analysis has shown that the effect of asymmetries in expertise arising from a lack of coordination have proven to be negative for the EP's impact on the final outcome. Too much discretion in the hands of rapporteurs can potentially lead to one-sided positions where the EP is either missing out on certain elements in its position or adopts a very extreme position making it harder to show flexibility in negotiations with the other institutions. This effectively limits the EP's influence on the outcome of the negotiations in practice.

As mentioned above, the case studies have shown that bridging figures can help overcome this problem. Committee chairs, vice-presidents and the EP president all represent broader interests than rapporteurs do, namely that of the committee or the institution as a whole. They can potentially control the negotiator and even take over negotiations in order to bridge internal divisions or those between the institutions and forge compromises. However, the sword cuts both ways. The cases also showed that such figures need a certain expertise and authority to be fully effective. If not, intervention from above can also hamper a well-informed and prepared negotiations strategy.

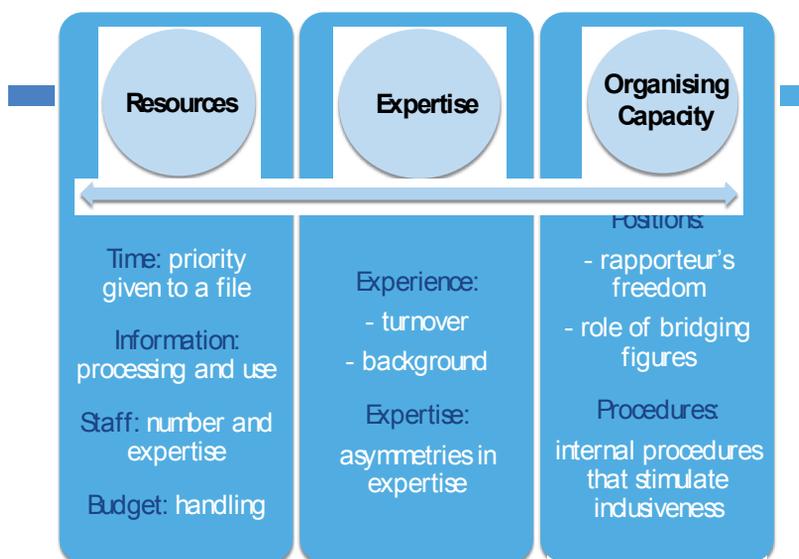
Interaction of factors

The analysis shows that no single capability factor can explain the EP's performance in inter-institutional negotiations. Factors are connected to each other and have to be seen in a context of constant interaction. The weakness of one factor can be overcome by the strength of another. Conversely, the positive impact of one factor on the EP's ability to influence the outcome of negotiations can be limited by the weakness of another. More concretely, it was observed that the impact of a lack of resources is tempered by a solid organising capacity, and that a lack of expertise or asymmetries in expertise can limit the effect of well-organised structures and procedures.

The ideal situation is therefore one in which all factors are handled in a way that they strengthen each other. This means individual time management which allows key members, including bridging figures, to prioritise their time so that they are sufficiently involved in the negotiations. This in combination with procedures that allow for input and feedback can assure not only a broadly carried position, but also one in which expertise is used so that the positions defended at the negotiation table are well-substantiated and not one-sided. Indeed, as argued above, it is not only the possession of resources, expertise and organising capacity, but also the handling of it that matters. If the EP is to exercise its formal powers fully it needs to handle all three capabilities so that they are exploited to their full potential.

The figure below gives an overview of the elements that influence the strength of each factor:

Figure 8.1: Capability factors



Alternative factors

The empirical analysis however showed that not only capabilities have an impact the outcome of negotiations and the ability of an institution to exert influence. Apart from the factors that were defined in the conceptual framework, the case studies demonstrated that other variables such as the degree of politicisation and the relative power of other institutions have an impact on the EP's performance as well. This is partly in line with the literature on bargaining models to assess the power of the institutions in the EU (e.g. Thomson and Hosli 2006; Napel and Widgrén 2006; Schneider et al. 2010). Yet, the analysis has also shown that this literature leaves important variance between powers and influence unexplained.

