

More bureaucracy or more democracy: the EU at an "unrepresentative turn"?

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Faculteit der Kunst en
Maatschappijwetenschappen

More Bureaucracy or more Democracy: The EU at an 'unrepresentative turn'?

***More Bureaucracy or more Democracy:
The EU at an 'unrepresentative turn'?***

Oratie

In verkorte vorm uitgesproken bij de aanvaarding van het ambt van bijzonder
hoogleraar "EU Democratic Governance" aan de Faculteit der Kunst en
Maatschappijwetenschappen van de Universiteit Maastricht

Op Vrijdag 28. Maart 2014

Door

Dr. Christine K.P. Neuhold

This inaugural is dedicated to Dr. Herta Welzig and Dr. Hans Neuhold

Dear Rector Magnificus, Rein, dear professors, dear colleagues, dear students, dear family and friends: It is a great honor and pleasure for me that you are here today to attend my inaugural lecture.

In the following I would like to present some thoughts about the (possible) tension between bureaucracy and democracy in the EU and how I see my contribution to that debate.¹

Introduction: Setting the scene

For those of you who have been to Mini-Europe in Brussels; after strolling past the tiny tower of Pisa, the Austrian monastery of Melk to the Houses of Parliament in London, you might have noticed at the end of the tour the following question: “A democratic European Union”? And the simple answer is: “Of course”. So the question of the European Union’s (EU) democratic nature seems very straightforward and my lecture could stop here.

But of course we know that as this question relates to the EU, it cannot be that simple and must be inherently fraught with complexity. What the exhibition of Mini-Europe fails to address is that the EU has indeed been diagnosed as suffering from a *malaise*: the much proclaimed and debated democratic deficit. These “democratic deficit allegations” as Zweifel (2002, 821) calls this phenomenon, can according to some be traced back to discussions of the European Parliament’s draft treaty for a European Union (EU) in the early 1980s and debates leading up to the 1986 Single European Act (Zweifel 2002). Others posit that the term has its origins in the ratification process surrounding the Maastricht Treaty (Bellamy and Kröger 2013; Tsakatika 2005). But whatever the roots of this democratic deficit are, most scholars posit that it indeed exists.

Some scholars find that the roots for this deficit can be traced back to the fact that decision-making powers were transferred to the European level but that national representative institutions lost out in the process (e.g. Maurer and Wessels 2001).

Others link this deficit also to deficiencies arising as a result of the way legislatures work - in the wider sense of the term - but this time this malaise is attributed to the European Parliament (EP). While crucial decisions are taken at the European level the processes of electing members of the European Parliament (MEPs) are not contests about the “content or direction of EU policy” (Follesdal and Hix 2006, 552). EP elections are thus not in fact about Europe, but are described as “second-order national contests” (Reif and Schmidt 1980, 536, in: Follesdal and Hix 2006). The EU thus falls short on premises

¹ I would like to thank San Bilal, Tannelie Blom, Afke Groen, Anna-Lena Högenauer, Alexander Strelkov and Sophie Vanhoonacker for their very helpful comments on earlier versions of this inaugural lecture.

that are “shared by a broad range of democratic theorists”. Most importantly there is no clear electoral mechanism where expressed preferences over alternative candidates determines the outcome in such a way that the government is responsive to the majority of voters (Follesdal and Hix 2006, 547).

Yet other authors have examined the way the EP works *internally* and have found deficits there, contributing to increased problems of accountability. What I allude to here, is the recent debate on the conclusion of first-reading agreements under the main decision-making procedure in the EU, the Ordinary Legislative Procedure (OLP) (e.g. Reh *et. al.* 2013). In this context, informal meetings, so-called trialogues, that are held in early stages of the procedure are flourishing. These informal meetings are called upon in order to foster agreements between the co-legislators; the Council and the EP. These fora are only open to a very restricted set of actors representing the institutions and are held behind closed doors (De Ruiter and Neuhold 2012, Christiansen and Neuhold 2013). This trend exacerbates problems of accountability and is seen as to add to the democratic deficit more generally (Farell and Heritier 2003, 2007).

Academics also argue that the basic foundations of European democracy are lacking as the EU consists of peoples rather than one set of people. Europe is thus consisting of *demoi*, rather than a *demos*; but as Weiler posits without a *demos*, there can in fact be no democracy (Weiler 1995). This opens the question of how these “citizens” can actually impact on decision-making in the European Union. Or to put it differently, how the organization of interests affects democracy in the European Union. Here one comes to a somewhat sobering conclusion (e.g. Kohler-Koch 2007, Lord and Pollak 2010). On the one hand the fact that the EU is open to a plethora of different actors can be seen to allow for a rather high degree of participation. On the other hand, the very same system is also seen prone to fragmentation (Lord and Pollak 2010, 131).

