Politics and Governance
Open Access Journal | ISSN: 2183-2463
Volume 3, Issue 1 (2015)

Special Issue

# The Role of Expert Knowledge in EU Executive Institutions

Editors

Åse Gornitzka and Cathrine Holst

COGITATIO

Politics and Governance, 2015, Volume 3, Issue 1
Special Issue: The Role of Expert Knowledge in EU Executive Institutions

Published by Cogitatio Press
Rua Fialho de Almeida 14, 2º Esq.,
1070-129 Lisbon
Portugal



Available online at: www.cogitatiopress.com/politicsandgovernance

# Table of Contents

**Politics and Governance (ISSN: 2183-2463)**
**2015, Volume 3, Issue 1, Pages 1-12**
**Doi: 10.17645/pag.v3i1.271**

Editorial

# The Expert-Executive Nexus in the EU: An Introduction

Åse Gornitzka [1,2,*] and Cathrine Holst [2]

[1] Department of Political Science, University of Oslo, 0851 Oslo, Norway; E-Mail: ase.gornitzka@stv.uio.no
[2] Arena—Centre for European Studies, University of Oslo, 0855 Oslo, Norway; E-Mail: cathrine.holst@arena.uio.no

* Corresponding author

Submitted: 26 March 2015 | Published: 31 March 2015

**Keywords**
decision-making; European Union; expert knowledge

**Issue**
This editorial is part of the special issue "The Role of Expert Knowledge in EU Executive Institutions", edited by Professor Åse Gornitzka (University of Oslo, Norway) and Dr. Cathrine Holst (University of Oslo, Norway).



## 1. Introduction

Expertise has played a pivotal role in EU executives since the European Union (EU) was established, but its significance is arguably increasing and takes on new shapes. This issue explores the role and use of expert knowledge in decision-making in and by EU executive institutions. Developments in the EU are decisive for executive organisation and politics in Europe, in particular due to the position of the European Commission as the EU's executive centre, but also because of the growing number of EU-level agencies. What characterizes EU's executive organizations' reliance on expert advice and judgment? How is the use of expertise organized? And what are the implications of expertise organisation for experts' performance and interactions, policy outcomes, institutional dynamics and democratic legitimacy? This introductory paper gives an overview of how these questions have been addressed in contemporary study of the European Union and serves as an introduction to the in-depth analysis provided by the contributions to this special issue. But first, we explore the major argument as to why it is relevant to centre analytical attention on the nexus between *expertise* and *executive* institutions in the political-administrative systems, and second we look at why analysis of this relationship is especially warranted in the context of the EU's political-administrative order.

## 2. Why Executives? Why EU? Why Expertise?

Public administration has a central role in the preparation and implementation of public policies, and in regulating what kinds of actors, problems and solutions have access to processes of policy-making. In complex political-administrative orders, public administration has a compound role that extends across most stages of the policy process and the traditional division of powers (Vibert, 2007). Its influence lies in taking initiative, shaping the policy agenda and the policy alternatives, and drafting policy texts before formal decisions are made. Public administrative bodies also exert influence in the process of putting formal political decisions into practice, monitoring and interpreting the effects of policy and channelling feedback on how policies work back to the political-administrative system, and thus laying the foundation for new cycles of policy making. Moreover, as carriers of norms and values and basing their authority on principles of hierarchy, rule of law and expertise, bureaucracies have intrinsic value that extends beyond their instrumentality (Olsen, 2010). This institutional complexity is also evident in the EU. The overall development of the EU shows signs of an emerging executive system upheld by a political-administrative order that sets it apart from traditional international organizations and implies a profound transformation of executive politics within the EU (Egeberg, 2006). The European Commission (Commission)

harbours organised capacity for policy making at the supranational level and carries most of the organizational and behavioural characteristics of "normal" executive bodies at the national level (Egeberg, 2006; Wille, 2013). With executive institutions at the EU level as a node, this executive order spans governance levels and includes multiple types of actors (Curtin & Egeberg, 2008).

Research on the EU's multi-level administrative system relates to a wider set of issues that concerns modern political order's reliance on expert advice and judgement. In constitutional democracies the "will of the people" does not rule unfettered by concerns for other core values: rule of law, the concerns of the "past and future" as opposed to the hegemony of the present, the rights of the especially affected and minorities to be protected from the "tyranny of the majority", but also values attached to professional concerns and basing common decisions on specialized knowledge and factual evidence, to ensure their "truth-sensitivity", and so the quality of policy outcomes (Christiano, 2012; Holst & Tørnblad, 2015 (this issue)). The starting point for this paper then is that: 1) we can expect that differences in the organization of political-administrative institutions will affect the ways in which such concerns are blended, balanced, justified and justifiable; 2) principles of expert-based decision-making are part of corner stone values in modern political orders, but do not necessarily find themselves in a *settled* position within such orders.

The role of expertise in political-administrative systems is an issue that is as perennial as it is topical, dynamic and seemingly paradoxical. On the one hand there is a demand for and expectation that policy-making should be based on evidence and facts and in accordance with, or at least guided by, what *experts* have to say; there is an increased scope for the particularly knowledgeable—those who know non-trivially more than most people within a domain, and that have "a capacity to deploy or exploit this fund of information to form beliefs in true answers to new questions that may be posed in the domain" (Goldman, 2011, p. 115). Knowledge production has during the previous decades grown exponentially, making the pool of specialized information potentially of relevance for policy a vast ocean of knowledge. "Knowledge-based democracies" are embedded in knowledge-based economies and societies. Different kinds of expertise are seen as essential for addressing complex problems and for managing high pace technological change and for regulation of risk prone issues and activities. The regulatory state has delegated powers to specialized agencies, staffed by purportedly neutral experts, partly based on the argument that they can carry out policies with a level of efficiency and effectiveness that politicians cannot match (Majone, 1999, p. 4). Furthermore, competent and professional bureaucracies are a key factor of quality of government and quality of life (Rothstein, 2012). In addition, a myriad of expert advice arrangements are established and expected to contribute to enlightening and improving on the problem-solving credentials of policy- and decision-making (Fischer, 2009). Citizens seem moreover to accept decision-making on these terms as legitimate and place trust in procedures and institutions that privilege experts and expert opinions, an acceptance and trust that is intimately linked to modern society's functional expert dependency or the fact of expertise (Kitcher, 2011): It is impossible—and most people recognize that it is impossible—to make rational political decisions in complex societies like ours without relying extensively on expert advice and even expert decisions.

At the same time, the authority of professionals, scientists and science and the powers of the "unelected" appears as more contested. Professional elite monopolies in the governance of societal sectors have been under attack from an increasingly informed public in the age of mass higher education and easy access to information. In public sector reform the rule/role of professionals in welfare state governance and public bureaucracies has been challenged, and professions are perceived as self-serving "villains" producing public sector inefficiencies (Sehested, 2002). In political decision-making the distinction between beliefs based on normative views and technical knowledge are contested and blurred; is- and ought-questions, facts and values, descriptions and prescriptions are often intertwined, the argument goes. Specialized knowledge is enlisted in the service of special interests or mustered as political ammunition in adversary decision-making. Both elements of "scientization" of politics and "politicization" knowledge can be observed (Boswell, 2008; Ezrahi, 1990; Fischer, 2009; Jasanoff, 1990; Marcussen, 2006; Schofer & Meyer, 2005; Weingart, 1999).

In the debate on the legitimacy of political orders, the tension and dependencies between "politics and expertise" has been seen as primarily relevant for inter-institutional relationships between majoritarian institutions representing the will of the people and non-majoritarian public administration. Yet, the role of expertise is inherent in most institutions in a modern political order and more complex than a simple dyadic relationship between the elected and the unelected could lead us to believe. In the judiciary, legal professional standards and expertise are at the base of a well-functioning system and expert testimony is a recognized and integral part of it (Jasanoff, 1997). In legislative politics the elected remain "amateurs" with no special claims on specialized knowledge. However, the specialization of parliamentarians' work within sectorally specified committees, an increase in parliament staff resources, the use of public hearings, lobbyists and interest groups providing expert information, and interrogating professional news media speaking "truth to power" can be seen as signs of an increasing influx

of specialized expertise and "expertification" processes also within the legislative branch, in civil society and the public sphere, and the development of procedures and mechanisms to hold officials, professionals and different groups of experts to account (Blichner, 2015 (this issue); Bovens, 2007; Campbell & Laporte, 1981; Egeberg, Gornitzka, & Trondal, 2014b; Fleischer, 2009). Consequently, framing the role of expertise in a political system as a pure antagonism versus the democratically elected, accountable political institution and (runaway) technocracy or "epistocracy" (Estlund, 2008), misses some of the core dynamics on the role of expertise and the normative complexity involved: Knowledge-based decision-making and power to expertise are not something one can be "for" or "against" per se, but rather something that is more or less legitimate or illegitimate depending on the more specific organization and behaviour of actors. This must also be the approach to the study and assessments of EU developments: the expansion of EU competencies has prompted a need for expertise in new areas and a specialization of policy-making in both the executive and the legislative branches, which has allowed for stronger every day interaction between different institutions around specialised policy issues (Egeberg, Gornitzka, & Trondal, 2014a). On the other hand, this self-same expansion challenges existing systems and notions of democratic accountability and legitimacy. If anything, this calls for systematic investigations and analyses of how more exactly expertise is organized, institutionalized and held to account within this political order, and the implications of concrete interventions, developments and institutionalization patterns.

### 3. Institutionalizing the Expertise-Executive Nexus

For the executive branch of government there are several ways in which expertise can be organized into policy-making. This universe of organizational ways and models has been mapped and analysed in research. Our special issue contributes to this ongoing academic endeavour, but variations in organizational forms and institutionalization are also something executive organizations themselves are aware of, reflect on, and contribute to consolidate or transform, see for example Holst and Moodie (2015 (this issue)), analysing the Commission's public communication on its use of expertise and expertise organization. Generally, expertise arrangements vary in location (expertise located both within and outside the central government apparatus), in permanence (ad-hoc temporary versus permanent arrangements), in how rule-governed they are (formal or informal), and in how closely connected they are to the political centre of executive institutions. Most political-administrative systems will draw on a combination of ways of organizing expert advice (Craft & Howlett, 2013). Executive organizations' staff represent considerable in-house expertise and the backbone of professional bureaucracies. Firstly, the degree of professionalization of bureaucracy is an indicator of executive capacity (Fukuyama, 2013). Principles and practices of meritocratic recruitment to administrative bodies and the weight given to what types of formal professional qualifications are in themselves central in defining the expert-executive nexus. Specialized and exclusive skills are at the root of the power of professions in bureaucracies and in societies at large (Christensen, 2015 (this issue)). Consequently, in order to know the role of expertise in an executive order we have to examine the extent to which bureaucrats are recruited and promoted on the basis of merit and what kind and level of technical expertise they are required to possess (Fukuyama, 2013, p. 352). As a result, changing recruitment policies and practices, such as recruiting on the basis of specialist rather than generalist qualifications in the Commission (Ban, 2010; Christensen, 2014), might both reflect and contribute to changing dynamics in EU policy-making and "technocracy". Another example is how the Commission balances meritocratic recruitment and the need for specialization and particular professional competences with other concerns, including the bureaucracy's claim to be demographically "representative" (Trondal, Murdoch, & Geys, 2015 (this issue)).

Secondly, not only the type of in-house expertise and professional capacity is important for the expertise-executive nexus; so are the other organisational properties of bureaucracies. As participation in policy-making is defined by the formal position/offices in the organizational structure that draws up the defined sphere of competence (vertical and horizontal specialization) in line with Weberian bureaucracy as an ideal type (Weber, 1971), we can expect that expertise structures follow organisational specialisation. Bounded rationality of decision-makers in an organization means that the attention of policy makers is limited and bureaucrats' search for information trails organizational structures. Hence, contact patterns can be expected to follow bureaucratic departmental boundaries and hierarchical structures of an organization will channel the exchange and processing of information and use of expertise (Egeberg, 2012). Main information and decision-making premises come from the political and administrative leadership and from in-house expertise found within departments and agencies established under a unit's aegis.

When the use of expertise follows intra-mural organizational boundaries, it also becomes relevant to see whether capacity is organized in specialized advisory positions (permanent and temporary) or advisory units within the organization, i.e. officers or subunits that are expected to be especially oriented towards an expert role with full-time permanent staff that are specialized in producing professional advice, information,

and knowledge. In the case of the Commission, the establishment of the Joint Research Centre has created specialized capacity for providing policy-relevant scientific input to European policy-making. The capacity for expert policy advice has also been housed in "internal think tanks" such as the Bureau of European Policy Advisers that, under the Barroso Commission, reported directly to the Commission President and operated under his authority. Such positions and units can also be reserved for particular professions, organizationally anchoring the role of specialised professional skills. Johan Christensen (2015 (this issue)) finds however that both recruitment and organizational structures of the Commission tend to emphasise specialization less than previously assumed. For example, even if there are generally more economists staffed, and so a quantitative increase, this does not necessarily imply "strong expert roles" for economists in a situation where the staff hired through economics competitions has dropped, and there are few separate units for economic analyses.

Moreover, a second important dimension in the organization of in-house expertise is the extent to which a vertical specialization has taken place, establishing specialized/regulatory agencies that are vertically separated from ministry departments and hence at arm's length from direct political steering. If organization matters, then "agencification" will tend to secure that independent expert considerations are funnelled into the policy process (Egeberg & Trondal, 2009). Studies of the growing addition of European level agencies point to how vertical specialisation has implications for what we have labelled the backbone of bureaucracies, i.e. its staff qualifications and expertise. Studies show that in agencies recruitment and selection of staff is based on specific scientific or technical knowledge: whereas staff in the Commission tend more to be generalist—and even more generalist than commonly assumed—staff in European agencies are largely made up of specialists, with professional qualifications matching the specialisation of the Agency, such as scientists specialised in medicine, veterinary science and subareas of engineering (Suvarierol, Busuioc, & Groenleer, 2013). Agency staff have been shown to lean towards having technocratic attitudes supporting the idea that legitimacy and accountability of EU agencies builds on expertise and should be based on professional standards, as well as on public approval of their work (Wonka & Rittberger, 2011). Christoph Ossege's study of three European agencies (Ossege, 2015 (this issue)), shows how the expertise that regulatory agencies such as the European Medicines Agency (EMA), the European Chemicals Agency (ECHA) and the European Food Safety Authority (EFSA) draw on is a sufficient condition for policy autonomy from the Commission when providing advice. Due to the multilevel character of the EU's executive order and an increased leverage for "agents" spurred by a situation of multiple "principals", the relationship between expertise and agencies' policy autonomy may even be stronger in the EU context than in comparable cases in member states or in more stringent federal systems such as the US (Zito, 2015 (this issue)).