Politicisation

Individual time management was shown to be linked with politicisation as a higher degree of politicisation is associated with more time being dedicated to a file and more members being involved. Time spent on a file is therefore determined as much by politics as it is constrained by resources. The fact that few members were involved in the comitology discussions is simply because few took an interest, until the full implications of the regulation were realised. Yet, even when a file is politicised, time may still be scarce and limit certain actors in playing their role. Such was the case in novel foods where both the committee chair and the vice-president came late into the negotiation process and did not manage to bridge the divisions.

Politicisation therefore also has an impact on organising capacity. The analysis showed that a low degree of politicisation is linked with a lower intensity of internal coordination and fewer members being involved. This was the case during the initial phases of the comitology negotiations. A high degree of politicisation such as the conciliation negotiations on novel foods and the 2011 budget are linked with wide and intense internal coordination. This was shown to lead to broadly defended positions.

In one case, politicisation was also shown to limit the effect of expertise. The positive effect of the EP's extensive system of tapping expertise from its committees in the budget case, was tempered by the fact that the file was politically tied to the future MFF negotiations. Expertise did not matter much, as the EP's priority was to obtain reassurances on its involvement in the MFF negotiations and related issues.

The degree to which a file is politicised has to be seen as a process, and one that is linked to capabilities. It is a variable that can explain part of the gap between powers and influence in practice, but not all of the variance.

Relative power

A second factor that emerged is the recognition that neither the EP's powers, nor its other capabilities are absolute. Indeed, the EP does not operate in a vacuum, but in an inter-institutional context. Its ability to influence the outcome of negotiations is therefore also determined by the strength of the other players around the table.

This thesis was not designed to compare the capabilities of all three institutions, but in order to come to a comprehensive understanding of the decision-making process and the balance of power in the EU, the Council and the Commission need to be studied as well.

Apart from capabilities, the analysis demonstrated how other factors affect the relative power as well. Both the novel foods and the budget case showed how the Council had an advantage over the European Parliament. Its costs of no agreement were considered smaller than those of the EP. The EP wanted to regulate food of cloned animals and their offspring; the Council's position was less clear-cut therefore failure to come to an agreement was considered less fundamental than in the EP. In the budget case, the EP asked for assurances on its involvement in the future MFF negotiations and raised the budget lines for 2011. The member states in the Council however, made cuts to the proposal of the Commission, a position markedly closer to the provisional twelfths that would enter into force in case no agreement was found. In addition, Parliament's strategy to link the negotiations on the annual budget to issues related to the MFF changed the voting requirements in the Council, where unanimity was required. This further strengthened its position

in the negotiations. In conclusion, it is fair to say that the influence of one institution is thus also partly determined by the power and capabilities of the others involved.

Yet to argue that both politicisation and the relative power of the other institutions can account for the gap between the EP's power and influence in practice would leave important variance unexplained. As summarised above, the analysis showed that even in a highly politicised context, such as the conciliation negotiations on novel foods, a lack of expertise weakens the Parliament's position. It demonstrated in the comitology case that deficiencies in the EP's organising capacity combined with asymmetries in expertise have a negative impact that can reverse the Parliament's favourable starting position. The novel foods case showed how a lack of expertise in combination with limited time and late involvement by members that can bridge divisions have a negative impact on the outcome of the negotiations. And finally, all three cases showed how the EP's handling of deadlines and time during the negotiations worked to its own disadvantage.

The findings of this research therefore offer new insights in the study of bargaining power and negotiating success. It makes a strong case for bargaining models to systematically take account of capabilities in order to fully account for the gap between powers and influence.

Conclusion

The central topic of this thesis was to look into the potential gap between the EP's powers and its influence in practice. The analyses in the different cases made it clear that (formal and informal) powers alone cannot fully account for the EP's influence and performance in negotiations, and that other capabilities too have an impact. An institution's ability to influence the outcome of negotiations is as much determined by its powers as by capabilities such as resources, expertise and organising capacity. Moreover, not only the level of the capabilities, but also the handling of the different capabilities by actors inside the institution is important to explain the gap between powers and influence.