A rather minor but very influential group in the debate, the “titans” (Follesdal and Hix 2006); Majone (1998 and 1996) and Moravcsik (2008), somewhat swim against the (main)stream and do not come up with the diagnosis that the EU is suffering from a democratic deficit.² According to Majone, if one accepts that the EU is able to regulate problems by way of technocratic governance, then non-majoritarian standards are enough to justify the delegation of powers (Majone 1998, 5). Simply put, the EU’s main concern is to see to it that the internal market works effectively and as long the Member States legitimize this endeavor at the national level, this suffices. Moravcsik goes as far as stating that the European democratic deficit is a “myth” (2008, 322). The European Union is not in a worse condition than its constituent member states (Moravcsik 2008, 332). So all seems well as long as the Member States manage EU affairs via institutions such as the European Council, the Council of Ministers and the EP.

² For an overview of the debate on the democratic deficit more in general and “representation deficits and surpluses” in EU policy-making, see for example Bellamy and Kröger (2013).

What I want to do in the next 35 minutes, together with you, is to look at the issue of the EU's democratic base from a slightly different angle and bring together, of course metaphorically speaking, the egg white and the yolk of an egg together, without scrambling them up too much...

There is, as I will show in just a moment, a far-reaching debate on the role of bureaucracy and the politics thereof (e.g. Peters 2001, Vanhoonacker 2009; Neuhold *et al.* 2013) and an expanding literature on the role of legislatures in the EU³. So far the issue of "Policy Bureaucracy" (Page and Jenkins 2005) and the role of representative institutions in the EU have, however, been treated by very different canons in the literature.

To stick with the metaphor, the egg-white and the yolk have been kept apart so far, although in some cases they inhabit the same space: parliaments. The question of the role that unelected officials play within **legislatures** and to what extent this relates to the democratic 'malaise' that the EU seems to suffer from, has somewhat surprisingly been eclipsed from the debate.

The main question at stake here is thus whether the 'empowerment' of unelected officials in parliaments leads to an 'unrepresentative' turn in the EU, or whether there are other factors that might lead to an exacerbation of the alleged democratic deficit.

1. The application of the concept of democratic legitimacy to the EU context

But before we can focus on this particular issue, we need take a step back from diagnosing what could be wrong with the EU and I will try to answer two very far-reaching questions: Firstly, what do we actually mean by democracy in the EU context and then secondly how has the EU attempted to address questions of democratic legitimacy by way of Treaty reform? This 'detour' is necessary in order to sketch the context that officials find themselves working in within the EU system of governance.

It might come as no surprise that there is not single definition of democratic legitimacy and not even a definition as such, but most scholars attribute the democratic nature of the EU to the fulfilment of different criteria, standards, premises or vectors.

And of course the debate is too vast to do justice here and so I will also rely on a few 'highlights' by way of bullet points...

Thus, as Lord and Magnette (2004) point out, the literature builds on the assumption that a legitimate EU is defined by four "vectors":

³ See for example Hix and Høyland 2013, Rasmussen *et al.* 2013 on the role of the EP and see: for example Kiiver 2012; Heffler *et al.* 2014 on the growing role of national parliaments in EU affairs.

- *Indirect legitimacy*: This departs from the assumption that the legitimacy of the EU and its institutions can at best be indirect; it thus depends on the legitimacy of the Union's component states are pivotal in that they authorize and carry Treaty reform (e.g. Moravcsik 1998, 2008).
- *Parliamentary legitimacy*: Here the EU is based on a "dual legitimacy"; legitimated by governments represented in the Council and in the European Parliament that is directly elected (Lord and Magnette 2004, 185). What one could factor into this, is the increasing role of national parliaments play after the Lisbon Treaty (Kiiver 2012; Heffler *et. al.* 2014) but I will come back to that.
- *Technocratic legitimacy*: According to the perspective of *technocratic legitimacy*, EU institutions are best legitimated through their ability to solve regulatory problems and as such increase the welfare of citizens and we have alluded to that before by referring for example to the work of Giandomenico Majone (Majone, 1996).
- and *procedural legitimacy*: According to the view of *procedural legitimacy*, legitimacy may be enhanced as long as certain procedures – such as transparency, balance of interests, proportionality, legal certainty and consultation of stakeholders – are adhered to and as such public accountability increases (De Schutter, 2000; Meijer *et. al.* 2009).

By way of summary, Lord and Magnette (2004: 187) go on to show how these vectors cut across another distinction, that between legitimacy stemming from the *input* and *output* stages of policy-making (Scharpf, 1999). In the case of parliamentary legitimacy, elections are for example seen to provide input legitimacy and output legitimacy is in turn secured by full-filling voter preferences (Lord and Magnette 2004, 187).

Interestingly enough the emphasis on output legitimacy within the EU, goes back to one of the so-called founding fathers of the European Union: Jean Monnet (Tsakatika 2005). Thus the ultimate criterion in the eyes of Monnet was efficiency, not democracy, "output", rather than "input" legitimacy (Scharpf, 1999). Europe's "input" legitimacy would be indirect and therefore weak. "Output" legitimacy would have to make up for this weakness. The Union would basically be legitimate "as long as it clocked up results" (Tsakatika 2005, 198).

Recently a lively scholarly debate has shifted away from the discussion of democratic legitimacy in a wider sense and has focused on the quality of the European Union when it comes to the standards of representative democracy; leading authors to proclaim a "representative turn" in EU studies (Bellamy and Kröger 2013; Kröger and Friedrich 2013; Crum and Fossum 2009).