The extramural model for bringing expert advice into policy-making also comes in several versions, be it directly through government funded research programmes, government-supported policy research centres/think-tanks, ad-hoc purchase of consultancy services or research projects, conferences, or indirectly via media, or expertise brought in through lobbying. For a supranational executive, "externalization" of expertise implies relying to a large extent on national knowledge and expertise systems and in particular the expertise housed in *national* administrations. Several of the contributions to this issue point to the importance and implications of experts from national administrations in several stages of the policy process. Jarle Trondal et al. (2015 (this issue)) analyse the Commission's use of a set of so-called seconded national experts (SNE), typically national civil servants bringing in knowledge of their issue area to the Commission, while at the same time communicating back their experiences and knowledge from EU executive levels to the member states. This kind of personnel is on the one hand external in the sense that they are recruited on a temporary basis from member states' administrations in areas where expertise may be lacking within the Commission's permanent staff. On the other hand they are internal to the supranational executive as they are full-time staff of the Commission department and their de facto role conceptions as experts are significantly shaped by their supranational organizational affiliation and socialization, as well as their educational background (Trondal et al., 2015 (this issue)). Nationality and other demographic variables cannot explain how strongly such personnel are oriented towards an expert role when working for the Commission.

Expert committees are key instruments of modern governance and a paramount organized mode for channelling external input to executives at national, sub-national and supranational levels (Balla & Wright, 2001; Craft & Howlett, 2013; Krick, 2014), and a prominent way of organizing expertise for the executive also in the EU. Committees as collegial bodies vary in their mandate, permanence and composition, and whether they are expected to make formal and binding decisions or produce advice. Yet their implications for the expert-executive nexus are considerable. This is particularly visible in the everyday policy-making that takes place within the elaborate system of expert groups that the Commission organizes (Gornitzka & Sverdrup, 2008; Hartlapp, Metz, & Rauh, 2014; Metz, 2013). Within the overall institutional architecture and set of formal decision-making rules of the EU there is a considerable diversity in modes of policy making in how the everyday policies are shaped and implemented.

Member states' government and administrative bodies are coupled to each other and with the Commission in expert groups, but such committees are also important venues through which a range of other external actors accesses the EU policy-making process (Gornitzka & Sverdrup, 2015 (this issue); Holst & Moodie, 2015 (this issue)). As is the case with national governments, advisory committees can be a way to address the dual challenge of securing technical expertise for policy making as well as responding to demands for representation of interests and for accountability (Krick, 2014). In the EU expert groups system, this is an "everyday" microcosmos of policy making. However, the shape and role of this part of the policy-making system varies considerably in different policy areas (Gornitzka & Sverdrup, 2011, pp. 52-54) and issue areas. Moreover, the use of expert groups is multi-modal and extends beyond the technocratic acquisition of advice (Metz, 2013). Bart van Ballaert (2015 (this issue)) shows that the Commission uses expert groups in around 1/3 of its policy initiatives and then primarily as an instrument to reduce uncertainty and not as a means to offset the salience of issues. For issues that cut across policy areas and that involve standard-setting, the lead DG is likely to make use of the expert group system. Saliency as an issue characteristic does not seem to have such an effect; there is little evidence that the DGs consult outside experts, from member states, science or interests groups—in the "narrow" space of committees and groups—in order to build consensus in contentious matters.

Also, within European agencies much of the actual work is done by external experts and scientists via committees and expert panels established as part of the formal structures of an agency. Suvarierol et al. (2013, pp. 920-921) point to how national experts participating in these committees and panels are drawn from national expert-based administrations. Their role conceptions are heavily tilted towards expertise and decisions in these fora are based on professional rules, criteria and standards rather than national interests or supranational norms. In this case "working for Europe" means basing decisions and recommendations on scientific reasoning and technical arguments. In fact, national experts taking part in the committees and panels of European agencies may come from the national level with double institutional affiliations, i.e. both national agencies and university/research institute positions. Contributions to this volume elaborate complexities in this type of nexus between experts and executives, for example in a case where national and EU agency expertise are competing and contestations are enmeshed in conflicting interests and competing ideas. Klika's analysis of the implementation of the REACH directive shows how the organized involvement of member states regulatory agencies in authorization procedures is not only based on expert assessments, but includes political considerations in the sense that national interests are explicitly represented in committee deliberations (Klika, 2015 (this issue)). However, in the end the responsible agency (in this case, the European Chemicals Agency) does not falter faced with opposition from national capitals when making its recommendations.

External experts and advisors may also be coupled to policy-making through informal structures and networks. This implies that shared norms and ideas forge the base upon which executive and external experts relate with each other in the policy process. From a cultural perspective, cultures and norms of appropriate behaviour may be as salient in shaping expert-executive relationships as formal organisational arrangements. In knowledge utilisation research, such cultural explanations have been a starting point in accounting for "gaps" between expertise and executives (Caplan, 1979; see also Holst & Moodie, 2015 (this issue); Rimkuté, 2015 (this issue)). Some types of information behaviour and contact patterns become institutionalized as "good administrative behaviour" and "infused with meaning" beyond the task of instrumentally seeking expert advice to policy briefs or substantiating mobilizing expert support for controversial proposals (see also Holst & Moodie, 2015 (this issue), on the logic of "institutional decoupling"). Executive bureaucracies can thus develop departmental cultures that are conductive to epistemic orientation in policy making and shape their interaction with external expertise (see also Gornitzka & Sverdrup, 2015 (this issue)). As a result, policy communities can be formed around individual DGs and agencies (Coen, 2007). Such communities involve a limited number of participants that share similar ideologies and values and engage in frequent and high quality interaction to an extent that they may even be referred to as "epistemic communities" (Cross, 2015 (this issue)).

For understanding the expert-executive nexus, an important line of investigation is to see how formal organisational arrangements *interact* with informal norms, traditions and ideas about expertise. Long engagement in expert venues can turn into sites for socialisation into common European expert cultures speaking the same expert language, merging agency staff and external experts (Suvarierol et al., 2013; see also Trondal et al., 2015 (this issue) on "resocialization" and self-perception of seconded national experts). Moreover, the role that experts can play in policy making via epistemic communities is conditional. As underlined by Mai'a Cross (2015 (this issue)), research on European integration can, on the one hand, demonstrate that the configuration of a supranational institutional set-up, shared values, and transnational interactions in Europe has been conductive to the establishment of influential knowledge-based networks of actors. In such cases, networks of experts that share specific professional behavioural rules and references—based inside or outside formal organizations—can exercise collec-

tive agency beyond the formal mandate of their organization and be able to persuade others of policy initiatives that were not previously on the table. On the other hand, Cross' case study of EU security agencies importantly identifies the *limits* of expertise in influencing the trajectory of integration. She argues that the type of institutional context and type of professional background affects the propensity of networks of experts to form epistemic communities. Based on the analysis of the European Defence Agency and the EU Intelligence Analysis Centre two factors stand out in particular as limiting the possibility of forming epistemic communities: the strongly hierarchical bureaucratic structure within which experts work and the characteristics of their professions (secretive and prone not to sharing information with each other).

## 4. What Type of Expertise for What Type of Executive? A Sketch of Ideal Type Models

These different characteristics and dimensions of the expertise-executive nexus can be systematized into a set of ideal type patterns or even models that several of this special issue's contributions shed light on.

Firstly, we could talk of a *supranational expertise model* where policy-making takes place mainly within the executive institution itself. Here, attention is drawn to the type of expertise that the Commission and other executive bureaucracies within the EU hold and how that affects policy processes and implementation in the EU. Particularly important is how Commission' departments relate to the parallel or complementary expertise of EU agencies. This model assumes that participation in policy-making is reserved primarily for the supranational executive body itself, and in particular the Commission, as the executive centre, seeks to assert its autonomy, especially from the member states but also from other external actors. In-house professional capacity and meritocracy becomes the basis for autonomy of action for the executive and the platform for its impact on decision-making at the EU level and in inter-institutional relationships, and in the implementation of policy within the member states. Parallel to the observation of bureaucracies of national political systems, the Commission's main source of information will be its own staff and subordinate bodies, especially agencies to the extent the Commission serves as their authoritative principal. A striking example of something like this model arguably at work is a case this issue presents on the Commission's influence in an area where it interestingly does not hold formal competences. Marianne Riddervold and Hsuan Chou (2015 (this issue)) argue that the de facto influence of the Commission in the formally intergovernmental decision-making of security and defense policies and external migration is anyway substantive and captured by its use of expertise. They find that the Commission used its expert arguments in order to influence the member states and other actors' positions by linking intergovernmental discussions to policy areas where it holds (cross sectorial) expert authority, but also by presenting convincing expertise-based arguments. There are, however, limits to supranational expertise even in this case, since expertise as the basis for influence is used next to both institutional circumvention through informal consultations and strategic alliances with members states that share the Commission's preference for integration. Another relevant example from this special issue is analysis of how the Commission responds to criticism in its public communication on the role and use of expertise in EU policy-making. Despite a declared openness to "knowledge plurality", the Commission goes a long way in problematizing and criticizing external critics' demands for "democratizing expertise" and more inclusive expert arrangements (Holst & Moodie, 2015 (this issue)).

Secondly, *a multi-level administrative model* could occur, where the Commission and EU agencies involve national ministries and other national administrative bodies in policy making through formal and informal linkages. In this model participation in policy making remains within the executive domain, but it incorporates the idea that bureaucracies are open systems that interact with their administrative counterparts from other levels of government in a multi-level executive system. The EU has taken on main hallmarks of such an executive model with frequent interpenetrations of national and European level administrations (Trondal, 2010). This multi-level administrative policy-making has two possible interpretations. It has on the one hand been argued that member states' administrations in this model *capture* the policy process that takes place within the European executives, not least due to the latter's dependence on a significant amount of national level expertise. This will give member states an opportunity to put their mark on policy formation and implementation beyond the institutional settings where they are formally expected to exert influence over policy decisions, that is, primarily in the Council's decision-making and in the comitology committees, where member states oversee the implementation of policy. This interpretation emphasises the interest and ability of national governments to influence, monitor, and control policy-making within the Commission.

The contention that the Commission is leaking power to national capitals in this way is at odds with the growing evidence in support of an alternative interpretation (Egeberg, 2014; Egeberg & Trondal, 2011): This model of policy-making in the EU is an indication of a system with high level of administrative cooperation and integration and where national and EU-level administrative bodies jointly make up an executive order. The Commission is then seen as inviting national administrations into the policy-making process in order to increase information as well as to promote

administrative integration and interaction. For example, Trondal et al. (2015 (this issue)) can be read along these lines. Their findings on the orientation of national seconded experts in the Commission do not support the idea of national capture. Moreover, the high degree of involvement of national officials in expert committees and networks can been seen as a model for the Commission to develop a structured and organized connection with national officials, thereby also perforating national administrations. Studies of Commission expert groups find that these are not venues where policy making primarily takes place in an intergovernmental mode. This is an organized context that evokes multiple and multifaceted roles for national officials (Egeberg, Schaefer, & Trondal, 2003), that is, they show mixed behavioural patterns that are not consistent with the idea that the Commission becomes captured by member states via this mode of policy-making. Information is shared and interpreted in organized interactions among national and Commission officials. This affects the identification of a common set of beliefs across administrative levels about the main problems and the causal mechanisms at work in a policy area (Radaelli, 2003). It implies that the Commission can draw on the national policy expertise as well as informally "sound out" the potential reception of policy proposals in national administrations. Also van Ballaert's (2015 (this issue)) findings with respect to the Commission's actual use of expert groups (to reduce uncertainty) go against the idea the expert group system represents a "nationalization" of the EU executive.

Thirdly, there is *the science-oriented model*, where researchers and independent scholarly experts are brought directly into the policy process; through committees, or special positions attached to different levels of the supranational executive. Here the underlying rationale is that a bureaucracy is organized to house and foster specialized expertise. However, bureaucratic organizations have limited resources as repositories of knowledge, and for gathering and processing scientific information by themselves. Thus, they are expected to link to external scientific expertise. From such a perspective, the autonomy and influence of an administration is connected to its ability to present itself as neutral, and to ground its actions in updated and specialized knowledge. The administration is seen as deriving its legitimacy from principles of enlightened, knowledge-based government, and both in-house and external experts are judged primarily on the basis of their epistemic performance (Holst & Moodie, 2015 (this issue); Olsen, 2008). This is the case in national administrations—both national ministries and national agencies. The latter institutions in particular are organized at arm's length from a direct political steer, and have developed strong connections to parallel scientific communities and research institutions (Gornitzka, 2003). At the level beyond the nation state, international organizations in general often establish formal and informal channels for scientific input to the policy process (Andresen, 2000; Haas, Williams, & Babai, 1977). Scientific expertise has the added attraction as a source of information because it may transcend the bias of information imbued with national interests. This latter aspect would also apply to EU executive institutions. In the EU, increased complexity and "technical" uncertainty in governing modern societies have increased the role of scientific arguments and the role of expertise (Ballaert, 2015 (this issue); Radaelli, 1999). The nexus between the European executive and scientists underlines the European administrative system as an epistemic, scientized space. Drawing on scientists as the main information providers would thus legitimize the executive bodies' autonomous basis for action, independent of national, societal, and partisan interest, and would potentially buffer it from the political and intergovernmental logic of policy making. In an EU executive context, this would seem to apply not least in the case of the agencies: The horizontal specialization involved in establishing (semi)independent regulatory agencies can be expected to affect the organizational foothold that science has within an executive order. That is, given that the agency level has in many cases the formal task of providing science-based advice and regulatory decisions, how agencies actually use scientific expertise is consequently a key to understanding the science-oriented expert executive nexus. Several of the cases discussed in this issue also point to how the presence of agencies at the European level have implications for how science is funneled into decision-making and the implications of this not least for agency-Commission interactions. As argued, for instance, in the case of ECHA, EMA and EFSA (Ossege, 2015 (this issue)), the scientific expertise that these agencies draw on is the basis for their ability to maintain an independent advisory role vis-à-vis the Commission.

A further step towards uncovering the mechanisms involved in the use of scientific expertise is provided by Rimkuté (2015 (this issue)). She analyses how a European agency's (European Food Safety Authority) use of scientific expertise is affected by pressures from its external environment and the agency's internal expert capacity. She finds that in the case of pesticide regulation where the Agency had strong internal capacity to produce scientific advice (the EFSA's Pesticide Unit), but was faced with controversy among political actors and differing scientific conclusions, the Agency used scientific evidence in a "strategic substantiating mode". The Commission's position as risk regulator and as the most important actor in EFSA's environment defined new and stricter standards of risk assessment (precautionary principle) which in turn led the agency to rely on one type of scientific evidence over another. On a general level, this demonstrates that the use of scientific expertise has to be theorized and analyzed by tak-

ing into consideration internal organizational factors as well as environmental and case specific conditions.

However, there are also limits to scientizaton: Expert dependence that several of the cases analyzed in this special issue refer to does not necessarily lead to scientific expertise trumping other decision making premises in inter-institutional decision making at the supranational level. The Commission's proposal for regulating trade on Seal products is illustrative (Blichner, 2015 (this issue)): The proposal was based on internal and external scientific assessments but was challenged by the European Parliament and pressure groups on ethical grounds/and with reference to assessment of science from a perspective of animal welfare. This indicates that scientization of policy making is conditional—depending on the types of policies or issues, what level of specialized expertise they are seen to demand, epistemic uncertainty as well as on degree of politicization.