The hypothesis inductively generated from this research therefore is that **an institution's ability to influence the outcome of negotiations can be hampered because of low levels or poor handling of capabilities such as resources, expertise and organising capacity.**

The research question aimed to identify the conditions under which these capabilities fall short of the EP's powers. Based on the analysis these can be formulated as follows:

Table 8.1: *The conditions under which capabilities fall short of powers*

Resources: the ability of the EP to influence the outcome of negotiations is hampered by	
<i>Time</i>	too little time spent on a file and thus the low priority attributed to it by actors inside the institution
<i>Information</i>	the processing of an overload of information and the non-availability of all necessary information
<i>Staff</i>	a limited number of assisting staff that has little expertise in the relevant policy area
<i>Budget</i>	budget that is not used for obtaining input into the negotiation process
Expertise: the ability of the EP to influence the outcome of negotiations is hampered by	
<i>Experience</i>	the high turn-over rate of members and their limited background in the policy area they are working in
<i>Expertise</i>	asymmetries in expertise between members, between committees and between staff and members
Organising capacity: the ability of the EP to influence the outcome of negotiations is hampered by	
<i>Positions</i>	giving too much freedom to rapporteurs, which runs the risk of one-sided positions being defended the limited involvement of bridging figures such as committee chairs or vice-presidents in the negotiation process
<i>Procedures</i>	procedures that do not foster substantive inclusiveness

8.3 Lessons learnt

One of the advantages of qualitative research in a ‘most different’ case study design is that one can not only draw conclusions on the individual cases, but also make statements about the EP’s performance in general. Even though a selection of a limited number of cases can never be fully representative of the wider population they belong to, the case studies in this thesis are indicative of the category they fall into – constitutive, regulatory and distributive policy fields (Bennett and George 2005: 74-75). In addition, this research design was suitable for exploring a new area of research, namely the study of capabilities and even a limited number of cases can be used to advance the academic debate and can be the basis for further “analytical generalization” and “facilitate analytical precision and theory development” (Burns 2005, p. 494). The development of a new analytical framework based on the typology proposed by March and Olsen, and the definition of a testable general hypothesis has to be seen in that light.

8.3.1 *The European Parliament : the need for expertise and sharing power*

The main challenges for the EP as a player in the EU’s decision-making system are related to the handling of its resources, the organisation of its internal procedures

so that EP negotiators defend well-substantiated and broadly supported positions, and the tapping expertise from members, staff and the outside world. The analysis showed that with the right mix of capabilities exploited to their full potential the European Parliament can play its role as co-legislator and branch of the budgetary authority fully in line with the powers it has. In order to do so, certain weaknesses need to be addressed.

At the outset, one of the aims of this thesis was to uncover the informal processes in inter-institutional decision-making. Process tracing enabled this and gave new insights into the effects of informal processes on the Parliament. One of the key questions in that respect is what balance to strike between efficiency on the one hand and inclusiveness and the ability to have better substantiated positions on the other. The analysis has shown that especially in the Ordinary Legislative Procedure the EP's organising capacity is inadequate in the sense that much power lies in the hand of rapporteurs, which can potentially lead to one-sided or weakly developed positions. In this way the Parliament is weakened at the negotiation table or misses opportunities to influence the outcome. The fact that only a handful of people on the EP's side are involved and that much of the negotiations take place in informal processes not only raises concerns about inclusiveness and accountability, something which has been addressed in previous research. This thesis revealed that it also has a negative effect on the EP's wider impact and influence in negotiations with the other institutions.

It lies in the EP's own capacity to address this issue. Its formal and informal internal rules have shaped the current situation, and can therefore also change it. First, this analysis has shown that great potential lies with so-called bridging figures; members who represent broader interests than rapporteurs, in particular committee chairs or vice-presidents. Internal procedures could be adapted so that these have the adequate resources (especially time) and the possibility to play a more mediating and consensus-seeking role than is the case today. In that way, not only broad majorities can be forged, but well-substantiated positions can be assured. Second, the budget case showed how internal organisation can overcome challenges with time, processing large volumes of information, obtaining input and tapping expertise from other members and committees. While the chief negotiators remained responsible for the political priorities, a consultation system was set up in which bottom-up expertise and info was used from other members and committees to substantiate the EP's position. The 2012 Guerrero reforms of the EP's Rules of Procedure which strengthen and formalise internal coordination procedures show that Parliament is conscious of these concerns. Future research will show whether they have addressed them adequately.