In order to adhere to certain democratic norms, a representative system (Pitkin 1967) needs to govern in a way that citizens can see to be both "*of*" and "*for*" the people. On the one hand this implies that when representatives are chosen, citizens can see that their views and interests are in fact treated equally. On the other hand representatives must

also take citizens interests into account equally when making policy (Bellamy and Kröger 2013). Western-style political systems today are generally categorized as representative democracies, as is the EU (Bellamy and Kröger 2013, 481).

2. An attempt of a cure? How the EU tried to 'redress' its democratic deficit

So let me briefly put what I said so far, into the metaphorical nutshell. The EU is mostly defined on resting on a series of different legitimating principles or vectors.

If we then look at the attempts of the EU to redress its alleged democratic deficit, we see that the emphasis is put on one vector of legitimacy flagged up above: **Parliamentary democracy**, which is a cornerstone of democratic representation (Groen and Christiansen 2014). It is also in this vein that the Lisbon Treaty has been referred to by some as the "Treaty of Parliaments" as it upgrades both the European Parliament in EU decision-making and foresees provisions by way of which national parliaments can influence the EU policy process (e.g. Lammert 2009; Höing and Neuhold 2013). Representation is thus a central concept in the way in which the EU understands its democratic legitimacy (Kröger, and Friedrich, 2013). It is even spelt out in the Lisbon Treaty itself that the EU 'shall be founded on representative democracy'⁴.

The role of the EP is upgraded insofar as its competences have been extended. The Ordinary Legislative Procedure (OLP), whereby the EP has a veto right together with the Council, has been extended to cover 85 Treaty articles, reaching from Common Agricultural Policy to migration (Dobbels and Neuhold 2013; Hix, and Høyland 2013). The Lisbon Treaty additionally strengthens the role of the EP in the process of selecting the next Commission President. Accordingly, "taking into account the elections to the European Parliament and after having held the appropriate consultations", the European Council, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by an absolute majority of MEPs.⁵

For the first time in the electoral history of the EP, Europe's political parties thus announce their candidates for the Commission President *before* the citizens' go to the elections and before the Heads of State and Government actually put forward their proposed candidate.⁶

But not only the role of the EP was strengthened, the role of national parliaments is also upgraded in the quest of curbing the democratic deficit. National legislatures are thus seen to contribute to the "good functioning of the European Union".⁷ In its protocols, the

⁴ In article 10 of the Treaty of Lisbon.

⁵ According to article 17 of the Treaty of Lisbon. An absolute majority means that a majority of the component members of the EP have to support the candidate. If he/she does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure.

⁶ See: <https://www.ucl.ac.uk/european-institute/events/2013-14/EP2014>

⁷ According to article 8c of the Treaty of Lisbon.

Treaty of Lisbon then sets out to strengthen the information rights of national parliaments and provides for new channels of action of national legislatures.⁸

Most importantly, under the new “Early Warning system” (EWS), any chamber of a national parliament may review the compliance of a legislative proposal with the principle of subsidiarity. To put it simply, national parliaments have to examine - for each proposal coming out of the EU’s machinery - whether a decision should be taken ‘at home’ or at the European level. If national parliaments find that the subsidiarity principle is violated, they can flag this up by passing a reasoned opinion.

What is very important to note, is that it does not suffice for *one* national parliament to raise the yellow card but that there are certain thresholds foreseen, which have to be met in order for the institution that has put forward the draft (normally the Commission) to have to review its proposal. Even if national parliaments raise subsidiarity concerns collectively, the proposal can still be maintained but the institution that issued the draft has to explain why it has not taken the view by national parliaments into account⁹ (Kiiver 2012, Cooper 2012; Fabbrini and Granat 2013). Parliaments only have eight weeks to raise the multi-coloured cards and the clock ticks even during recess such as over the Christmas holidays. So far only two yellow cards have been issued.¹⁰

So now that we have established that the EU sees itself as a representative democracy and has upgraded the role of legislatures - both on the international and domestic level - I want to focus on the other dimension of this contribution: the role of administrators in parliaments within the system of EU governance.

⁸ The protocol on the role of national parliaments guarantees parliaments wide-ranging information rights with regard to Commission consultation documents, instruments of legislative planning and draft legislative acts as well as the agendas and minutes of Council meetings (Articles 1 and 2). Secondly, the control and participation rights of national parliaments are improved. Thus, each national parliament can veto the move from unanimity to qualified majority voting or from a special legislative procedure to the ordinary legislative procedure (under the so-called passerelle clauses). National parliaments are to be involved in the revision procedures of the Treaties and to take part in the monitoring of Europol and Eurojust.

⁹ The so-called ‘yellow’ card procedure consists of the following: where reasoned opinions on violation of subsidiarity represent at least one third of all the votes allocated to national parliaments, the draft must be reviewed. After such review, the institution that has put forward the proposal may decide to maintain, amend or withdraw the draft and justify its decision. The ‘orange’ card procedure states that under the ordinary legislative procedure, if the reasoned opinions regarding subsidiarity represent at least a simple majority of the votes allocated to national parliaments, the proposal must be reviewed. After this review, the institution that has put forward its proposal may decide to again overrule parliaments by deciding to maintain, amend or withdraw the proposal but must give a reasoned opinion if it maintains the draft. This opinion, together with the reasoned opinions from national parliaments, shall be submitted to the legislators (COSAC 2008).