Finally, there is *the "society" model* that assumes a direct relationship between societal actors and public administration, tight links between supranational executive bureaucracies, societal, non-governmental actors, including consultations with private corporations and businesses, EU social partners, and civil society associations. A pluralist idea suggests that societal interests and affected parties have a legitimate right to be heard and have their views taken into consideration. The authority and legitimacy of executive bodies are derived from opening up to, channelling, and mediating different political forces, that is, it reflects deference to principles of input legitimacy, representation of societal interests, and attention to experience-based expertise. Administrators need information and support from such groups for making and defending their policies in their relationships with other political institutions; and such groups can use these organized links to further their interests and perspectives on policy issues (Peters, 1995, p. 181). As is the case in national administrations, the Commission will be interested in cultivating a relationship with business groups and organized interests as providers of information about grass-root preferences and of factual information in complex policy areas (Bouwen, 2004; Broscheid & Coen, 2007; Coen, 2007). Societal groups make claims to represent specialized and professional information as well as experiential expertise (Greenwood, 2007).

Several studies report a triangular relationship between expertise, executives and society at several levels and stages of the policy processes. The role of ad-hoc expert venues is a case at hand. Commission expert groups bring national officials from corresponding ministries and agencies into interaction with Commission departments. As highlighted earlier, the externalization of expertise that takes place within the expert groups are in this way embedded in a multi-level administrative system (Gornitzka & Sverdrup, 2015 (this issue)). However, as societal actors take part in 40 percent of all expert groups the overall pattern of participation in expert venue is consistent also with the Commission as a societal responsive executive that bring into policy making a mix of different types of actors. "Pure" society oriented expert groups are indeed rare, but societal representation from industry, "social partners" or NGOs are frequently blended with participation from scientists and academics. Also the factors that prompt Commission departments to include "society" differ between types of societal actors: the logic of inclusion of industry and corporate actors into expert venues is different from the logic applied to, for instance, NGOs. Overall these findings suggest considerable heterogeneity in the European executive's link to external expertise in the preparatory and implementing stages of the policy process. Also the role of expertise plays out differently for European agencies when they deal with private stakeholders than with their Commission parent or partner departments. Vis-à-vis the latter, the European Medicine Agency, European Chemicals Agency and the European Food Safety Authority's superior specialized expertise guards their policy autonomy, whereas with strong private stakeholder with considerable technical and scientific capacity of their own, agencies engage in procedural insulation in order to protect their independence (Ossege 2015 (this issue)).

## 5. Assessing Expertise in Executives: Normative Justification and Institutional Variation

Finally, there is the question of how to assess the normative legitimacy of EU expertise arrangements, and—key for this special issue—how this question of the legitimate, or illegitimate, use and role of expertise and experts in policy-making is linked to different dimensions of the organization and institutionalization of the expertise-executive nexus. Generally, questions of normative legitimacy and justification depend decisively on choice of justification criteria. Holst and Tørnblad (2015 (this issue)) introduce a distinction between intrinsic and epistemic justifications of democratic systems (Estlund, 2008; Goodin, 2003; Lafont, 2006; Peter, 2011): To be a desirable form of rule, democracy must have procedures with "truth-tracking" or "truth-sensitive" qualities that contribute to improving on decisions, but a normative defense of democracy must also refer to the intrinsic moral value of democratic procedures. It follows from this that the organization and institutionalization of expert arrangements within such systems must both fulfill certain democratic procedural requirements and score well on performance parameters. Holst and Tørnblad contribute primarily to the latter in their discussion of how to assess and measure the epistemic quality of EU experts' deliberations in the context of the Commission's expert group system.

Their concern overlaps significantly with Klika's (2015 (this issue)), as he discusses the viability of European Chemicals Agency consultation and decision procedures in light of deliberative expectations and criteria—what he refers to as "throughput legitimacy", framed as an alternative to standard notions of input and output legitimacy. There is a similar focus in the work of Blichner (2015 (this issue)), who develops a set of tests citizens and their representatives can use to hold experts to account under conditions of epistemic asymmetry (see also Holst & Tørnblad, 2015 (this issue)).

Blichner's, Klika's and Holst and Tørnblad's contributions are all illustrative of the intimate interconnections between normative assessments and organizational and institutional analysis. Blichner operationalizes his list of accountability tests in the institutional context of European Parliament-Commission interactions. Klika clarifies levels of throughput legitimacy by means of a detailed examination of formal and informal aspects of the ECHA, its procedures and the multilevel institutional context in which it is embedded; Holst and Tørnblad highlight the close relationship between experts' deliberative performance and institutional variables, and discusses ways to tackle the issue in empirical research. This highlights a common underlying point: In assessments of the normative legitimacy of expert arrangements, a set of organizational and institutional characteristics of the expertise-executive nexus will be relevant to look at, and several contributions to this volume bring our attention to how and why this is so, raising the issue quite explicitly or in more implicit terms.

First, when evaluating experts' performance and the epistemic merits of particular expertise-based bodies or procedures, what kind of experts and expertise that are consulted or delegated power on what kind of issues, is of significant importance. This is a key normative subtext in Christensen's (2015 (this issue)) contribution. If generalists are what the Commission needs to perform its task in an optimal way, recruitment of generalists are in full order. However, if the Commission's staff is also supposed to perform specialized, technical tasks that needs highly skilled specialists ready to fill "strong expert roles", current recruitment practices are more problematic.

Secondly, there is the separate question of which issues experts of whatever kind should be given extra political power on, whether they are consulted, for example as part of expert groups or committees, or whether they are delegated discretionary space to make decisions and formulate and implement policies, for example as part of the in-house expertise of an executive agency. A central, but far from clear-cut distinction runs between technical questions, questions of state of affairs, causal dynamics, and "what works", and standard-setting questions of how to conceptualize, rank and interpret principles, values and goals; between instrumental means-end issues and the moral and political issue of which ends we ought to pursue, and how we can do so in normatively defensible ways. A standard assumption in democratic theory is that the latter are questions for citizens, not for experts, for intrinsic democratic reasons, and because there cannot be "moral experts" (Dahl, 1989; Kitcher, 2011), or if there can be such a thing (Broome, 2012; Singer, 1972) the ones we should have in mind are not necessarily the technical "what works" experts. However, closer examinations and analyses of the questions experts actually engage with, also found in the contributions to this special issue (see for example Rimkuté, 2015 (this issue), van Ballaert, 2015 (this issue), Zito, 2015 (this issue)) give firm evidence that experts are routinely involved in standard-setting practices and enter "the kingdom of ends", be it because they are formally entitled to do so, because they do so informally, with conscious intent, or because they consider it "appropriate", push the limits of their mandates (as full-fledged "epistemic communities" typically would tend to do, see Cross, 2015 (this issue)), or because facts and values in many cases are inevitably intertwined. This raises obvious questions of normative legitimacy, and is a natural concern also for Blichner (2015 (this issue)) in his discussion of expert accountability in the seal ban case (see also Holst &Tørnblad, 2005 (this issue)).

Thirdly, as already suggested, both formal mandate and organization and more informal features of the institutionalization of expert cultures also need to be considered for normative reasons. It is arguably problematic for executives to seek extensive recourse to expert authority arguments of the kind Riddervold and Chou (2015 (this issue)) outline even within the domain of their formal competences, but even more problematic when they do so beyond it. Moodie and Holst (2015 (this issue)) highlight how actual Commission communication practices of subtly avoiding unpleasant facts contradict official statements of openness and transparency and cherished ideas of how knowledge utilization is to serve problem-solving and enlightenment. A normative analysis of EU executive/citizen relations will be meager if it fails to consider such informal features of accountability.

Fourthly, several of the contributors of this special issue address or touch upon the democratic merits of EU-expert arrangements. This is an underlying normative concern for Trondal et al. (2015 (this issue)) when they discuss the Commission's use of expertise from a representative bureaucracy perspective, as well as for Gornitzka and Sverdrup (2015 (this issue)) in their mapping and analysis of societal and stakeholder participation patterns in the Commission's expert groups system. Also Blichner (2015 (this issue)) could exemplify: His expert accountability tests are developed to ensure a high quality of political decisions under conditions of expertise dependence and epistemic asymmetry, but also no doubt reflect deeper concerns for democratic equality.

**Acknowledgements**

We gratefully acknowledge the contributions of the authors in this special issue and also the many excellent reviewers that generously shared their comments, criticisms and ideas in the process of making this special issue. We also thank the participants of the seminar at the Department of Politics Science, University of Oslo, 10th March 2015, where a preliminary version of this editorial was presented. Finally, without the professionalism of António Vieira this special issue would not have been possible.

**Conflict of Interests**

The authors declare no conflict of interests.

**References**

Andresen, S. (2000). *Science and politics in international environmental regimes: Between integrity and involvement*. Manchester: Manchester University Press.

Balla, S. J., & Wright, J. R. (2001). Interest Groups, advisory committees, and congressional control of the bureaucracy. *American Journal of Political Science, 45*(4), 799-812. doi: 10.2307/2669325

Ballaert, B. v. (2015). The politics behind the consultation of expert groups: An instrument to reduce uncertainty or to offset salience? *Politics and Governance*, *3*(1), 139-150.

Ban, C. (2010). Reforming the staffing process in the European Union institutions: Moving the sacred cow out of the road. *International Review of Administrative Sciences, 76*(1), 5-24. doi: 10.1177/0020852309359042

Blichner, L. C. (2015). Epistemic dependence and the EU seal ban debate. *Politics and Governance*, *3*(1), 49-60.

Boswell, C. (2008). The political functions of expert knowledge: Knowledge and legitimation in European Union immigration policy. *Journal of European Public Policy, 15*(4), 471-488. doi: 10.1080/13501760801996634

Bouwen, P. (2004). The logic of access to the European Parliament: Business lobbying in the committee on economic and monetary affairs. *Journal of Common Market Studies, 42*(3), 473-496.

Bovens, M. (2007). Analysing and assessing accountability: A conceptual framework. *European Law Journal, 13*(4), 447-468. doi: 10.1111/j.1468-0386.2007.00378.x

Broome, J. (2012). *Climate matters: Ethics in a warming world*. New York: W.W. Norton.

Broscheid, A., & Coen, D. (2007). Lobbying activity and fora creation in the EU: Empirically exploring the nature of the policy good. *Journal of European Public Policy, 14*(3), 346-365.

Campbell, S., & Laporte, J. (1981). The staff of the parliamentary assemblies in France. *Legislative Studies Quarterly, 6*(4), 521-531.

Caplan, N. (1979). The two-communities theory and knowledge utilization. *American Behavioral Scientist, 22*(3), 459-470.

Christensen, J. (2014). Recruitment and expertise in the European Commission. *West European Politics*, *38*(3), 1-30. doi: 10.1080/01402382.2014.982353

Christensen, J. (2015). The organization of professional expertise in the European Commission. *Politics and Governance*, *3*(1), 13-25.

Christiano, T. (2012). Rational deliberation among experts and citizens. In J. Parkinson & J. Mansbridge (Eds.), *Deliberative systems: Deliberative democracy at the large scale* (pp. 27-51). Cambridge: Cambridge University Press.

Coen, D. (2007). Empirical and theoretical studies in EU lobbying. *Journal of European Public Policy, 14*(3), 333-345. doi: 10.1080/13501760701243731

Craft, J., & Howlett, M. (2013). The dual dynamics of policy advisory systems: The impact of externalization and politicization on policy advice. *Policy and Society, 32*(3), 187-197. doi: http://dx.doi.org/10.1016/j.polsoc.2013.07.001

Cross, M. a. K. D. (2015). The limits of epistemic communities: EU security agencies. *Politics and Governance*, *3*(1), 90-100.

Curtin, D., & Egeberg, M. (2008). Tradition and innovation: Europe's accumulated executive order. *West European Politics, 31*(4), 639-661. doi: 10.1080/01402380801905868

Dahl, R. A. (1989). *Democracy and its critics*. New Haven, Conn.: Yale University Press.

Egeberg, M. (2006). Europe's executive centre in the melting pot: An overview. In M. Egeberg (Ed.), *Multilevel Union administration* (pp. 1-16). Houndmills: Palgrave.

Egeberg, M. (2012). How bureaucratic structure matters: An organizational perspective. In B. G. Peters & J. Pierre (Eds.), *The Sage handbook of public administration* (2nd ed., pp. 157-168). London: Sage.

Egeberg, M. (2014). The European Commission: From agent to political institution. *Public Administration, 92*(1), 240-246. doi: 10.1111/padm.12094

Egeberg, M., Gornitzka, Å., & Trondal, J. (2014a). A not so technocratic executive? Everyday Interaction between the European Parliament and the Commission. *West European Politics, 37*(1), 1-18. doi: http://dx.doi.org10.1080/01402382.2013.832952

Egeberg, M., Gornitzka, Å., & Trondal, J. (2014b). People who run the European Parliament: Staff demography and its implications. *Journal of European Integration, 36*(7), 659-676.

Egeberg, M., Schaefer, G. F., & Trondal, J. (2003). The many faces of EU committee governance. *West Eu-*

*ropean Politics, 26*(3), 19-40.

Egeberg, M., & Trondal, J. (2009). Political leadership and bureaucratic autonomy: Effects of agencification. *Governance, 22*(4), 673-688. doi: 10.1111/j.1468-0491.2009.01458.x

Egeberg, M., & Trondal, J. (2011). EU-level agencies: New executive centre formation or vehicles for national control? *Journal of European Public Policy, 18*(6), 868-887. doi: 10.1080/13501763.2011.593314

Estlund, D. M. (2008). *Democratic authority: A philosophical framework*. Princeton, N.J.: Princeton University Press.

Ezrahi, Y. (1990). *The descent of Icarus: Science and the transformation of contemporary democracy*. Cambridge, Mass.: Harvard University Press.

Fischer, F. (2009). *Democracy and expertise: Reorienting policy inquiry*. Oxford: Oxford University Press.

Fleischer, J. (2009). Power resources of parliamentary executives: Policy advice in the UK and Germany. *West European Politics, 32*(1), 196-214. doi: 10.1080/01402380802509941

Fukuyama, F. (2013). What is governance? *Governance, 26*(3), 347-368. doi: 10.1111/gove.12035

Goldman, A. I. (2011). Experts: Which ones should you trust? In A. I. Goldman & D. Whitcomb (Eds.), *Social epistemology: Essential readings* (pp. 109-135). Oxford Oxford University Press.

Goodin, R. E. (2003). *Reflective democracy*. Oxford: Oxford University Press.

Gornitzka, Å. (2003). *Science, clients, and the state: A study of scientific knowledge production and use*. Enschede: CHEPS.

Gornitzka, Å., & Sverdrup, U. (2008). Who consults? The configuration of Expert Groups in the European Union. *West European Politics, 31*(4), 725-750.

Gornitzka, Å., & Sverdrup, U. (2011). Access of experts: Information and EU decision-making. *West European Politics, 34*(1), 48-70.

Gornitzka, Å., & Sverdrup, U. (2015). Societal inclusion in expert venues: participation of interest groups and business in the European Commission expert groups. *Politics and Governance*, *3*(1), 151-165.

Greenwood, J. (2007). Organized civil society and democratic legitimacy in the European Union. *British Journal of Political Science, 37*(02), 333-357. doi: doi:10.1017/S0007123407000166

Haas, E. B., Williams, M. P., & Babai, D. (1977). *Scientists and world order: The uses of technical knowledge in international organizations*. Berkeley: University of California Press.