Another weakness in the EP's capabilities was identified as lack of expertise. Turnover of members did not play a role in the cases under study, as most MEPs involved were experienced members. Yet with a renewal rate of around 50% this

may play a role in other files. Another important question is that on the role of supporting staff in legislatures such as the EP. Being part of an institution that is a full-fledged co-legislator, MEPs are in need of expertise. The demand for expertise is diverse and varies from member to member. At the same time supporting staff such as assistants, group advisors and the EP's secretariat are expected to assist their members in defining the substance of their position. Most of them were shown to be generalists rather than policy specialists, which leads to a capability expectations gap when they are asked to give detailed input for amendments and the drafting of reports. One way may be to steer recruitment policies and internal mobility rules more towards specialisation, even though given its smaller size the EP's administration will never match the level of specialisation of that of the Commission, let alone that of a national Member State. Another way may be to streamline and govern the acquisition of external expertise better so that the resources available are used where they are most needed namely for the EP's core business of negotiating legislation.

8.3.2 Research agenda: studying capabilities and testing the framework

The analysis has demonstrated the need to study capabilities in order to make a comprehensive assessment of an actor's position in the context in which he has to negotiate with other partners. This is something that has been overlooked in the context of the EU. Not only formal powers and processes need to be taken into account. In order to assess an actor's influence and make statements about him exercising the powers he has in practice, one has to look at informal powers and processes as well, and identify and assess capabilities such as resources, expertise and organising capacity.

The framework developed and applied in this thesis as well as the hypothesis formulated above allows for such analysis. It takes account of both formal and informal powers and enables the assessment of different types of capabilities in a systematic way. The identification of other variables such as the degree of politicisation and the relative power of other institutions will make future research alert to alternative causal explanations as well. In order to further the research into capabilities, the hypothesis is now in need of theoretical foundations, which are lacking in this area.

The framework and hypothesis cannot only be tested and applied in the field of European politics. In fact the lesson derived from this thesis is that capabilities matter and that in order to say something about an actor's influence, one always needs to analyse its capabilities. This is a lesson valid for any collective actor, be it a legislature or a local council. Furthermore, it cannot only be tested and applied on collective or institutional actors, such as the European Commission, the Council of Ministers or individual Member States, but could also be used to evaluate and analyse individual negotiators. Differences in expertise, resources and organising

capacity between the institutions will affect their impact on the negotiations. In this light, systematic analysis of the capabilities of all actors in the EU's decision-making triangle will lead to a more comprehensive assessment of the inter-institutional balance of power.

In the same vein, the framework applied to the EP could be applied to other legislatures operating in an inter-institutional context such as the US Congress or the German Bundestag. Actors in such a context do not even have to be equal partners like the Council and the EP were in this analysis. 'Rights and authorities' were taken as a baseline factor here, because of equal rights in the ordinary legislative procedure and the annual budgetary procedure. Yet, this factor could easily be taken as part of the substantive analysis. Finally, the interaction of capability factors is also a potential avenue of research. Not all possible interactions could be studied in this thesis. More qualitative research is needed in order to fully test this analytical framework and exhaustively assess all factors.

8.4 Giant with feet of clay? Final remarks

Throughout the decades the European Parliament evolved from an unelected assembly to a full-fledged co-legislator on equal footing with the Council of Ministers. More powers were transferred to the EP with the aim of making the decision-making system more democratic and more legitimate. As the legitimacy of the EU as a whole depends on the well-functioning of its institutions, it is vital to assess whether these institutions are capable of exercising the powers they have. This thesis has raised questions and provided answers as to the EP's capabilities in the EU's inter-institutional context. The question at the outset was whether the EP, with all the powers it has, but with questionable means in terms of the capabilities to exercise these powers is not something of a giant with feet of clay.

The analysis showed that the EP has adapted itself over the years to fulfil its institutional role in the decision-making process. It possesses most of the capabilities it needs as a co-legislator and branch of the budgetary authority. It still struggles with obtaining the necessary expertise and the time management of its members can be problematic as it leads to few people being involved in the decision-making process. It has effectively taken measures to organise itself efficiently, but has paid a price not only in terms of inclusiveness and accountability, but also in terms of influence.

The answer therefore is that the EP is indeed a giant, still experiencing growing pains, rather than with feet of clay. The foundations and elements for it to fully exploit the powers it has are present, and in most cases the EP can address its own weaknesses. It is therefore up to its members and staff, the people that bring this institution to life and make it one of the most dynamic and interesting actors in the EU, to make this happen. Its success depends on them.

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Interview 6 with an official of one of the EU institutions, Brussels, 16.03.2012.

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Interview 11 with an official of one of the EU institutions, Brussels, 03.04.2012.