¹⁰ The first yellow card was issued against a draft EU law governing the right to strike (Monti II) in May 2012 and the second one against the European Commission’s proposal on the establishment of the European Public Prosecutor’s Office in October 2013.

3. More bureaucracy or more democracy? The role of administrators in legislatures

3.1. Putting the role of officials in legislatures into context

It is well known that elected representatives cannot take all policy decisions on their own and have to delegate some of their decision-making authority to administrative officials and then seek some ways to control what administrators do with that authority (Arnold 1987). The factors behind this process of delegation and their implications on policy-making both within national parliaments and the EP have been thus-far eclipsed by the academic debate.

This might be surprising for two reasons, when it comes to the EP. First, a vast body of literature focuses on the delegation of authority and bureaucratic control by the US Congress (e.g. Hammond and Knott 1996; Huber 2000; McCubbins and Schwartz 1984). Second, within the EP itself, officials working in the EP committee secretariats operate at the “heart of the legislative process” (Marshall 2012, 5). EP committee officials traditionally assist the key members in their committee: the committee chair and the rapporteur(s) of the files under negotiation. As such officials participate in a stage of policy-making, which makes up the cornerstone of the leading committee’s and (very often) also the EP’s negotiation position (Marshall 2012, 3; Dobbels and Neuhold 2013).

A recent but flourishing scholarly discourse has focused on the emerging executive system within the European arena, which has been coined as the “European Administrative Space” (e.g. Trondal and Peters 2013; Curtin and Egeberg 2008). Compared to the attention that the Commission has received (e.g. Bauer 2008; Kassim *et al.* 2013) research on the EP’s administration however has until recently received little attention within the scholarly debate. Neunreither (2006) was the first to shed light on the nuts and bolts of the EP’s administration. The historical legacy of the EP, from unelected assembly to directly elected parliament, ensured that EP officials had a high degree of manoeuvre during MEPs absence prior to the direct elections (Neunreither 2006).

Scholars have used this work as a stepping-stone to be able to examine the role of officials working for EP committees. Winzen (2011, 41) zooms in on the question whether the work of EP officials is fundamentally technical or has a concrete impact on the policy-making process. Political principals make the distinction between “technical” and “political” issues when attributing tasks to officials. As such officials, who have limited administrative autonomy can be reduced to mere paper-keepers (Winzen 2011, 28). Egeberg, Gornitzka, Trondal and Johannessen (2013) who have examined the activities of EP staff by way of an online survey, find that the activities of these actors mainly centre around expert and sectoral concerns, with European issues being given the priority (Egeberg *et al.* 2013).

The academic debate on officials within the EP only provides limited answers to the question under which conditions such actors have an impact on policy-making. We thus have to build on the more general debate on bureaucratic delegation processes to civil servants and work on ministerial bureaucracies.

Any study on bureaucracy is – as our Research Master students in European Studies well know - inspired by Max Weber. The Weberian ideal type of a bureaucracy is characterized by hierarchical structures and the rule of law. Personnel of this ideal type are career officials recruited by way of “objective criteria and educational qualifications” (Barberis 2011, 15). These professionals adhere to principles of neutrality “free from all personal considerations” (Weber 1978, in: Barberis 2011, 962).

From the debate on delegation in the US Congress we learn that competences are delegated to officials, given that clear administrative procedures and rules prevail. Administrative procedures lower the costs of monitoring and sharpen sanctions and thus contribute to greater compliance (McCubbins, Noll and Weingast. 1987, 246). Gailmard and Patty (2007) show that the risks of delegation can be minimized if issues are delegated to bureaucratic experts that have “some measure of control over policy issues they care about” and as such develop “politicized competence” (Gailmard and Patty 2007, 886). A merit system based on job tenure protections combined with discretion setting by the legislature, creates a main incentive for officials to invest in their career. These two factors provide a “payment” for expertise development (Gailmard and Patty 2007, 874- 875). Politicized competence thus can be defined as the readiness to invest in “expertise development” and is not to be confused with politicization and partisanship (Peters and Pierre 2004).

When trying to conceptualise the role officials play within policy-making, the work by Page and Jenkins (2005) is particularly instructive. Building on sociological theories of bureaucracy and drawing on 140 interviews, three types of policy roles of middle-level administrators working for UK ministries are identified (Page and Jenkins 2005, 60-71):

- These range from a *production role*, which consists mainly of drawing up policy drafts and documents,
- to a *maintenance role* of trying to ensure that policies run according to agreed principles within ministerial bureaucracies,
- to a *service role*, which consists of offering knowledge, advice and skills to those involved in policy-making (Page and Jenkins 2005, 71).