Hartlapp, M., Metz, J., & Rauh, C. (2014). *Which policy for Europe? Power and conflict inside the European Commission.* Oxford, Oxford University Press.

Holst, C., & Moodie, J. (2015). Cynical or deliberative? An analysis of the European Commission's public communication on its use of expertise in policy-making. *Politics and Governance*, *3*(1), 37-48.

Holst, C., & Tørnblad, S. H. (2015). Variables and challenges in assessing EU experts' performance. *Politics and Governance*, *3*(1), 166-178.

Jasanoff, S. (1990). *The fifth branch—Science advisers as policymakers*. Cambridge MA: Harvard University Press.

Jasanoff, S. (1997). *Science at the bar: Law, science, and technology in America*. Cambridge, Mass.: Harvard University Press.

Kitcher, P. (2011). *Science in a democratic society*. Amherst, N.Y.: Prometheus Books.

Klika, C. (2015). The implementation of the REACH authorisation procedure on chemical substances of concern: What kind of legitimacy? *Politics and Governance*, *3*(1), 128-138.

Krick, E. (2014). Negotiated expertise in policy-making: How governments use hybrid advisory committees. *Science and Public Policy*. doi: 10.1093/scipol/scu069

Lafont, C. (2006). Is the ideal of deliberative democracy coherent? In S. Besson & J. L. Martí (Eds.), *Deliberative democracy and its discontents*. Hampshire, England: Ashgate Publishing ltd.

Majone, G. (1999). The regulatory state and its legitimacy problems. *West European Politics, 22*(1), 1-24. doi: 10.1080/01402389908425284

Marcussen, M. (2006). Institutional Transformation? The scientization of central banking as a case study. In T. Christensen & P. Lægreid (Eds.), *Autonomy and regulation: Coping with agencies in the modern state* (pp. 81-109). Cheltenham: Edward Elgar.

Metz, J. (2013). Expert groups in the European Union: A sui generis phenomenon? *Policy and Society*, *32*(3), 267-278.

Olsen, J. P. (2008). The ups and downs of bureaucratic organization. *Annual Review of Political Science, 11*, 13-37.

Olsen, J. P. (2010). *Governing through institution building. Institutional theory and recent European experiments in democratic organization*. Oxford: Oxford University Press.

Ossege, C. (2015). Driven by expertise and insulation? The autonomy of European regulatory agencies. *Politics and Governance*, *3*(1), 101-113.

Peter, F. (2011). *Democratic legitimacy*. New York, N.Y.: Routledge.

Peters, B. G. (1995). *The politics of bureaucracy*. New York: Longman Publishers USA.

Radaelli, C. M. (1999). The public policy of the European Union: Whither politics of expertise? *Journal of European Public Policy, 6*(5), 757-774.

Radaelli, C. M. (2003). The open method of coordination: A new governance architecture for the European Union? *SIEPS* (Vol. 1). Stockholm: Swedish Institute for European Policy Studies.

Riddervold, M., & Chou, M.-H. (2015). The unexpected negotiator at the table: How the European Commission's expertise informs intergovernmental EU

policies. *Politics and Governance*, *3*(1), 61-72.
Rimkuté, D. (2015). Explaining differences in scientific expertise use: The politics of pesticides. *Politics and Governance*, *3*(1), 114-127.
Rothstein, B. (2012). Political legitimacy for public administration. In B. G. Peters & J. Pierre (Eds.), *The Sage handbook of public administration* (2nd ed., pp. 407-419). London: Sage Publications.
Schofer, E., & Meyer, J. W. (2005). The worldwide expansion of higher education in the twentieth century. *American Sociological Review, 70*(6), 898-920.
Sehested, K. (2002). How new public management reforms challenge the roles of professionals. *International Journal of Public Administration, 25*(12), 1513-1537. doi: 10.1081/PAD-120014259
Singer, P. (1972). Moral experts. *Analysis, 32*(4), 115-117.
Suvarierol, S., Busuioc, M., & Groenleer, M. (2013). Working for Europe? Socialization in the European Commission and Agencies of the European Union. *Public Administration, 91*(4), 908-927. doi: 10.1111/j.1467-9299.2012.02100.x
Trondal, J. (2010). *An emergent European exective order*. Oxford: Oxford University Press.
Trondal, J., Murdoch, Z., & Geys, B. (2015). Representative bureaucracy and the role of expertise in politics. *Politics and Governance*, *3*(1), 26-36.
Vibert, F. (2007). *The rise of the unelected: democracy and the new separation of powers*. Cambridge: Cambridge University Press.
Weber, M. (1971). *Makt og byråkrati: Essays om politikk og klasse, samfunnsforskning og verdier*. Oslo: Gyldendal.
Weingart, P. (1999). Scientific Expertise and political accountability: Paradoxes of science in politics. *Science and Public Policy, 26*(3), 151-161.
Wille, A. (2013). *The normalization of the European Commission. Politics and bureaucracy in the EU executive*. Oxford: Oxford University Press.
Wonka, A., & Rittberger, B. (2011). Perspectives on EU governance: An empirical assessment of the political attitudes of EU agency professionals. *Journal of European Public Policy, 18*(6), 888-908. doi: 10.1080/13501763.2011.593315
Zito, A. R. (2015). Expertise and power: Agencies operating in complex environments. *Politics and Governance*, *3*(1), 73-89.

**About the Authors**

**Dr. Åse Gornitzka**
Åse Gornitzka is a Professor at the Department of Political Science, University of Oslo, and Research Professor at Arena, Centre for European Studies, University of Oslo. She is also Adjunct Professor at the Department of Administration and Organization Theory, University of Bergen, and Editor-in-Chief of Scandinavian Political Studies. Her main fields of research include the role of organisational factors in EU governance, administrative integration and transformation in Europe, as well as the comparative study of national public reforms and change in public sector organisations.

**Dr. Cathrine Holst**
Cathrine Holst is a Senior Researcher at ARENA—Centre for European Studies, University of Oslo where she coordinates the project *Why not epistocracy?* (EPISTO). Holst's research interests are democratic theory, political epistemology, expertise politics, European studies, and gender studies. Recent publications are "Why democracy? On the relationship between gender democracy and gender equality in the EU", and "Jürgen Habermas on public reason and religion: Do religious citizen suffer an asymmetrical cognitive burden, and should they be compensated?" (with Anders Molander).

**Politics and Governance (ISSN: 2183-2463)**
**2015, Volume 3, Issue 1, Pages 13-25**
**Doi: 10.17645/pag.v3i1.77**

Article

# The Organization of Professional Expertise in the European Commission

Johan Christensen

Department of Sociology, Stanford University, Stanford, CA 94305, USA; E-Mail: johanc@stanford.edu;
Tel.: +1-650-646-1171; Fax: +1-650-725-6471

Submitted: 30 May 2014 | In Revised Form: 25 October 2014 | Accepted: 19 November 2014 |
Published: 31 March 2015

**Abstract**
What kind of professional experts dominate within the European Commission—lawyers, economists or others? Driven by the notion that the role of professional experts is shaped by organizational features, the article examines how different kinds of expertise are inscribed in the Commission's recruitment system and organizational structure. The analysis shows that while economics may have overtaken law as the most common educational background in the Commission, neither the recruitment system nor the departmental structure appears to encourage the development of economic expertise. The proportion of staff hired through economics competitions has dropped markedly, and there are few specialized units for economic analysis in the organization. More generally, the Commission's hiring policies and organizational hierarchy do not seem conducive to strong expert roles. The picture that emerges is that of an organization where expert knowledge is neither tied to a particular profession nor firmly rooted in the departmental structure.

**Keywords**
economic experts; European Commission; expertise; organization of expertise

**Issue**
This article is part of the special issue "The Role of Expert Knowledge in EU Executive Institutions", edited by Professor Åse Gornitzka (University of Oslo, Norway) and Dr. Cathrine Holst (University of Oslo, Norway).



## 1. Introduction

The top civil service in Britain is dominated by generalists educated at Oxford and Cambridge. In France, the most important government ministries are populated by officials with broad training in politics, law and economics from the *École nationale d'administration* (ENA). The German and Italian government administrations are staffed mainly by lawyers. And in the Scandinavian countries, the earlier monopoly of lawyers on civil service positions has been upended by the rise of economists and political scientists.

The permanent administration of the European Union (EU) is frequently described as a "technocracy" where power and legitimacy is based on expertise. But what kind of expertise dominates within the European bureaucracy is far from obvious. The EU administration is often believed to be the exclusive territory of legal experts, skilled at navigating the complex body of treaties and directives. Yet, surveys of the European Commission services have revealed that lawyers are outnumbered by economists (or by social scientists in general) both in top administrative positions and among the rank and file (Page, 1997, p. 77; Georgakakis & De Lassalle, 2008; Kassim et al., 2013, p. 40).

At the same time, some scholars have argued that professional expertise—be that in law or economics—has little salience in the Commission. The professional background of administrators is less important than their specific institutional capital, such as experience in various *cabinets* and directorates (Georgakakis & De Lassalle, 2008). Other studies also indicate that the emphasis on specialist expertise in the Commission has declined, as a result of changes in recruitment policies and requirements for greater staff mobility (Ban, 2010; Wille, 2013; Christensen, forthcoming).

This brief discussion highlights that the role of professional expertise in the European bureaucracy is a multifaceted issue. It is not only a matter of how many lawyers, economists or natural scientists there are in the administration, but also of the extent to which officials identify with their discipline and bring their professional expertise to bear in their daily work. In other words, professional knowledge has both an objective and a subjective side (Fourcade, 2009). Recognizing this dual nature of expertise is important because administrative behavior is closely related to officials' identification with different roles (cf., March & Olsen, 1989). Whether administrators identify as professional experts, civil servants or representatives of particular outside interests will influence their approach to the formulation of policies. As such, the kind of professional expertise that dominates within a bureaucracy can have major implications both for the direction of policy and the quality of decisions (Babb, 2004; Chwieroth, 2009; Christensen, 2013).

As we know from organizational sociology, the salience of different kinds of professional expertise in administrative organizations depends on features of those institutions (Fourcade, 2009). Organizational structures, cultures and policies for recruiting and promoting staff can shape the role of experts by either stimulating or eroding professional identities. For instance, organizations specialized along professional lines may accentuate distinctions between officials with different educational backgrounds, whereas specialization along sectoral lines may erase such distinctions (Gulick, 1937). Thus, while some bureaucracies are organized in ways that are conducive to strong expert roles, others are structured in ways that put professional expertise in the background.

Based on this insight, the article seeks to explore the salience of different kinds of expertise in the European Commission by examining the organization of expertise. It thus poses two questions: *(1) How are different kinds of professional expertise inscribed in the organization of the Commission? (2) What can this tell us about the position of professional knowledge in the Commission?* To answer these questions, the article analyzes new empirical data on the recruitment policies and departmental structure of the organization.

Important to note, the analysis is restricted to *professional* expertise, that is, knowledge acquired through extensive formal education in a specific academic discipline (e.g., Abbott, 1988). One can of course imagine other types of expertise that are relevant in public administration, such as knowledge about how to get proposals through the policy process. Yet, what we are interested in here is not so much the institutional know-how of officials as the influence of bodies of knowledge defined outside the Commission, be that in the economics discipline, the legal profession or some other professional group.

The analysis shows that while economics may have overtaken law as the most common educational background in the Commission, neither the recruitment system nor the departmental structure seems to encourage the development of economic expertise. The proportion of staff recruited as economists equals that of law recruits and has dropped steadily since the 1970s. And the creation of specialized units for economic analysis has so far been restricted to a small number of departments—and does not match the many legal units scattered around the Commission.

More generally, the Commission's recruitment policies and organizational structure do not seem conducive to strong expert roles. In recruitment, low educational requirements and a marked shift towards hiring generalists undercut the image of the Commission as an "expert organization". Also, the Commission's departments are generally not structured along professional lines or organized in ways that promote the generation of in-house expertise. The picture that emerges of the Commission is that of an organization where expert knowledge is neither tied to a particular profession nor firmly rooted in the departmental hierarchy.

These findings challenge the conventional narrative about the Commission as a "technocracy"—at least if we understand a technocracy as a system where expert knowledge is the primary basis of power and legitimacy. In fact, compared to other international bureaucracies, the Commission organization places remarkably little emphasis on professional expertise. The findings also provide some comfort to those who fear that economists are taking over the Commission, as there are few indications that the organization is becoming similar to economist-dominated international bodies like the International Monetary Fund (IMF) or the Organisation for Economic Co-Operation and Development (OECD).

To be sure, the type of organizational analysis employed here has clear limits, as it tells us more about the structures that may shape the use of professional expertise than about how this knowledge actually is used. Yet, it may provide a useful method for comparing the organization of knowledge across different national and international bureaucracies, since it relies on data that in many cases are readily available.

The article proceeds as follows: Section 2 reviews existing literature about the role of professional experts in the Commission. Section 3 introduces the notion of professional expertise and discusses theoretically how organizational features can shape the role of professional experts. Section 4 presents empirical data on the role of professional expertise in the recruitment system and organizational structure of the Commission. The final section discusses how the findings speak to common narratives about the role of expert knowledge in the Commission.

## 2. Expertise in the European Commission

The European Commission is by far the largest and most important executive institution of the EU, with a staff of more than 23,000. It is the principal initiator and preparer of policy in a decision-making system that includes the Council of the European Union, the European Parliament and the European Council. The Commission is a supranational body, formally independent from the Council, which represents the member states. The Commission is led by a college of politically appointed Commissioners and their political secretariats (*cabinets*). The permanent bureaucracy of the Commission (the "Services") is divided into departments ("directorates-general" or DGs), which are again divided into departments, units and sections.

The Commission is frequently characterized as a "technocracy", that is, as a body that "recognises expertise as the sole basis for authority and power" (Radaelli, 1999, p. 758). The technocratic character of the Commission is usually linked to its extensive engagement in regulatory policy-making, where "[k]nowledge, rather than budget, is the critical resource" (Radaelli, 1999, p. 759; Majone, 1996). Boswell similarly argues that expertise is the basis for the *legitimacy* of the Commission, as "the institutional structure of the Commission [implies] a strong propensity to value knowledge as a source of legitimation" (Boswell, 2008, p. 472). The idea of a European "technocracy" can of course be interpreted to mean a number of things, ranging from the kind of corporatist policy-making instituted by Jean Monnet to the fact that member states are represented mainly by experts to the central role of knowledge in EU policy-making (Radaelli, 1999, p. 759). But it is the latter interpretation we are most interested in here.

If the Commission is a technocracy, what kind of "technicians" dominates? It is commonly thought that the Commission is an organization dominated by lawyers. Given the law-based character of the European Union and the Commission's legal functions (e.g., as "guardian of the treaties") that seems like a reasonable inference. Yet, a number of studies indicate that this is no longer the case. Georgakakis and de Lassalle (2008) show that legal training dominated among top officials in the early decades of the Commission's history, with lawyers occupying Director-General positions in most DGs, including Economic Affairs and External Relations. However, economists took over many of these positions in the 1990s, replacing lawyers as the largest professional group in the top echelon of the Commission services.