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Samenvatting

De Europese Unie werd gesticht op grond van vrijheid, democratie en gelijkheid. Steeds meer macht en bevoegdheden werden overgedragen aan Europa en met die overdracht werd ook het Europees Parlement steeds meer een hoeksteen van de Unie. Bij elke verdragswijziging werd immers ook meer macht gegeven aan het Parlement met als doel de besluitvorming in de Unie democratischer en meer legitiem te maken. Het Parlement wordt geacht de Europese burgers rechtstreeks te vertegenwoordigen en met meer bevoegdheden zou ook het democratisch gehalte en de transparantie van de Unie in haar geheel moeten verbeteren. Het EP is op die manier geëvolueerd van een niet-verkozen assemblee in de jaren '50 tot een volwaardige medewetgever die op gelijke voet staat met de Raad van Ministers. Het is een van de machtigste parlementen ter wereld en staat symbool voor een nooit gezien experiment in grensoverschrijdende democratie.

De academische wereld bleef hier uiteraard niet stil bij. Onderzoekers van over de hele wereld bestudeerden het EP. Men analyseerde haar macht en bevoegdheden, de Europese verkiezingen, de politieke breuklijnen, de rol van de partijen, en het stemgedrag van haar leden. Men vergeleek de verschillende besluitvormingsprocedures, bestudeerde het functioneren van de commissies en deed onderzoek naar het democratisch gehalte van het Parlement als instelling. Een grondige analyse van de capaciteit van de effectieve macht van het Parlement bleef tot nu toe echter uit. De vraag of er eventueel een kloof is tussen de bevoegdheden enerzijds en de werkelijke invloed van het Parlement in de praktijk anderzijds, is echter meer dan relevant. Dat is het niet enkel om ons een beeld te kunnen vormen van de reële macht van het EP, maar ook en vooral om na te gaan of het haar rol naar behoren kan uitoefenen. Als we in de naam van democratie meer macht en bevoegdheden aan het EP hebben gegeven, moet het ook in staat zijn om die uit te oefenen. De legitimiteit van de Unie hangt er immers mee vanaf. Kan het EP haar bevoegdheden ook omzetten in invloed of is het een reus op leren benen?

Hoewel het Parlement medewetgever is en dus op gelijke voet met de Raad staat kunnen er inderdaad vragen gesteld worden over haar capaciteit om die macht daadwerkelijk uit te oefenen. Parlementsleden moeten immers een hele reeks verschillende onderwerpen kunnen behandelen die vaak heel technisch zijn van aard. Waar de Europese Commissie en de lidstaten kunnen terugvallen op ondersteuning vanuit hun administraties, heeft het EP een relatief kleine ambtenarij. Bovendien keert na elke verkiezing ongeveer de helft van de

verkozenen niet terug en dus gaat er telkens een stukje expertise. Verkozenen die hun kennis kunnen opbouwen over meer dan een termijn hebben over het algemeen gesproken een streepje voor. De middelen die het EP heeft zijn dan weer groot in vergelijking met nationale parlementen, maar relatief klein in vergelijking met machtige instellingen zoals het Amerikaans Congres of de Duitse Bondsdag. Ook moeten Parlementsleden vaak beroep doen op externe actoren om input en informatie. Tot slot maakt haar relatieve openheid in vergelijking met de Raad het makkelijker om de interne verdeeldheid van het Parlement uit te spelen tijdens de onderhandelingen. Kortom, factoren als middelen, expertise en de manier waarop het EP georganiseerd is zijn cruciaal voor haar rol en invloed als wetgever.

Het centrale onderwerp van deze thesis is dan ook de potentiële kloof tussen de bevoegdheden en de invloed van het EP. Onder welke omstandigheden schiet de capaciteit om invloed uit te oefenen tekort? Deze vraag werd onderzocht in drie verschillende onderhandelingen waar het EP op gelijke voet staat met de Raad van Ministers.