Despite the fact that these insights do not relate to officials working within parliaments *per se*, they are an indication of the different tasks performed by officials within administrative systems. Let me note that this categorization is also very helpful in order to be able to capture the rather vague and possibly also normatively laden term of “empowerment” of officials that I have raised earlier.

3.2. The role of officials in the EP

In our research we focused on the one hand on the European Parliament and the role unelected officials play within that institution. But who are these EP officials?

The historical development of the EP facilitated the development of a three-level structure of administrative machinery:¹¹

- at the level of political groups we find political group staff: Political group staff is recruited to work for the Political Groups directly and as such political convictions can play a role.
- at the level of MEPs accredited assistants: Moreover, every MEP has a number of assistants at his or her disposal. MEPs are entirely free in the selection of candidates they want to work for them. Normally between one and three accredited assistants work for one MEP.
- at the level of the EP itself, the General Secretariat: These officials are recruited by way of general competition, the so-called CONCOURS. The number of officials working in the Secretariat in 2010 was 5,273 (Corbett *et al.* 2011, 226). Yet, it is important to note that 1,350 officials are employed as translators and interpreters, while less than a fourth, or 1,150 are administrators (Corbett *et al.* 2011: 220). Most officials hold tenured posts but rotate every three to seven years. Tenure is awarded after nine months of recruitment (Corbett *et al.* 2011: 228; Dobbels and Neuhold 2013).

Our research, which focused on the latter category of officials, namely those working in the EP General Secretariat, covered 5 different policy fields. Based on a most different research design, we covered vast ground. The cases studied ranged from fisheries, to the system of implementing and delegated acts (formerly known as comitology) to migration, to novel foods and to the annual budget of 2011 ¹² (Neuhold and Dobbels, forthcoming). Here it became apparent that officials can exert more influence over the policy-process than flagged up within the scholarly debate thus far.

This might come as no surprise in a very legal and technical field such as the system of implementing and delegated acts, where we could observe that the Secretariat played a role that transcends that of production and service. Officials steered the file, without

¹¹ Before 1979 MEPs were delegated by national parliaments and were not directly elected. They thus had to travel back and forth between their national legislatures and the EP.

¹² We studied two cases in the field of fisheries, the GFCM Regulation and the Long-term management plan for horse mackerel, two cases in the field of Migration; the single permit directive and the long-term residents directive. Moreover we studied one case in the field of consumer protection, the case of novel foods. We also examined one dossier of a more procedural nature, which concerned the conferral of implementing and delegating powers to the Commission based on article 290 and 291 of the Treaty on the Functioning of the European Union (i.e. formerly known as comitology). The last case concerned negotiations on the annual budget of 2011, which was part of the multi-annual financial frameworks (MFF) for 2007-2013 (Dobbels and Neuhold 2013, Neuhold and Dobbels, forthcoming).

however going beyond the instructions and mandate given by the rapporteur. The informal meetings between Council, EP and the Commission, the so-called trialogues were extensively prepared by the Secretariat. This implied that not only complete agendas for the meetings but even scenarios which (potential) compromises would be tabled when were prepared. The reason why the Secretariat had such a considerable impact on the dossier was mainly due to its expertise in the file making this a classic case of “politicized competence”. Officials invest into developing their expertise when it comes to issues they care about.

Yet, even in cases that were attributed high political importance¹³ such as the regulation of novel foods, which touched upon the issue of cloning, EP officials still played an important role by determining key organisational aspects, such as the organisation of informal negotiations or drawing up compromise amendments. As such they were able to determine the substance of the dossier, at least to some extent. The Secretariat thus assumed a role that can be placed between that of service and steering. Our initial assumption that administrators play a minor role when it comes to files that are attributed great political importance thus does not hold. Not only did the officials possess politicised competence but the file was characterised by a highly unified position on part of the EP, mainly on the issue of cloning. It was virtually impossible for an MEP to argue in favour of placing food on the market that has any link to cloned animals. This made it easier for EP officials to fend for the EP’s position as the latter was crystal clear.

Our analysis reflected that a combination of three factors – a high degree of politicized competence; a high degree of political importance attributed to the file within the EP and a high degree of consensus – can create the conditions under which officials can play a steering role and as such shape policy (Dobbels and Neuhold 2013, Neuhold and Dobbels, forthcoming).

These empirical observations feed into the conceptual debate on parliamentary administrative systems insofar as the roles developed for administrative players within ministerial bureaucracies can only be applied to a limited extent. Whereas we find that the maintenance role - of managing particular policies - is more prevalent within ministerial administrations, we can also observe that, under certain conditions, EP officials assume a role that goes beyond the respective conceptualizations and adopt a steering role. This steering role that EP officials adopt is linked to that of guardian of the institutional prerogatives of the EP. The politicized competence that EP officials gain within the EP is thus indeed not “neutral” in the Weberian sense of the term but expertise that is linked to preserving the EP’s position in inter-institutional negotiations (Neuhold and Dobbels, forthcoming).

¹³ Here we build on Wlezien (2005) who defines political importance as follows: Accordingly a distinction should be made between an issue and a problem; an issue is not salient or important *per se*, but it depends on the degree to which it is *perceived* as a political problem.