The rise of economists and the relative decline of lawyers also show up in surveys of Commission administrators at all levels. Based on biographical data from 1991–1993 (n = 622), Page finds that 39 percent of Commission officials had training in the social sciences (including economics), 26 percent in law, 26 percent in the natural sciences and 9 percent in the arts (Page, 1997, p. 77). A smaller survey conducted in 2005–2006 (n = 179) finds that 41 percent of officials had their main training in the social sciences, 28 percent in law, 24 percent in the natural sciences and 6 percent in law (Ellinas & Suleiman, 2012, p. 53). And a large recent survey (n = 1793) shows that 29 percent of Commission administrators had their main educational qualification in economics or business, 26 percent in the "hard" sciences (such as math, engineering and life sciences), 24 percent in law, 15 percent in politics and other social sciences and 5 percent in the arts and humanities (Kassim et al., 2013, p. 40).

Kassim and colleagues also find great variation across departments in the educational background of officials. The proportion of lawyers was highest in the Legal Service (92%), DG Justice, Freedom and Security (46%) and DG Competition (44%), while the presence of economists (including business and statistics) was greatest in DG Economic and Financial Affairs (87%), Eurostat (63%) and DG Budget (59%). They conclude that "[w]hile lawyers are concentrated in a relatively small number of medium-size Directorates-General, mostly concerned with compliance, enforcement and regulation, economists are found in significant numbers across several Directorates-General that perform a variety of functions" (Kassim et al., 2013, pp. 40-42). Taken together, these surveys do not single out one professional group as dominant within the Commission, but they do suggest that legal expertise has been complemented with—and partly replaced by—other types of expertise, in particular from economics and related areas.

Yet the educational composition of staff can only tell us so much about the salience of different kinds of professional knowledge. Georgakakis and de Lassalle argue that while many top officials in the early decades had legal training, they were not "pure jurists" exclusively devoted to legal knowledge and conceptions of the world (2008, p. 3). Rather, having legal training was instrumental to building general bureaucratic capital, defined *within* the organization rather than with respect to external professional groups. One example is that top Commission bureaucrats in their CVs put little emphasis on their external educational achievements as compared to their internal work experience in departments and *cabinets* (Georgakakis & De Lassalle, 2008, p. 2). The authors also suggest that economists are "involved in similar strategies of accumulation of a specific institutional capital" (p. 7), in the sense that their economics background *per se* is less important than their acquired experience inside the Commission.

More generally, this argument suggests that while Commission officials may have an educational background in law or economics, they do not necessarily identify closely with these disciplines or act mainly based on ideas or norms rooted in the profession. For Commission officials, the role as a "professional ex-

pert" may be less salient than other roles, such as the role of the "administrator" devoted solely to the organization or department. And indeed, Trondal and colleagues have found that expert or "epistemic" roles are much less prominent in the European Commission than in the secretariats of other international organizations such as the World Trade Organisation (WTO) and the OECD. In the Commission, they observe, hierarchy trumps expertise and officials "do not identify with their scholarly discipline" (Trondal, Marcussen, Larsson, & Veggeland, 2010, p. 167).

Moreover, some scholars point out that new requirements that staff rotate frequently between positions have weakened the position of specialist experts in the Commission: "The new mobility system", argues Wille, "has clearly favored the generalist over the specialist. Specialization tends to diminish promotion aspects, as it restricts departmental mobility. Generalists are a lot more likely to be considered for a wider range of senior positions than officials with a highly specialized technical background" (Ban, 2010, p. 18; Wille, 2013, p. 129). It has also been argued that changes to the system for selecting staff have put specialists at a disadvantage, as the current selection procedure puts primary emphasis on very general skills (Ban, 2010; Christensen, forthcoming).

However, while these scattered arguments suggest that expert roles have organizational underpinnings, EU scholars have not systematically investigated the factors that condition the salience of professional knowledge in the European Commission. To be sure, the role of professional knowledge in the Commission is influenced by a broad range of factors, including the institution's demand for expertise and the supply of professionals from the education systems of a changing set of member countries. Yet, this article focuses specifically on the *organizational* features of the Commission that may shape the role of different types of expertise in the administration. To put some flesh on this notion, the next section provides a theoretical argument about professional expertise and the organizational factors that condition it.

## 3. Professional Expertise and Organizations

Professions are exclusive occupational groups that possess special skills acquired through extensive formal training. These skills are rooted in an abstract system of knowledge that is inaccessible to outsiders (Abbott, 1988, p. 8). Medical doctors have exclusive knowledge about how the body works and how to treat illnesses, just as lawyers have unique expertise in interpreting the law. This special expertise is the very basis for the position and power of professions in society. Importantly, professional knowledge is defined within professions, that is, in specialized academic departments or in professional associations. As such, it is to a significant degree insulated from political, administrative or corporate demands. For instance, politicians cannot at will intervene in how doctors treat cancer. (If they did, it would severely discredit the treatment.) This autonomy distinguishes professional expertise from other types of knowledge one could identify as expertise. For instance, knowledge about how an organization works, amassed through long experience in the organization, is certainly an asset for those who possess it. So is the training one gets on the job in how to carry out particular tasks. Yet these kinds of expertise are defined within the bounds of the organization and are thus of a different nature than expertise defined in external professional groups. In this article, we are concerned only with professional expertise, since this kind of knowledge in many cases has been shown to have a profound impact on public policies, perhaps most prominently in the case of economic knowledge (e.g., Babb, 2004; Chwieroth, 2009; Fourcade, 2006; Reay, 2012).

The position of different types of professional expertise varies between public bureaucracies, both across countries and across departments. For instance, the role of lawyers in the British civil service differs from the position of lawyers in the German administration or in the French bureaucracy. As the sociologist Marion Fourcade argues in the book *Economists and Societies* (2009), these differences are intimately linked to the character of administrative institutions. Fourcade demonstrates how the variation in the role and practice of economists in the U.S., the U.K. and France was intimately related to historically determined differences in their "administrative orders", that is, in the "organization and exercise of 'government'" (p. 247). For instance, the central role of economists as top bureaucrats and advisers in the U.S. was partly the result of the porous and specialist nature of the American state, whereas the marginal role of economists in the British bureaucracy was linked to its closed and generalist civil service. Central to Fourcade's argument is the point that administrative institutions not only filter the access of economists to bureaucratic positions (cf., Weir & Skocpol, 1985), but also construct the role of economic experts within the state: "By defining the terms under which economic knowledge is incorporated into public policy, public administrations have implicitly contributed to *construct* the professional role of the economist" (Fourcade, 2009, p. 25, original emphasis).

Building on Fourcade's insight about the dual impact of administrative institutions, this article argues that two organizational factors can be seen as particularly important in shaping the role of professional experts in public bureaucracies: recruitment systems and organizational structures. *Recruitment systems* vary in terms of the type of knowledge and skills that is emphasized in hiring. Officials can be selected on the basis of qualifications and skills in specialist fields, such as academic credentials in the fields of economics or law.

Strongly specialist recruitment is found for instance in the top U.S. civil service and in the Scandinavian public administrations (Peters, 2010, p. 90). There is also variation in what type of specialist expertise is emphasized in recruitment to the civil service, whether legal, economic, political or in the natural and technical sciences. Alternatively, officials can be recruited based on general skills, such as intelligence or the ability to analyze or communicate. In this case officials are expected to be able to cover any kind of position and receive any specific training on the job. Examples of generalist systems are the traditional British civil service, staffed by bright amateurs trained in the liberal arts, and the French administration, where top bureaucrats have broad training from the *grandes écoles*.

Recruitment systems shape the role of professional experts in part by filtering access to bureaucratic positions. For instance, hiring based on advanced specialist credentials in economics—say, a Ph.D. degree and proven quantitative skills—reserves positions for this particular professional group. By contrast, selection on general skills renders professional credentials irrelevant and favors a different type of candidate. But recruitment policies also contribute to constructing the role of the official. Selection procedures and recruitment categories signal to candidates which qualities are valued by the organization, thereby shaping officials' perception of their own role. Job advertisements for "economists" that ask for a Ph.D. and quantitative method skills send the message that officials will be valued as economic experts, reinforcing this professional identity. By contrast, a general advertisement for "administrators" signals to officials that their professional background is unimportant for the job and instead supports a general civil service identity.

The second organizational factor that conditions the role of professional experts is the degree of *organizational specialization along professional lines*. All complex organizations have highly specialized organizational structures, which allow the organizations to carry out their tasks. Public administrations can be horizontally specialized along a number of dimensions, including geography, purpose (sector), process or clientele (Gulick, 1937). Structures are never neutral: by bundling some issues together and keeping others apart they direct attention, structure contact patterns, establish cleavages and mobilize bias (Egeberg, 2003, p. 117; Schattschneider, 1960). Organizational specialization along *professional* lines is a form of process specialization. Specialization along professional lines means that tasks are divided between different kinds of expertise rather than according to the issue at hand. An example is a competition agency that is divided into an economic division and a legal division rather than into issue-based divisions for, say, cartels, mergers and state aid. A closely related practice is the institutional "licensing" of professional jurisdiction through the reservation of positions for particular professions (Fourcade, 2006, p. 151). Examples are job titles such as "chief economist" or "legal adviser".

Specialization along disciplinary lines concentrates professional expertise in one place, thereby stimulating further development of professional knowledge and closer links to the academic discipline. A professionally specialized unit can become almost like an academic department, with seminars, paper series and regular interaction with the outside academic discipline (Froeb, Pautler, & Röller, 2009, p. 577). But specialization along professional boundaries also establishes cleavages that reinforce disciplinary identities. The division of work into "economic" and "legal" questions reifies this professional distinction, signaling to officials that professional frames are the most relevant for addressing any issue. This is likely to increase the emphasis on professional values at the expense of other administrative norms. By contrast, specialization along other dimensions (sector, territory) may imply a fragmentation of professional expertise, which hinders the further development of professional knowledge and privileges other organizational identities over disciplinary ones.

To summarize, the key message of the theoretical discussion is that organizational features not only reflect but also shape the role of professions. Recruitment systems and organizational structures are durable features of organizations that condition the role of different types of professional experts. These organizational features are not, however, unchangeable. For instance, a professional group may well instigate changes in recruitment policies or further organizational specialization along professional lines that cements its position within the organization.

## 4. The Organization of Expertise in the European Commission

How is professional expertise "organized" in the European Commission? This section surveys the role of different types of professional experts in the Commission's recruitment system and organizational structure.

### *4.1. Recruitment System*

Since the 1960s, the European Commission has relied on open competitions for recruiting permanent staff. These competitions—often referred to with the French term *concours*—are essentially civil service examinations that are either general or restricted to a specific field (see e.g., Coombes, 1970; Spence, 1997; Stevens, 2001). The *concours* has changed significantly over time, going from *ad hoc* competitions for few posts in the 1960s to regular mass competitions to recruit hundreds of officials in the 2000s. The largest waves of recruitment have been connected to the successive enlargements of the European Union. Recruitment was previously the responsibility of the single European insti-

tutions. But on the eve of the Eastern enlargement in 2004, a special agency—the European Personnel Selection Office (EPSO)—was set up to administer open competitions for all the European institutions (Ban, 2010).

From which fields has the European Commission selected its staff, and how has this changed over time? This is examined by analyzing the notices for the European Commission's recruitment competitions for "administrators"—that is, staff with policy tasks—over the period 1956 to 2013.[1] The competition notices are collected from the online archives of the *Official Journal of the European Union*.

Figure 1 maps out the main fields in which the Commission has organized recruitment competitions from 1960 until today. The categories listed ("economics", "general administration", etc.) are drawn directly from the competition notices, which means that they are the fields of recruitment *as defined by* the Commission. The figure shows the period during which the Commission recruited administrators under a certain heading.

As we can see, the Commission instituted competitions in a core set of specialist fields following the Commission merger in 1967. These included "law", "economics" (often accompanied by "statistics"), "financial management" and "agriculture". Recruitment competitions in the fields of law and economics/statistics have been organized regularly ever since. Recruitment in the field of financial management was first complemented with and eventually replaced by competitions in the "audit" field. Similarly, competitions in agriculture were supplanted by recruitment in the fields of "food safety" and "public health" in the 1990s. Perhaps more remarkable was the emergence and transformation of competitions in public administration. This field was not part of the initial recruitment categories, and competitions in "general administration" were first introduced in the late 1970s. The category was later changed into "general administration, public administration and management" and finally re-labeled as "European public administration" in 1998, becoming the most important field of recruitment to the Commission (as we will see below). It should also be noted that completely general competitions have been organized intermittently. Such competitions were first organized in the early 1960s and then revived in the first half of the 1990s and used occasionally since then.

How has the relative importance of these fields changed over time? This is assessed by looking at the number of officials recruited through competitions in the various fields in different periods. Figure 2 shows the changes in the distribution of recruited officials by field of competition.

[1] The analysis comprises *all* the administrator competitions in this period that were aimed at selecting multiple officials (a total of 284 competitions) while leaving out competitions for single positions.

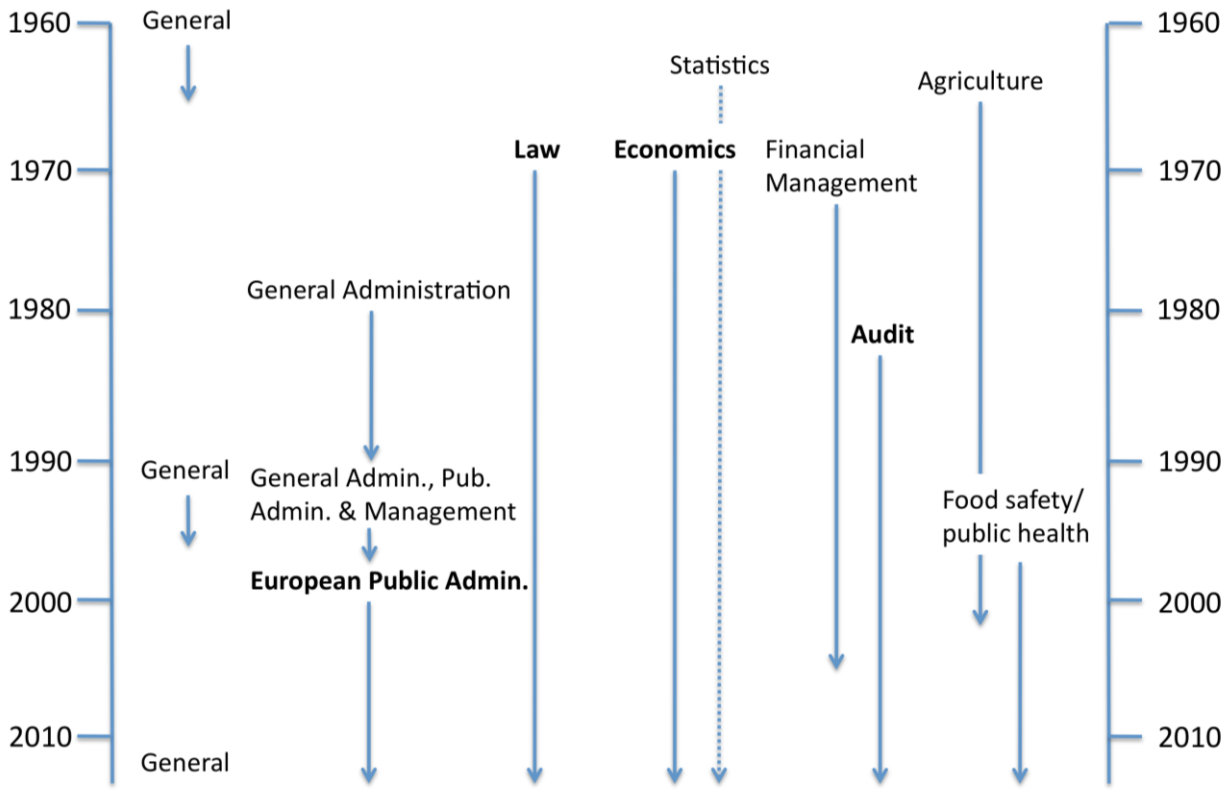


**Figure 1.** Fields of recruitment to the European Commission. Source: Author's illustration based on competition notices compiled from the *Official Journal of the European Union*.