Om de analyse te structureren werd een analytisch kader opgesteld dat vier factoren definieert: formele en informele rechten, middelen, expertise en organisatie. De factor 'formele en informele rechten' werd als de basisfactor genomen omdat hij niet wijzigde tijdens de onderhandelingen. Zowel in de gewone wetgevende procedure als in de begrotingsprocedure staat het Parlement immers op gelijke voet met de Raad en is het dus op papier even machtig. Voor de andere factoren werden de volgende veronderstellingen geformuleerd:

- **Middelen:** op basis van eerder onderzoek werd aangenomen dat de beperkte middelen inzake ondersteunend personeel en tijd de capaciteit van het EP om invloed uit te oefenen kunnen beperken
- **Expertise:** op basis van eerder onderzoek over de achtergrond en ervaring van parlementsleden en hun ondersteunend personeel werd aangenomen dat een gebrek aan expertise een negatieve impact heeft op de capaciteit van het EP om invloed uit te oefenen
- **Organisatie:** op basis van de bestaande literatuur werd aangenomen dat het EP goed georganiseerd is om als solide en coherente partner aan de onderhandelingstafel te komen en dat deze factor haar capaciteit om invloed uit te oefenen bijgevolg niet beperkt

Drie onderhandelingscases werden geselecteerd op basis van een 'meest verschillend' casestudie-ontwerp. Dat wil zeggen dat de cases sterk verschillen van aard, maar dat wordt verwacht dat ze een gelijkaardige uitkomst hebben. Vervolgens moet men nagaan of er een gemeenschappelijke verklaring is. De drie cases die hier bestudeerd werden zijn de onderhandelingen over het nieuwe

systeem van gedelegeerde en uitvoeringshandelingen (hierna comitologie genoemd), de jaarbegroting van 2011 en de onderhandelingen over een verordening betreffende nieuwe voedingsmiddelen. Deze cases werden op kwalitatieve wijze bestudeerd met de zogenaamde 'process tracing'-methode. Dat is een methode waarbij een dossier van begin tot eind geanalyseerd wordt door alle tussenstappen die tot beslissingen hebben geleid te identificeren en de beweegredenen en oorzaken die tot deze beslissingen hebben geleid te achterhalen. Door alle stappen na te gaan worden niet enkel de veronderstelde verklaringen onderzocht, maar kunnen ook alternatieve verklaringen aan het licht komen. Deze methode in combinatie met casestudie-onderzoek leent zich perfect voor onderzoek van nieuwe gebieden, zoals hier het geval is met een studie over de capaciteit van het Europees Parlement. Naast analyse van officiële en informele documenten werden 54 interviews afgenomen met betrokken actoren uit de verschillende instellingen van de Unie en daarbuiten.

De analyse gaf aan waar en of het Europees Parlement invloed heeft kunnen uitoefenen op de uitkomst van de onderhandelingen. In het comitologie-dossier bleek de invloed van het EP eerder beperkt te zijn. Dat dossier gaat over de controle door lidstaten en de instellingen op de uitvoeringsbevoegdheden van de Commissie. De rapporteur van het EP had ervoor gekozen enkel een standpunt in te nemen over de rol van het EP in dit controlesysteem en niet over andere elementen van het controlesysteem. Hoewel een aantal andere parlementsleden hier tegen protesteerde bij het einde van de onderhandelingen werd door deze aanpak de beslissing over enkele fundamentele punten overgelaten aan de Raad en de Commissie. In het dossier over nieuwe voedingsmiddelen waren de standpunten van Raad en Parlement onverenigbaar. Onder invloed van de rapporteur had het EP zich sterk geprofileerd op het punt van gekloonde dieren. Het wilde elk voedingsproduct van gekloonde dieren en van hun (eerste generatie) afstammelingen verbieden. De Raad was minder eensgezind. Enkele lidstaten argumenteerden samen met de Commissie dat het opsporen van onder meer zaad en embryo's van gekloonde dieren of hun nakomelingen onmogelijk is omdat ze vaak afkomstig zijn uit landen buiten de Unie die geen registratiesysteem hebben. Bovendien zou dit verbod in conflict zijn met het internationaal handelsrecht en waren bepaalde eisen van het EP op vlak van het labelen van voedsel volgens beide instellingen niet implementeerbaar. Ondanks de tijdsdruk in de derde (en laatste) lezing van het dossier slaagden de Raad en het EP er niet in een akkoord te vinden. Hierdoor blijft de kwestie van voedsel afkomstig van klonen of hun nakomelingen niet-gereguleerd in de Unie en kunnen dergelijke producten vrij op de markt komen. In het budget-dossier tot slot, had het EP eerder een beperkte invloed. Het kon een aantal budgetlijnen verhogen, maar moest de algemene bezuinigingen die gevraagd werden door de Raad aanvaarden. Onderhandelaars van het EP werden onder druk van hun politieke hiërarchie gevraagd meegaand te zijn om toegevingen van de Raad te krijgen op een ander dossier. Dat laatste dossier betrof onder meer de betrokkenheid van het EP bij de onderhandelingen

over de toekomstige meerjarenbegroting van de EU en het creëren van bron voor eigen Europese inkomsten in de begroting. Het EP liet een cruciale begrotingsdeadline verstrijken om druk te zetten op de Raad, maar haalde op beide punten uiteindelijk bakzeil.