3.3. *The role of officials in national parliaments*

When we then turn to the role that officials play in **national parliaments** we find that the specific requirements of carrying out scrutiny of EU affairs, impose a certain framework on administrators that leads to an even greater diversification of roles.

The introduction of the very novel Early Warning System (EWS) lead to a vibrant debate about the level of influence that parliaments can have in practice, the coordination mechanisms between national parliaments and the new procedures put in place by parliaments as a reaction to the Lisbon provisions (e.g. Kiiver 2012, Cooper 2012, Raunio 2010). However, a question that was largely eclipsed within the academic debate is how this affects the role of parliamentary administrations (Christiansen *et. al.* 2013).

One could expect the role of parliamentary administrations to increase for two reasons. Firstly, the Early Warning System and new information rights not only present opportunities but also put pressure on the **organization** of parliamentary business. The Lisbon changes require parliaments to filter and digest an increased amount of information, identify priorities and problems and react within a very narrow time span. As the EWS is limited to objections on grounds of subsidiarity, the reasoned opinions need to be carefully worded and be based on (legal) justifications. Moreover, as a certain number of reasoned opinions are necessary to trigger a card, coordination with other parliaments is not only desirable but a necessity (e.g. Christiansen *et. al.* 2013).

Secondly, the high **complexity** of European legislation and perceived low salience of most regulatory European issues are two features that make a delegation of tasks to administrators more likely (Manley, 1968). The delegation of administrative and technical tasks to administrators would leave Members of Parliament (MPs) more time to focus on electorally salient issues (Högenauer and Neuhold 2013).

The core questions at stake, similarly to the ones raised for the EP, are thus about the extent to which national parliamentary administrations actually *do* play an active part in the scrutiny of EU politics and what types of roles they fulfil. These empirical insights should then enable us to answer the more conceptual question of to what extent the ‘empowerment’ of officials in fact ‘democratises’ European policy-making.

In our research on officials in national parliaments we distinguish between three different types of staff roles: that of an administrative assistant, an analyst and an advisor. We also identify a fourth one that we see as a rather distinct category, which is that of a coordinator *across* national parliaments (Högenauer and Neuhold 2013).¹⁴

¹⁴ The research comprised semi-structured interviews with committee clerks and MPs from eleven member states between September 2010 and June 2013. In addition, the authors have received written replies to a questionnaire from 21 chambers that allow for a broader overview. By way of this data collection a large majority of EU Member States are covered (Högenauer and Neuhold 2013).

Table 1: Roles and tasks of national parliamentary administrators in EU Affairs

Roles	Administrative Assistant	Analyst	Advisor	Coordinator
Tasks	<ul style="list-style-type: none"> • Gathers and forwards information • Summarizes information • Organises committee meetings 	<ul style="list-style-type: none"> • Provides choice of balanced arguments • Provides drafts after debates • Provides procedural and legal advice 	<ul style="list-style-type: none"> • Pre-selection of documents • Provision of concrete solutions • Drafts also prior to debates 	<ul style="list-style-type: none"> • Coordination with executive • other chambers/parliaments • EU institutions
Extent of involvement in scrutiny	Low	Low- medium	Medium-high	Low-medium

According to our insights, if administrators adopt the first type of role, i.e. that of an *assistant*, they are seen to be involved in the actual process of scrutiny only in the margins. They are mere ‘paper-keepers’ and forward information without discriminating between issues, summarize the information provided and focus on the organization of parliamentary business. Interestingly, empirically *none* of the parliamentary administrations falls exclusively into that category.

The second ‘ideal type’ of administrator, the *analyst*, is more active in the process of scrutiny, but without exercising too much influence on the content of the discussions. Thus, that type of administrator provides a choice of arguments before a debate, that allows MPs to choose between different alternatives but the official does not recommend a specific course of action. Only the administration of the Dutch Upper House is seen to be limited to those tasks.

Administrators that take on the role of *advisors* engage in the pre-selection of relevant documents or issues and can thus play an agenda-setting role. They do not only present MPs with arguments, but recommend certain solutions and course of action, also prior to debates. A majority of those administrations under scrutiny played such an advisory role and provided content-related advice and/or drafts prior to debates in addition to the more technical tasks. In addition, a great number of parliaments allow their administrations to exert further influence; by pre-selecting documents for

parliamentary scrutiny. This in turn gives administrators a certain influence over the agenda (Högenauer and Neuhold 2013).¹⁵

Finally, administrators can fulfil a **coordinating function** vis-à-vis other national parliaments, European institutions or their own government. Coordination can mean information gathering, but it could also imply a representational function vis-à-vis other actors in Brussels or at home and can also imply that issues are ‘pre’-cooked across national boundaries. Coordination between national parliaments, is after all a crucial ingredient if one wants the Early Warning System to work. It is interesting to point out that a network of officials has been established at the European Union level. Here we allude to the permanent representatives of national parliaments or national parliamentary representatives (NPRs) in Brussels, which have grown into an informal network.