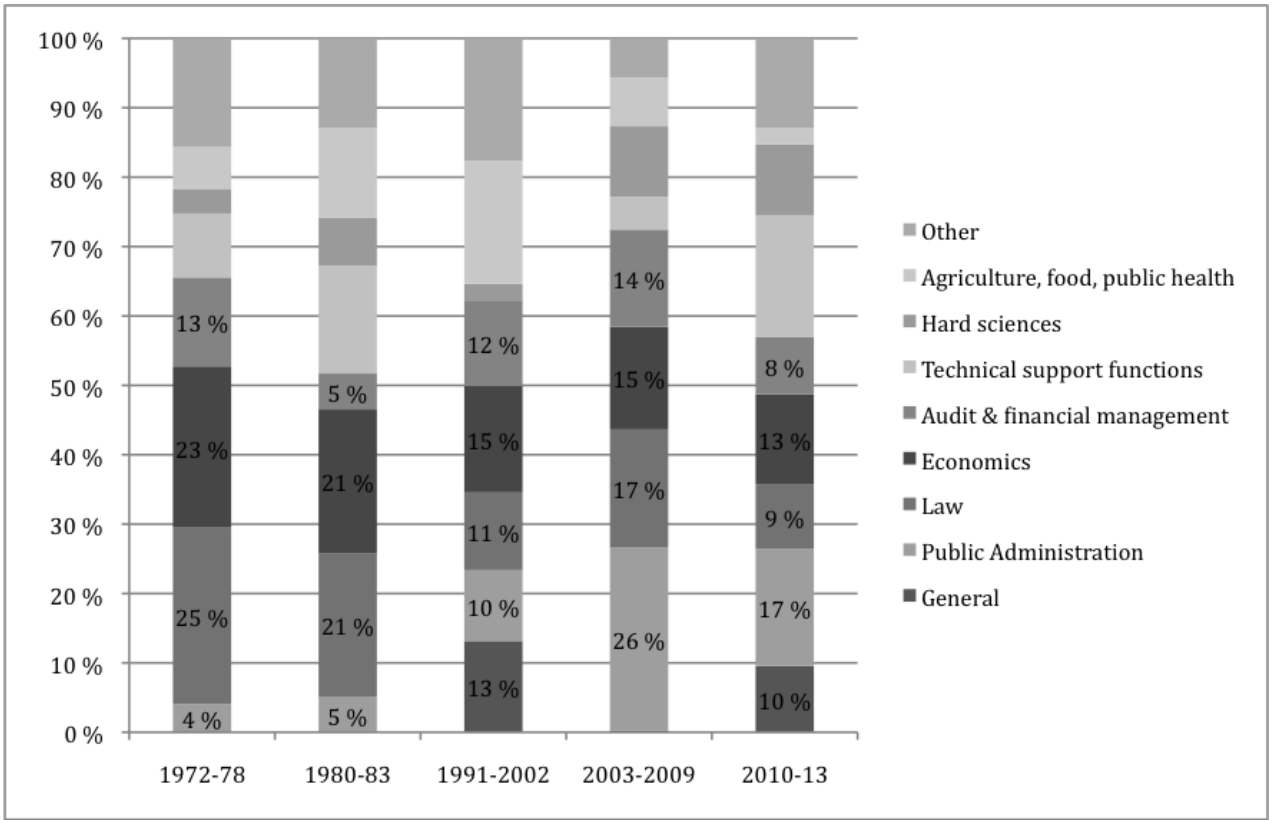


**Figure 2**. Officials recruited by field in different periods, percent. Source: Adapted from Christensen (forthcoming), based on data compiled from the *Official Journal of the European Union*. Note: Before 1991, complete data on the number of administrators to be recruited is available only for the periods 1972–1978 and 1980–1983.

First of all, the figure does not show a dominance of either lawyers or economists in recruitment to the Commission. The number of recruits from the two fields has been roughly similar throughout the organization's history. From 1972 to 1983 the Commission recruited 332 administrators through law competitions and 315 through economics competitions; since 1991 it has recruited 1,773 administrators in law and 1,847 in economics. We also see that competitions in law and economics—arguably the two core specialist fields in the Commission—have declined in importance over time. While these fields together accounted for nearly half of recruited officials in the 1970s and early 1980s, they account for only between 20 and 30 percent of recruits in the period after 1990.

At the same time, competitions in the field of general public administration have become increasingly important. The proportion of recruits coming from public administration competitions increased from around 5 percent in the 1970s and 80s to 26 percent during the eastern enlargement from 2003 to 2009. Public administration was the largest field of recruitment over the period 1991–2013: the 2,472 administrators selected in the field easily surpassed the number of recruits from law or economics. On top of this came the 720 administrators hired through completely general competitions. The growing importance of the field of "audit" is also noteworthy: since 1991 the Commission has recruited almost as many officials in the audit field—1,716—as in law and economics.

What emerges is a picture of a Commission that in recruiting civil servants seeks knowledge in four major fields—law, economics, audit and public administration—and that over time has shifted its emphasis from the first two fields towards the latter two. But to what extent is recruitment in these fields tied to specific professions and professional qualifications? This is examined by looking at the educational requirements for participating in the competitions. Higher and more specific educational requirements indicate that a competition is restricted to a certain profession. In the Commission, the minimum education required to take part in competitions has consistently been low: until 1998 a university diploma or degree of unspecified length was required; from 1998 to 2004 a degree that "gives access to doctoral studies" was needed; and since 2004 the requirements have been a 3-year university degree for lower-level policy administrators and a 4-year degree for officials in higher grades.

Whether applicants' degrees have to be in a specific discipline or not has varied over time and across fields of competition. Figure 3 shows the specificity of the degree required for Commission competitions in different fields, with a higher value indicating a more specific degree required.

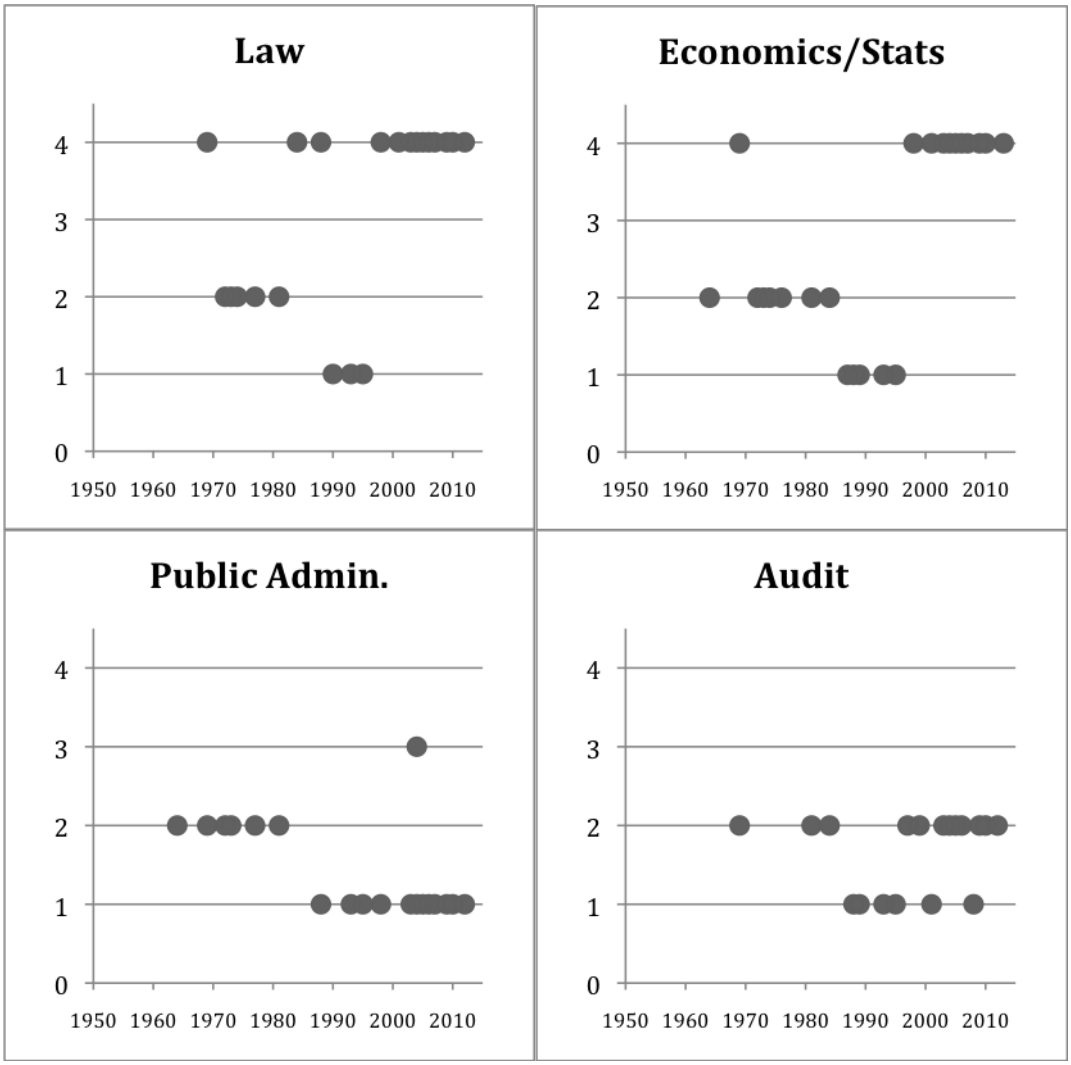


**Figure 3**. Specificity of degree required to participate in competition, by field of competition, 1958–2013. Note: 1: Degree in any field; 2: Degree in "relevant field"; 3: Degree in any of a wide range of fields; 4: Degree in one specific field. Source: Adapted from Christensen (forthcoming).

The figure shows that up until the late 1980s competitions in all of these fields usually required only a "relevant degree", even for competitions in law or economics. The requirements were even less specific from 1988 to 1995: in this period a degree in any field was sufficient to take part in any competition. Since 1998 the requirements have been differentiated across competition fields: Competitions in law and economics require degrees in those specific disciplines, while competitions in "European public administration" are open to graduates from any field. Audit is in a middle position, requiring university education in a "relevant" field. In other words, whereas recruitment in the fields of law and economics is linked to a specific professional background, recruitment in the buoyant field of "European public administration" is *not* tied to any specific professional profile.

Finally, it should be noted that the recruitment tests in themselves have become more general over time. As Carolyn Ban points out, the first stage of the tests introduced in 2010 assess a set of very general competences, such as verbal, numerical and abstract reasoning (Ban, 2010). Christensen (forthcoming) also shows that the emphasis on specialist skills in the competition tests has dropped over time. While the assessment of specialist knowledge constituted 50 percent of the tests in the 1970s, it only accounted for 28 percent of the tests in the periods 1990–2002 and 2003–2013. This trend is similar across the main fields of competition.

To summarize, the European Commission's recruitment system shapes the organizational role of different kinds of professional expertise by defining the categories/fields of knowledge, by linking these categories to specific professions (or not), and by determining the relative importance of these fields. The Commission's recruitment regime has defined some clear professional categories, in particular law and economics, which sets it apart from completely generalist recruitment systems like the traditional British or Irish system. At the same time, the professional content of these categories has been weak (e.g., low and generic

degree requirements and generic tests). The more specialist fields have also lost ground relative to a public administration category that is not rooted in any particular type of professional expertise.

### *4.2. Organizational Structure*

The role of professional expertise in bureaucratic organizations is not only shaped by recruitment systems, but also by organizational structures. To what extent is the European Commission specialized along professional lines? To what extent have professions "claimed" parts of the organization as their exclusive jurisdiction? The ambition here is to draw a "professional map" of the Commission services to get at the role of different expert disciplines in the organization, with a special focus on law and economics. What we are looking for is departments, units or positions that are defined in professional terms, such as a division of economic analysis or a position as legal adviser. The data presented is drawn from the online *Commission Directory*, which list all the units and positions in the Commission, as well as from organizational charts and other information available on the websites of the various Directorates-General and Services.

The institutional position of legal experts is most strongly expressed in the Commission's Legal Service, which is the only truly professional department of the organization. The Legal Service is an internal horizontal department charged with providing legal advice to the Commission and its services. The Legal Service must be consulted—and provides a legal opinion—on all documents put before the Commission. The service reports directly to the President of the Commission, giving it a more independent position that the regular departments. Almost all officials have a legal background (92%), and most positions are defined as "member of the Legal Service" (268 of approximately 350 positions). The Legal Service is thus a textbook example of professional jurisdiction: concentrating legal expertise in a dedicated department with special prerogatives rather than spreading it out across the regular departments gives legal knowledge a privileged status within the organization.

Other Commission departments also have dedicated legal units and positions. This is illustrated in Figure 4, which shows the number of organizational units specialized in legal (and economic) analysis, and Figure 5, which shows the number of designated legal (and economic) positions per department.