Het algemeen beeld over de invloed van het EP is hierdoor vrij somber, hetgeen ons terugbrengt bij het onderwerp, namelijk de kloof tussen de bevoegdheden en de reële invloed. Het is immers duidelijk dat de bevoegdheden die het EP op papier heeft niet dezelfde is als macht in de praktijk.

Natuurlijk spelen factoren zoals politisering en de macht van de andere instellingen een rol. Tegen het 'njet' van de Raad in het begrotingsdossier was niet veel in te brengen. Analyse toonde hier ook aan dat het niet zozeer een gebrek aan expertise, organisatie of middelen was, maar wel de politieke strategie van de top van het EP die het zwakker maakte aan de onderhandelingstafel. Het onderzoek toonde ook aan dat politisering het effect van een gebrek aan expertise kan temperen. Hoe politiker een dossier hoe minder zwaar zwakke expertise doorweegt aan de onderhandelingstafel.

En toch kan de kloof tussen bevoegdheden en invloed niet enkel met politisering en de macht van andere instellingen verklaard worden. De analyse toonde aan dat factoren als tijd, ondersteunend personeel, interne organisatie en expertise van cruciaal belang zijn. De veronderstellingen die gemaakt werden bleken echter slechts ten dele te kloppen. Het EP heeft voldoende staf, maar misschien niet altijd met de juiste achtergrond. Veel personeelsleden zijn generalisten en worden geacht specifieke vak-expertise op te bouwen tijdens hun carrière. Mobiliteitsregels, waardoor men om de paar jaar moet veranderen van beleidsdomein verhindert dit echter. Analyse toonde ook aan dat parlementsleden voldoende tijd hebben, maar die niet altijd even goed besteden. Tot slot is gebleken dat het EP zichzelf vrij efficiënt organiseert, de besluitvorming loopt vlot en men kan doorgaans snel akkoorden sluiten, maar het betaalt een prijs op vlak van betrokkenheid van andere leden en daardoor ook op vlak van invloed. Zo lieten de procedures voor interne coördinatie vaak toe dat rapporteurs veel vrijheid kregen in het formuleren van het EP-standpunt. Zeker als een dossier niet sterk gemediatiseerd en gepolitiseerd was. Een beperkte betrokkenheid van andere parlementsleden, zoals in het comitologie-dossier, of van de commissievoorzitter of vice-voorzitter, zoals in het voedingsdossier, leidden tot het innemen van eenzijdige standpunten. Hierdoor speelde ook expertise een rol. Zonder veel interne ondersteuning is men vaak aangewezen op de eigen expertise. Is die beperkt of te eenzijdig dan vertaalt zich dat in een zwakke onderhandelingspositie.

Ook tijd speelt een belangrijke rol. In alle drie de dossiers verzwakte de manier waarop het EP met tijd omging haar positie aan de onderhandelingstafel. In het comitologie-dossier werkte een deadline die het EP mee had ingesteld in haar

nadeel. Het had pas laat een standpunt geformuleerd, waardoor vele zaken al beslist waren. In het begrotingsdossier liet het EP een deadline verstrijken om druk te zetten op de Raad, maar moest het uiteindelijk zelf toegeven omdat het been stijf houden desastreuze gevolgen zou gehad hebben voor de financiering van een aantal belangrijke instellingen. In het dossier van nieuwe voedingsmiddelen werd de tweede lezing niet gebruikt om te onderhandelen met de Raad in de gedachte dat men een beter akkoord zou krijgen in derde lezing. Dit gebeurde echter niet. De persoonlijke tijdsbesteding, tot slot, heeft ook een negatieve impact op de invloed van het EP. Zowel het comitologie-dossier als het dossier over de nieuwe voedingsmiddelen toonden aan dat gebrekkige tijdsbesteding van andere parlementsleden dan de rapporteur ervoor kan zorgen dat bepaalde zaken over het hoofd worden gezien, of dat de kloof tussen de partijen aan de onderhandelingstafel onoverbrugbaar geworden is.