This ‘network’ of NPRs started in the early 1990s but was initially slow to grow from one representative to include representatives from all 28 parliaments. The Danish parliament was the forerunner, having already sent a parliamentary representative to Brussels since 1991. The fact that all Member States parliaments and a non-EU Members State (Norway) currently send a parliamentary representative to the European arena, is a clear indication that legislatures see it as vital to be part of this network, even in times of financial crisis and budget restrictions. Several bi-cameral parliaments such as the UK and Belgium send two representatives, one per chamber.

A majority of these officials actually work within their respective national legislature and are delegated to Brussels for a certain period of time and then return to “their” parliament thereafter. They thus have ample insights into the way their respective legislature works and have built up a web of contacts.

These officials work within the same physical space, along one corridor within the European Parliament and come together for regular weekly meetings with the view to exchanging information and let each other know when their respective parliament will come up with a reasoned opinion in the framework of the EWS, sometimes even before the Commission *formally* comes up with a proposal.

In our research we have attempted to capture the **nature** of the network, as we felt that by shedding light on the actual role that NPRs play in implementing the Lisbon Treaty provisions, we could contribute to greater conceptual clarity. We ‘tested’ several concepts advocated in the literature, that of an epistemic community, that of a third chamber and one we have developed one of our own: an information network (Neuhold and Högenauer 2013).

¹⁵ Five of those administrations under scrutiny also played an advisory role and provided content-related advice and/or drafts prior to debates in addition to the more technical tasks. On top of that, twenty parliaments allowed their administrations even further influence in the form of the *pre-selection* of documents for parliamentary scrutiny.

When it comes to the concept of epistemic communities, they have been described as a “network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain” (Haas 1992, 3). What is crucial is the fact that the professionals making up epistemic communities have a shared set of normative and principled beliefs, shared notions of validity and a set of common practices associated with a set of problems and policy issues (Haas 1992, 5; Clemens and Cook 1999, 446).

The idea of a virtual third chamber has first been advanced by Cooper (2012) and referred to parliaments (as a whole) constituting collectively a virtual third chamber that would deliberate European issues and exert influence. Accordingly, Coopers main argument is that the EWS and associated developments have a deliberative ‘value-added’ in that they have created a new public forum for the debate of salient EU policy questions. This forum is virtual “in that interaction is by correspondence rather than face-to-face” (...) but as “such it is seen to enable a deliberative exchange that is both horizontal (among NPs) and vertical (between NPs and EU institutions)” (Cooper 2012, 444).

We would posit that the permanent representatives fit none of these categories but rather form an information network. This is a network that does not share common beliefs or seek to take collective decisions in a (virtual) third chamber, but that collects and exchanges information with a view to optimizing the collective knowledge of national parliaments. The role of information is salient with regard to a bureaucratic network, as it is the traditional resource of influence for bureaucracies (Peters 2001, 234). This conceptualization departs from the assumption that current societies have shifted away from a command and control style of government towards increased deliberation and bargaining where information and knowledge are a key resource (e.g. Blom 2014).

Especially now that national parliaments are meant to play an active role within the EU policy-making process via the Early Warning System, information processing plays an important enabling function. In this case the Permanent Representatives of the national parliaments in the European Parliament are best placed to engage in information exchange on a regular basis and alert each other to important proposals (Neuhold and Högenauer 2013).

3.4. Where to go from here? New avenues for research

After all this, I still have to add one important caveat. While the Treaty of Lisbon with its document-heavy procedures has thus certainly led to a certain degree of bureaucratization of parliamentary business in an attempt to increase parliamentary capacity, this should not disguise the fact that the final decisions are taken by MPs in the

(European Affairs or sectoral) committees and plenary. At least this was the case for the parliaments we studied, i.e. the respective insights we gained in that regard.

One of the tasks for future research will be to explore further the differences between national systems of parliamentary administrative support as well as the factors explaining the variation in administrative organization and tasks (Högenauer and Neuhold 2013).

For the EP one would equally need to extend the comparative study of policy domains. We thus have to see whether our insights that transcend the concept of Weberian dichotomy - according to which politicians take decisions and officials merely implement - also hold true for different contexts.

The normative implications that arise from the increasing delegation of tasks from elected members of parliaments to officials also merit further clarification (Högenauer and Christiansen 2014).

4. The EU at ‘unrepresentative turn’?

So where do we go from here, what does this tell us when trying to answer the question of whether the EU is facing an ‘unrepresentative turn’? The equation that the ‘empowerment’ of officials leads to a representation deficit is not that simple as they are crucial in assisting elected actors in performing their tasks.

If we look both at the EP and at national parliaments officials play a crucial role. For the EP it became apparent that they can assume a steering role, even in fields that are attributed high political importance. In national parliaments we see that in a majority of the cases officials play an advisory role in EU affairs and as such come up with concrete solutions. We also observed that officials delegated by national parliaments to Brussels, have started to form something we coined as an information network and as such are important cogs in the wheel of Early Warning. Simply put: **‘no democracy without bureaucracy’** or no ‘representation without bureaucratization.’

What is very crucial, for questions of representation, is that we could not observe a case where directly members of parliament did not have the last call, did not take the final decision. Government *for* the people is still carried out by those that are elected *by* the people, even if these decisions as is the case in the EP, are increasingly taken behind closed doors, secluded from the public eye.¹⁶

The call is still out whether according to the premises that democratic systems should meet (Follesdal and Hix 2006), the EU fares well at the eve of parliamentary elections.