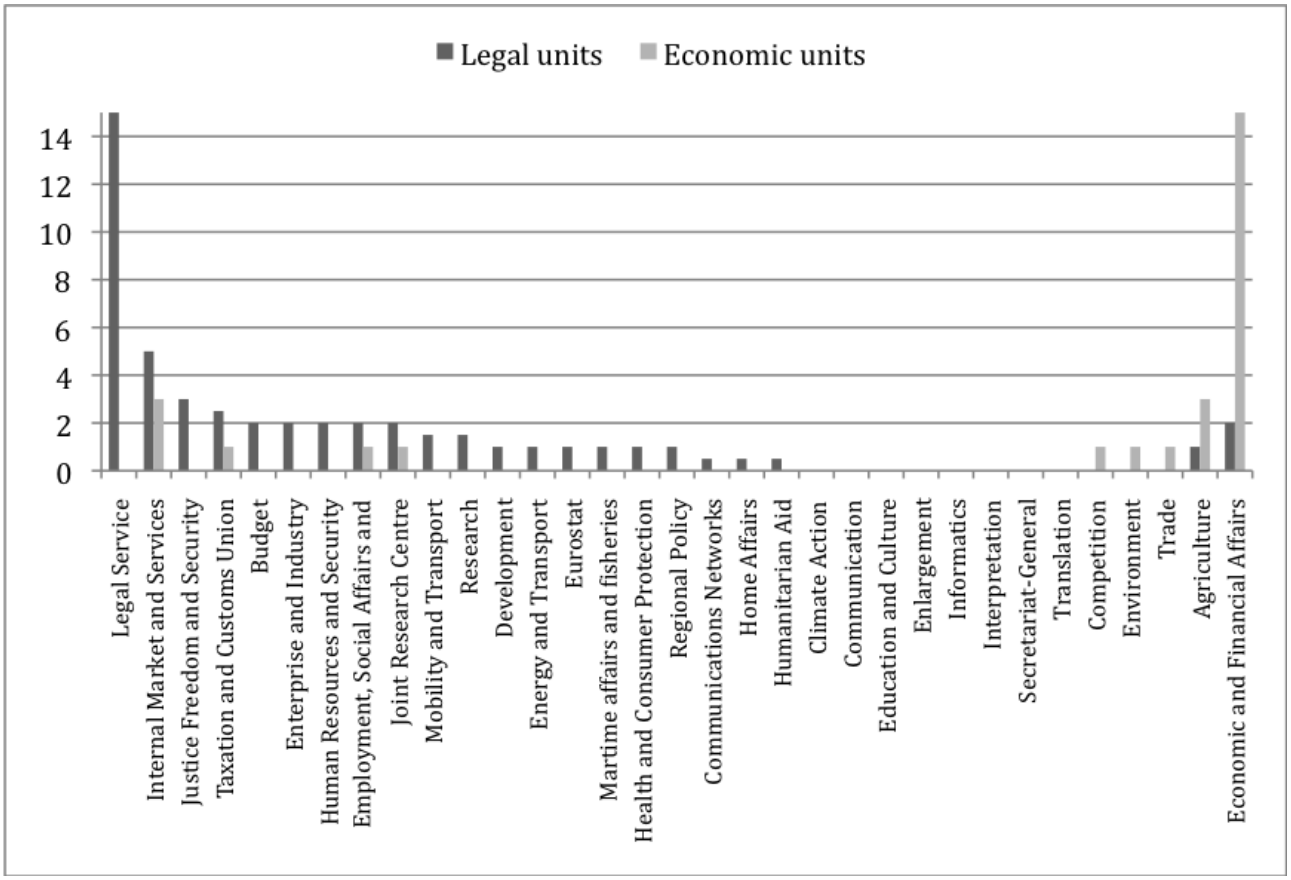


**Figure 4**. Number of organizational units dominated by lawyers or economists in the departments of the European Commission. Note: A unit is classified as legal (economic) if the majority of the positions in the unit are legal (economic) positions. In the Commission, a "unit" is the organizational entity below a "directorate" and above a "section". Sections are here coded as half a unit. Source: Author's illustration based on data collected from the online *Commission Directory*.

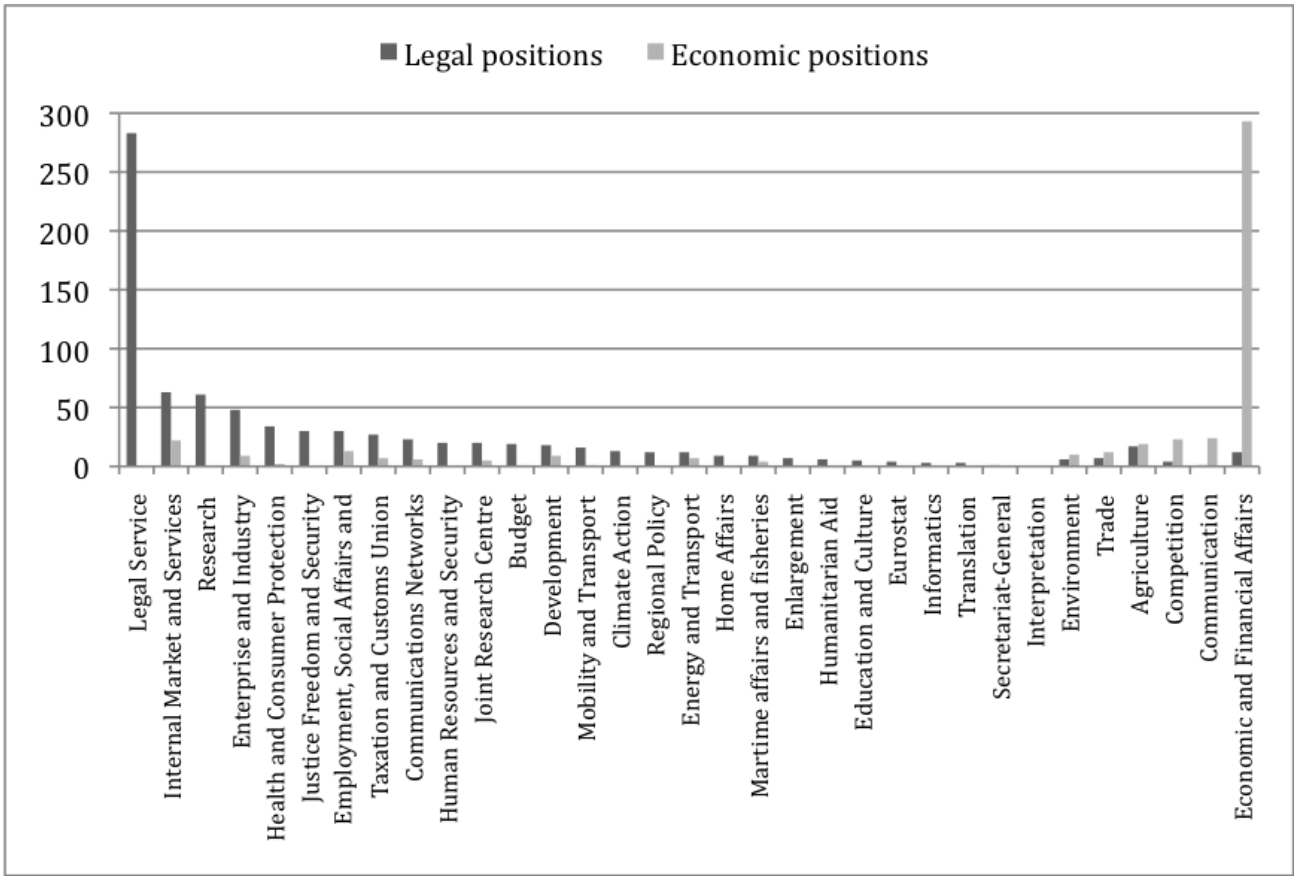


**Figure 5**. Number of designated positions for lawyers and economists in the departments of the European Commission. Note: Legal positions include the position titles "legal officer", "legal assistant" and "member of the legal service". Economic positions encompass the position titles "economist", "economic analyst" and "socio-economic analyst". Source: Author's illustration based on data collected from the online *Commission Directory*.

In total, there are 51 legal units and 828 positions as "legal officer" or "legal assistant" in the Commission. As we see in the figures, legal expertise has a prominent position in some departments beyond the Legal Service: DG Internal Market and Services has five predominantly legal units (e.g., "Application of Single Market law and relations to Parliament" and "Public procurement legislation I") and 63 positions as "legal officer" or "legal assistant"; DG Justice, Freedom and Security has three legal units (e.g., "Consumer and marketing law") and 30 designated legal positions; and DG Enterprise and Industry has two legal units and 48 legal positions. We also see that there is a legal presence in a majority of the departments: 22 of the Directorates-General and Services have at least one legal unit or section, and 19 departments have at least 10 designated positions for legal experts. These units are usually labeled "Legal matters" or "Legal affairs" and provide inside-the-department legal advice. Thus, in organizational terms, we see that legal expertise in the Commission is both *concentrated*—in the Legal Service—and *widespread*—with legal units in most departments.

Moving on to economic expertise, there are in total 39 predominantly economic units and 467 positions as "economist", "economic analyst" or "socio-economic analyst" in the Commission. The greatest concentration of economic expertise is found in DG Economic and Financial Affairs (ECFIN). In the strictest sense, DG ECFIN is not a professionally specialized department: it does *not* provide economic advice to the Commission departments like the Legal Service offers legal advice. It is instead a functionally organized department heavily dominated by officials with training in economics. 87 percent of its policy staff have a background in economics or similar fields, and it has 293 dedicated positions as "economic analyst" or "economist". The department carries out some economic research in-house, which involves development of economic models and analysis of data, and publishes economic working papers written by staff and collaborators (e.g., in the "European Economy Economic Papers" series). It is also part of the department's mission to interact with the academic community of economists in the development of policy.

There are specialized economic units in some other departments too. Most notable in this regard is the Chief Competition Economist in DG Competition. The Chief Competition Economist was established in 2003 with the objective of boosting the Commission's capac-

ity to apply economic and econometric analysis to competition cases (Röller & Buigues, 2005). The Chief Economist is appointed for a fixed term and is usually a prominent academic in the field. He leads a team of about twenty economists with Ph.D.s in the specialized field of Industrial Organization (Röller & Buigues, 2005, p. 6). The Chief Economist's Office is organized separately from the regular department and reports directly to the Director-General. Its role is to provide independent economic advice on cases and policy, both by supporting the case handlers with technical economic analyses and by providing an independent opinion on particular cases or policy issues based on economic knowledge. As such, the Chief Economist's Office plays much the same role within DG Competition as the Legal Service does across the departments: its role is to provide an independent opinion rooted in a particular body of professional knowledge on the work of the regular bureaucracy. The Chief Economist's office also serves as a center for economic debate on competition issues, organizing seminars with prominent competition economists, producing working papers and regularly consulting outside academics on policy questions (Röller & Buigues, 2005). In some respect, the office thus bears stronger resemblances to an academic department than a regular bureaucratic unit.

The European Commission also has a Chief Trade Economist inside DG Trade. But this office is smaller—with a staff of seven economists—and is tucked away deep down in the departmental hierarchy. It thus does not have the same institutional position as the chief economist in the competition area. Beyond the areas of competition and trade, economists have a sizeable presence in agriculture and internal market regulation. Both DG Agriculture and DG Internal Markets and Services have three predominantly economic units (such as "Economic analysis of EU agriculture" and "Analysis of financial market issues") and around 20 designated economist positions. In addition, Eurostat is heavily dominated by *statisticians*, whose knowledge borders closely on economic expertise. Yet specialized economics units and positions are far less widespread in the departmental structure than legal ones. Only nine Directorates-General or Services have at least one economics section or unit, and only eight departments have more than ten economist positions.

It thus seems that while economists have surpassed lawyers both in top positions and in the rank and file of the Commission, economic expertise does not have the same broad organizational entrenchment as legal knowledge. Compared to law, economics is less clearly defined as an independent form of expertise worthy of specialized organizational units. In other words, there may be more officials with economic than legal background in the Commission, but fewer economists *qua* economists than lawyers working in legal positions.

## 5. Discussion and Conclusion

The empirical data presented above sheds light on the role of professional expertise in the European Commission. Yet, there are clear limits to what the data can tell us. Most importantly, it does not tell us how many economists or lawyers there are in the Commission, only how many economists or lawyers were recruited *as such* and how many work in positions or units defined as economic or legal. For instance, the analysis does not pick up economists or lawyers who are recruited as public administrators and work in general administrator positions. But, as argued in the theoretical section, whether an economist is recruited as an economist and works in a position/unit defined as economic is highly significant for his or her identification with a professional expert role. And that is what this article has tried to examine.

With this caveat in mind, how do the empirical findings speak to common narratives about experts in the Commission? In an often-repeated narrative the Commission is portrayed as a "technocracy", that is, an organization where expertise is the basis for power and legitimacy (Boswell, 2008; Radaelli, 1999). This narrative is also popular with journalists, who rarely mention the European Commission without alluding to its technocratic character. Against this backdrop it is interesting to note that neither the Commission's recruitment system nor its organizational structure seem conducive to strong expert roles. Recruitment to the Commission does include competitions for specialists in fields such as law and economics. But the recruitment of specialists in these fields has dropped relative to hiring within more generalist categories like "European public administration". And the generally low educational qualifications required to participate in law and economics competitions do not seem geared to attract high-skilled experts. The Commission's organizational structure contains some departments and units organized around particular forms of expertise, such as the Legal Service, DG Economic and Financial Affairs or the Chief Competition Economist. The latter is an example of an organizational unit that explicitly encourages the use and further refinement of expertise and that is bound to reinforce identification with professional knowledge and expert roles. But units like this remain the exception. The vast majority of Commission departments are not structured along professional lines or designed in ways that promote the generation of in-house expertise. The fact that the Commission bears few resemblances to an "expert organization" in terms of how it selects its staff and structures its tasks should lead us to reconsider the claims about its technocratic character.

A second account suggests that economists play a growing role in the organization. In part this is based on surveys which show that the number of officials with a background in economics has surpassed the

number of law graduates (Georgakakis & De Lassalle, 2008; Kassim et al., 2013, pp. 40-42). But it is also part of a broader narrative about the rise of economists within public bureaucracies worldwide (Fourcade, 2006). Is the European Commission turning into an economist-dominated institution like other international organizations? Looking at recruitment and organizational structures there are few signs that this is the case. The analysis of the Commission's open competitions did *not* show an increase in the number of economists recruited or in the economics qualifications demanded of candidates. On the contrary, the proportion of officials recruited through economics competitions has dropped steadily since the 1970s. This does not necessarily imply that fewer economists have been hired, but it does mean that fewer economists have been hired *as such*. In the Commission's organizational structure some specialized economics units have popped up since 2000, including the Chief Competition Economist and the Chief Trade Economist. This institutionalization of an independent economic advice function expands the professional jurisdiction of economists at the expense of lawyers. But this trend does not extend across the Commission: so far the creation of economic analysis units has been limited to a small number of departments. Economists do not have the same broad organizational "license" that lawyers have, neither in terms of specialized units nor earmarked positions. Speaking of economists dominating the Commission thus seems premature.

Where does this leave the question of professional expertise in the Commission? The picture is decidedly blurry: while a few departments are clearly dominated by one profession or the other, most are unclaimed territory in professional terms. The role of legal expertise is supposed to be waning but remains firmly rooted in the organization; economists are said to be on the rise but are not broadly entrenched organizationally; and in the meantime public administrators with generalist knowledge are pouring in through the recruitment competitions. More fundamentally, professional background may have little relevance for explaining administrative behavior in the Commission: professional cleavages and distinctions appear to be less important in organizing the Commission's daily activities than for instance departmental boundaries (Egeberg, 2007, p. 149).

The ongoing eurozone crisis does, however, illustrate well that the type and extent of professional expertise matters for how policy-making bureaucracies tackle important policy issues. To some, the handling of the crisis has revealed a wide gap in economic competence between the heavily professionalized European Central Bank (ECB) and the European Commission. In an opinion piece in the *New York Times* entitled "Crisis of the Eurocrats", Paul Krugman, Nobel Prize winner in economics, drew a clear distinction between the "genuine technocrats" in the ECB and the "fake technocrats" in other European institutions (Krugman, 2014). Surely, this is an over-simplification. But concerns about boosting the capacity for economic management may well spur greater interest in cultivating expertise in economics within the Commission. And recently, there have been signs of renewed efforts to hire highly educated economic specialists to the organization. Investigating how the crisis influences the role of professional expertise in the organization is certainly an interesting topic for further research.