De bevindingen van dit onderzoek geven dus nieuwe inzichten in de studie van onderhandelingsmacht en succes. Het maakt een sterk punt dat men naast de relatieve macht van de partijen rond de tafel ook met hun capaciteit om bevoegdheden uit te oefenen rekening moet houden om een uitspraak te kunnen doen over hun invloed. Bevoegdheden alleen geven geen correct beeld weer. Factoren zoals expertise, middelen en organisatie spelen een belangrijke rol. Niet enkel het volume aan capaciteit, maar ook de manier van ermee om te gaan is van belang.

Het is aan het EP zelf om hier iets aan te doen. Het kan haar interne procedures aanpassen door breder en beter te consulteren zodat goed onderbouwde standpunten worden ingenomen. Het kan de zogenaamde 'brugfiguren' zoals commissievoorzitters en vice-voorzitters wat meer ontlasten van bepaalde taken zodat ze op kwalitatieve wijze kunnen toezien op lopende onderhandelingen. Het EP kan ook werken aan expertise door te investeren in ondersteunend personeel met specifieke vakkennis en door politieke partijen te stimuleren hun parlementsleden toe te laten ervaring en expertise op te bouwen. Met de huidige bevoegdheden die het Parlement heeft mag het geen probleem zijn om kundige en ervaren verkozenen aan te trekken.

Is het Parlement nu een reus op lemen benen? De analyse in dit boek heeft aangetoond dat het EP zich over de jaren heeft aangepast aan haar rol in de Europese Unie. Het heeft een aanzienlijke capaciteit om haar bevoegdheden uit te oefenen, maar worstelt nog steeds met zaken als expertise, tijdsbesteding en interne coördinatie. Het mag dan over het algemeen wel een relatief efficiënt georganiseerde actor zijn, maar het heeft daarvoor een prijs betaald op vlak van invloed.

Het Europees Parlement is dus inderdaad een reus, maar eerder een met groeipijnen dan met lemen benen. De fundamenten om haar bevoegdheden ten

volle uit te oefenen zijn er, en in de meeste gevallen kan het EP haar eigen zwakheden aanpakken. Het is daarom aan haar verkozenen en haar personeel om dit te doen; de mensen die deze instelling tot leven brengen en die het een van de meest dynamische en interessante actoren in de Unie maken. Het succes van het Parlement ligt in hun handen.

Curriculum vitae

Mathias Dobbels (1986) studied International Politics and European Studies at the University of Ghent. He spent one semester at Leeds University (2007) on the Erasmus programme and wrote his thesis on New Labour's decision not to join the Euro. He graduated with greatest distinction in 2008. The following year he completed the EU International Relations and Diplomacy Studies programme at the College of Europe in Bruges as laureate of the Marcus Aurelius Promotion (2009).

Mathias was also laureate of the 'Esprit Européen' scholarship of the Bernheim Foundation and did an internship at the Belgian Permanent Representation to the EU in Brussels and at the Belgian Ministry of Foreign Affairs (2009-2010). After this he worked as Deputy Mertens during the Belgian Presidency of the Council of the European Union (2010) and assumed the Mertens function in the first half of 2011.

Mathias took up a Ph.D. position at the Faculty of Arts and Social Sciences in January 2011 funded by the European Commission under the Marie Curie Initial Training Network on Inter-Institutional Cooperation in the EU. His research deals with institutional issues ranging from the role the European Parliament in EU decision-making, to comitology and the relation between the European Commission and the European Council in legislative agenda-setting. The findings of his research have been published in *West European Politics*, the *Journal of European Public Policy*, the *European Law Journal*, the *Journal of European Integration* and the *European Integration online Papers*.

Besides his research, Mathias has also been active in teaching. He has lectured and tutored in the course 'Negotiation Skills' at Maastricht University, and has given guest lectures on the Council, and on comitology to the Bachelor, Master and Research Master students. Finally, Mathias is also a guest lecturer at the Training Institute of the Belgian Federal Government (OFO/IFA) in Brussels, and at the Academy of European Law (ERA) in Trier.