¹⁶ Here I am referring to the increase of decisions taken in first reading within the Ordinary Legislative Procedure (OLP) (e.g. Reh *et.al* 2013).

Here I am not talking about output legitimacy where officials do play an important role in preparing rather technical decisions such as the reform of comitology or even more 'politicized' dossiers such as novel foods. Instead, I want to shift to the **"input"** side.

We are just witnessing the very beginnings of a public and political debate on who will head the European Commission. This has to be embedded into a larger debate on where Europe is heading in times of crisis. What we know for now is the EP's slogan that this "time it is different". Not only is there a persistent economic crisis but this time it is also "different" as the Lisbon Treaty foresees a mechanism where preferences over alternative candidates may determine who gets to be the President of the Commission.

We see, however, that a lot still has to be done to make this work.

The candidates to the Presidency of the European Commission have been known rather late for the electorate to make up their mind. More importantly it has to be clear what type of 'Europe' the different candidates stand for and how they see the future of European integration. The candidates for the Presidency might not have anticipated the events in Ukraine, but they will have to address how these developments relate to democracy, rule of law and a common approach in the domain of EU foreign policy.¹⁷

Moreover, the Treaty provisions on the election of the Commission President are not only complicated but at the same time have large political implications (Shackleton 2013): Will the Heads of State and Government actually 'buy' what the EP proposes and stick with the proposed candidate? On a positive note, some of the candidates in the race for the posts are political 'heavy-weights', which adds political clout to the electoral contest. Nevertheless, citizens cannot vote for these candidates directly but have to 'go' via their national political parties, which is not as self-evident as it might seem at first glance.

Although you cannot debate a deficit away, I do agree with those that argue that you do need more of a public debate on the direction that the European Union is taking. I am very happy to say that together with my colleagues, the Municipality of Maastricht, the European Youth Forum, Connect Europe and our fantastic students we are involved in the quest of organizing one of the debates for the Presidential candidates and add thus to this larger debate (albeit in a small way).

Overall, these elections are somewhat of a turning point, a unique chance to move away from "second order elections". Although we are not even two months away from the elections, it is too early to tell to what extent this opportunity will actually be seized.

¹⁷ Intervention by European Ombudsman, Your wish list for Europe, Interactive event, European Parliament, Brussels, 4th March 2014.

I want to conclude by saying that just like Mini-Europe, where enormous and impressive buildings and constructions are reduced to Lego-style castles, this little excursion has shown that the question of whether or not the EU is democratic can not be reduced to a 'multiple choice question' simply answered by 'yes' or 'no'.

This question will keep us busy for many years to come and I am very grateful that I will be able to contribute to this debate, through my special chair on "EU Democratic Governance."

5. Words of thanks

When more than ten years ago, I heard about the fact that one was setting up a Bachelor in European Studies at Maastricht University, my immediate reaction was that I want to be part of this endeavour of 'constructing Europe'. And it was as exciting and rewarding as setting up the European Union must have been, we were heading somewhat for the unknown. We did not wander through the Alps like Monnet did but we did ponder for many hours at the Café de Pieter how to set this up.

There was excitement in the air and we all in it together. It thus does not come as a surprise that there are many people to thank at this stage.

First, I have to thank Rein who supported me from the very beginning first as my Head of Department and then as Dean where he appointed me as Associate Dean and we worked together in the Faculty Board. He was also instrumental in this appointment and provided me with many other opportunities, one of which is to be the Director of the Graduate School of this faculty. In this new job Karin and Thomas Conzelmann have to be thanked for being very encouraging and Alexandra, Josje and Lidwien for providing consistent support and for being by my side.

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At the faculty I then quickly made other friends, hopefully for life, Esther and Patrick. Life without Esther would only be half as fun and with whom else can one discuss such diverse topics such as 'tofu moms' and risk regulation? Patrick with his large helpings of wit turns every small dinner into an event.

Many other encounters have ensued that go beyond being mere colleagues and here I can only name a few: Heidi, my wonderful Austrian host, Elissaveta, Paul, Christine and my 'train-buddy' Bram Akkermans and my 'Campus neighbor', Melissa Beltgens.

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I would also like to take this opportunity thank my wonderful parents for unconditional love and unconventional wisdom right from the start. They taught me and my sister to embrace the concept that the 'journey matters just as much as the destination' and they stand by us every step of the way.

There are no words to express what I feel for my sister who has been sticking with me through thick and thin for more than forty years. This also goes for my best friend Kati who is also here today. Long live: 'from Bad Ischl to Brussels and Berkeley'!

I am also not sure I would be here today without San who embodies a unique combination of relentless calm and love. To say it with a very old song: "the only truth I know is you."

And of course, my beloved daughters: Anna and Sophie have made it all worthwhile. In times of leaning in; where women proclaim from across the Atlantic that they cannot have it all, our daughters believe they can.

And I very much hope so- and wish that we help them along the way.

Ik heb gezegd

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