More generally, in order to further pursue the questions raised in this article we need to know more about how Commission officials perceive their roles (as professional experts or otherwise) and how the issue of expertise plays out in concrete policy processes. To be sure, the present analysis only scratches at the surface of a very complex set of issues. Discarding the stereotype of the European "technocrat" seems overdue, but whether to replace this image with that of the rule-oriented lawyer, the economist concerned about efficiency or the administrative all-rounder remains an open question.

**Acknowledgements**

I am grateful to the editors of the special issue and three anonymous reviewers for helpful comments. An earlier version of the article was presented at the workshop "Was Plato Right? Should the Experts Rule?" at the Nordic Political Science Association Conference in Gothenburg, August 12-15, 2014.

**Conflict of Interests**

The author declares no conflict of interests.

**References**

Abbott, A. (1988). *The system of professions: An essay on the division of expert labor*. Chicago, IL: University of Chicago Press.

Babb, S. L. (2004). *Managing Mexico: Economists from nationalism to neoliberalism*. Princeton: Princeton University Press.

Ban, C. (2010). Reforming the staffing process in the European Union institutions: Moving the sacred cow out of the road. *International Review of Administrative Sciences*, *76*(1), 5-24.

Boswell, C. (2008). The political functions of expert knowledge: Knowledge and legitimation in European Union immigration policy. *Journal of European Public Policy*, *15*(4), 471-488.

Christensen, J. (forthcoming). Recruitment and expertise in the European Commission. *West European Politics*.

Christensen, J. (2013). Bureaucracies, neoliberal ideas,

and tax reform in New Zealand and Ireland. *Governance*, *26*(4), 563-584.

Chwieroth, J. M. (2009). *Capital Ideas: The IMF and the rise of financial liberalization*. Princeton: Princeton University Press.

Coombes, D. L. (1970). *Politics and bureaucracy in the European Community: A portrait of the Commission of the E.E.C*. London: Allen & Unwin.

Egeberg, M. (2003). How bureaucratic structure matters: An organizational perspective. In B. G. Peters & J. Pierre (Eds.), *Handbook of Public Administration*. London: Sage.

Egeberg, M. (2007). The European Commission. In M. Cini (Ed.), *European Union politics*. Oxford: Oxford University Press.

Ellinas, A. A., & Suleiman, E. (2012). *The European Commission and bureaucratic autonomy: Europe's custodians*. Cambridge: Cambridge University Press.

Fourcade, M. (2006). The construction of a global profession: The transnationalization of economics. *American Journal of Sociology*, *112*(1), 145-194.

Fourcade, M. (2009). *Economists and societies: Discipline and profession in the United States, Britain, and France, 1890s to 1990s*. Princeton: Princeton University Press.

Froeb, L. M., Pautler, P. A., & Röller, L.-H. (2009). The economics of organizing economists. *Antitrust Law Journal*, *76*(2), 569-584.

Georgakakis, D., & De Lassalle, M. (2008). Where have all the lawyers gone? Structure and transformations of the top European Commission officials' legal training. *EUI Working Papers, RSCAC 2008/38*.

Gulick, L. (1937). Notes on the Theory on Organizations. With Special Reference to Government. In L. Gulick & L. Urwin (Eds.), *Papers on the Science of Administration*. New York: A.M. Kelley.

Kassim, H., Peterson, J., Bauer, M. W., Connolly, S., Dehousse, R., Hooghe, L., & Thompson, A. (2013). *The European Commission of the Twenty-First Century*. Oxford: Oxford University Press.

Krugman, P. (2014, May 23). Crisis of the Eurocrats. *New York Times*. New York.

Majone, G. (1996). *Regulating Europe*. New York: Routledge.

March, J. G., & Olsen, J. P. (1989). *Rediscovering institutions: The organizational basis of politics*. New York: Simon and Schuster.

Page, E. C. (1997). *People Who Run Europe*. Oxford: Oxford University Press.

Peters, B. G. (2010). *The politics of bureaucracy*. New York: Routledge.

Radaelli, C. M. (1999). The public policy of the European Union: whither politics of expertise? *Journal of European Public Policy*, *6*(5), 757–774.

Reay, M. J. (2012). The Flexible Unity of Economics. *American Journal of Sociology*, *118*(1), 45-87.

Röller, L.-H., & Buigues, P. A. (2005). The office of the chief competition economist at the European Commission. *Global Competition Review*, 122.

Schattschneider, E. E. (1960). *The semisovereign people: A realist's view of democracy in America.*(1st ed.). New York: Holt, Rinehart and Winston.

Spence, D. (1997). Staff and personnel policy in the Commission. In G. Edwards & D. Spence (Eds.), *The European Commission* (2nd edition.). London: Cartermill.

Stevens, A. (2001). *Brussels bureaucrats? The administration of the European Union*. Basingstoke: Palgrave.

Trondal, J., Marcussen, M., Larsson, T., & Veggeland, F. (2010). *Unpacking international organisations: The dynamics of compound bureaucracies*. Manchester: Manchester University Press.

Weir, M., & Skocpol, T. (1985). State structures and the possibilities for "Keynesian" responses to the Great Depression in Sweden, Britain, and the United States. In Evans et al. (Ed.), *Bringing the state back in* (pp. 107-63). Cambridge: Cambridge University Press.

Wille, A. C. (2013). *The normalization of the European Commission: politics and bureaucracy in the EU executive*. Oxford: Oxford University Press.

**About the Author**

**Dr. Johan Christensen**

Johan Christensen is a Postdoctoral Fellow in Sociology at Stanford University, affiliated with the Scandinavian Consortium for Organizational Research (SCANCOR). His research focuses on the role of professional expertise in public bureaucracies, both at the national and European level. His work has appeared in journals such as *Governance, West European Politics* and *Journal of Public Policy*.

**Politics and Governance (ISSN: 2183-2463)**
**2015, Volume 3, Issue 1, Pages 26-36**
**Doi: 10.17645/pag.v3i1.65**

Article

# Representative Bureaucracy and the Role of Expertise in Politics

Jarle Trondal [1,2,*], Zuzana Murdoch [1,3] and Benny Geys [4,5]

[1] Department of Political Science, University of Agder, 4604 Kristiansand, Norway; E-Mails: jarle.trondal@uia.no (J.T.), zuzana.murdoch@uia.no (Z.M.); Tel.: +47-3814-1561 (J.T.)
[2] ARENA—Centre for European Studies, University of Oslo, 0318 Oslo, Norway
[3] Organization and Governance Studies, University of Bremen, 28359 Bremen, Germany
[4] Department of Applied Economics, Vrije Universiteit Brussel, 1050 Elsene, Belgium
[5] Norwegian Business School BI, 0484 Oslo, Norway; E-Mail: benny.geys@bi.no

* Corresponding author

Submitted: 14 May 2014 | In Revised Form: 1 September 2014 | Accepted: 24 September 2014 | Published: 31 March 2015

**Abstract**
The vast majority of existing studies on bureaucratic representation focus on bureaucracies' permanent and internal staff. Yet, the rising sophistication of modern democracies and the technocratization of political life are gradually inducing an increased reliance on external experts to assist in the development and implementation of policy decisions. This trend, we argue, raises the need to extend studies of bureaucratic representation to such external and non-permanent experts in governmental affairs. In this article, we take a first step in this direction using seconded national experts (SNEs) in the European Commission as our empirical laboratory. Our results highlight that Commission SNEs do not appear representative of their constituent population (i.e., the EU-27 population) along a number of socio-demographic dimensions. Moreover, we find that the role perception of "experts" is primarily explained by organizational affiliation, and only secondarily by demographic characteristics (except, of course, education).

**Keywords**
bureaucracy; European Commission; expertise; representation; seconded national experts

**Issue**
This article is part of the special issue "The Role of Expert Knowledge in EU Executive Institutions", edited by Professor Åse Gornitzka (University of Oslo, Norway) and Dr. Cathrine Holst (University of Oslo, Norway).



## 1. Introduction

With the rising sophistication of modern democracies, the "business of governance [has become] more difficult" (Flinders, 2014, p. 3). Simultaneously, the "technocratization of political life" (Bickerton, 2012, p. 14) has increased the role of "experts" and their "ways of doing things" in processes of proposing, implementing and legitimizing public policy (Barnett & Finnemore, 2004; Joerges, 1999; Joerges, Ladeur, & Vos, 1997, p. 7; Radaelli, 1999; Rayner, 2003, p. 163; Weingart, 1999). This trend towards increased reliance on external experts in the development and implementation of policy decisions has thus far failed to receive attention in the vast literature on bureaucratic representation, which has focused exclusively on bureaucracies' permanent and internal staff (Kennedy, 2014; Meier & Capers, 2013; Rhodes, Hart, & Noordegraaf, 2007). Yet, understanding the representativeness of external experts is important because such "knowledge agents have intrinsic governance capacities in their power to define problems…or engage in standard-setting, rule-making, or other regulatory activity" (Stone, 2012, p. 329). Hence, their discretionary power may have important consequences for what premises are made available to decision-makers (Pennock, 1968). This study therefore contributes to

contemporary scholarship on representative bureaucracy (RB) by explicitly turning attention to the representativeness of external and non-permanent experts in governmental affairs.

From a theoretical perspective, we argue that the increased reliance on experts and external expertise in contemporary public policy-making requires a fundamental re-assessment of how the representativeness of the public sector workforce and its policy decisions is evaluated. This assertion rests on the fact that external experts are often recruited on time-limited contracts that only run as long as their specific expertise is required.[1] Moreover, these contracts are often awarded outside the standard recruitment procedures. The implied recruitment flexibility can generate *either* an improvement of passive (or descriptive) representation within the bureaucracy (when such contracts are employed to bolster staff contingents that are underrepresented in the permanent staff), *or* a deterioration of the bureaucracy's representativeness (when experts with unfavourable characteristics tend to be excluded in favour of those with more desirable features). Such potential shifts in passive representativeness may be important because they have the potential to translate into an active (under)representation of possibly relevant interests and opinions (Kennedy, 2013; Schröter & von Maravić, 2014).[2]

Following the advice of Kennedy (2014, p. 414), this study measures *active representation* by the representative role perceptions evoked by office holders. More specifically, our focus is directed towards officials' perception as "expert". To the extent that government officials perceive themselves to be an "expert", it is assumed that they would act according to an "epistemic logic" (see below). Officials would thus prepare dossiers, argue and negotiate on the basis of their professional competences, and legitimate their authority on scientific aptitudes and capabilities (Haas, 1992; Rayner, 2003; Rutgers & Mentzel, 1999). As such, their involvement in the policy-making process would tend to come with a "promise [of] objectivity and transparency" (Rayner, 2003, p. 163). Still, as documented in a substantial philosophy of science literature discussing the ever closer connections between expertise and politics (e.g., Rutgers & Mentzel, 1999; Weingart, 1999), this is not always self-evident in practice. Experts may also contribute to a "mobilization of bias" in public policy-making (Schattschneider, 1975) because they may interpret relevant decision-making premises (data) differently from elected office-holders (Sutcliffe & Weick, 2008, p. 62) and thereby systematically induce active under-representation of certain information.

Our empirical analysis concentrates on "external experts" in the European Commission (Commission)—the so-called Seconded National Experts (SNEs). These are recruited from member-state administrations into the Commission on temporary contracts (maximum six years), and are specifically recruited to provide expertise to the Commission in areas where this might be lacking in permanent staff. The data derive from Eurostat, official documents detailing the staff composition of the Commission, as well as a unique survey among Commission SNEs (N ≈ 450). We first of all employ these data to assess whether Commission SNEs reflect the characteristics of their constituent population (the EU-27 population); i.e., passive representation.[3] This indicates that SNEs are not a close match to the composition of the EU-27 population in terms of gender, education, age and geographical origin. Still, one might wonder whether such passive (mis)representation really matters: i.e., does the demographic background of public officials affect their self-perception of being an "expert"? Our data suggests that it may not. Indeed, the active role perception of experts appears to be primarily explained by their organizational affiliation, and only secondarily by their demographic characteristics. Only the educational background variable—among all demographic variables—has a substantive and significant effect on active "expert" representation.

In the next section, we briefly discuss the growing role of experts and expertise in public policy-making. Building on the foregoing RB literature, this section also indicates how this tendency might affect bureaucratic representativeness. Then, in Section 3, we use a variety of datasets to unveil Commission SNEs' representativeness relative to the EU27-population. Finally, Section 4 concludes and discusses some avenues for further research.

[1] The current trend towards "agencification" in (inter)national public-sector environments (Trondal, 2014) makes that bureaucrats with very specific expertise often become employed on long-term contracts in very specialised agencies. Although such agencies raise interesting issues of representation and legitimacy in their own right and deserve more in-depth attention in future research, they fall outside the scope of our current analysis. This article deals exclusively with external experts.

[2] Although recent work on RB has often uncovered a link between passive and active representation (Meier, 1993; Atkins & Wilkins, 2013; Hindera, 1993), it is not required that a bureaucracy is representative in a descriptive sense for it to take decisions that are representative in a substantive sense, or vice versa (Mosher, 1968; Pitkin, 1967). Kennedy (2013), for instance, illustrates that one does not have to be disabled to actively represent the interests of those who are, while O'Connor (2014) suggests that elite level bureaucrats may actively represent professional or technocratic ideas. More recent work illustrates that active representation requires two critical conditions: i) critical mass and ii) issue of importance to the particular minority (for excellent overviews, see Lim, 2006; Meier & Nicholson-Crotty, 2006).

[3] Following the recent accession of Croatia, the EU meanwhile has 28 members. This had not yet occurred at the time of our data collection, such that we treat the EU-27 population as the EU's relevant constituent population.

## 2. Expertise in Politics

### *2.1. A Note on Expertise*

Expertise is much more than the mechanical production of data and analysis. Expert knowledge grants access to constituting basic rules for cause and effect, distinguishing right from wrong, categorising social phenomena and advising about good and bad. As a result, expertise has become an institution in itself, loaded with authority and power. Moreover, expert authority bestows its holder with legitimacy and a communicative platform that reaches far beyond the narrow scientific discipline. It is, however, not any kind of knowledge that functions as the key to authority and power; only "recognised knowledge" matters. Universities have traditionally been the places with a monopoly on such recognised knowledge (Djelic, 2006; Drori & Meyer, 2006; Drori, Meyer, Ramirez, & Schofer, 2003; Maasen & Olsen, 2007; Paradeise, Reale, Bleiklie, & Ferlie, 2009; Ramirez, 2006; Savigny, 2013; Weingart, 1999). Today, political actors—public and private, national and international—seek to establish expert-based authority founded on the idea of evidence-based rulemaking. Apart from seeking *i)* rational-legal authority based on the idea of impersonal rulemaking, or *ii)* delegated authority based on the idea of accountable rulemaking, or *iii)* moral authority based on the idea of normative or principled rulemaking, the role of knowledge thus seems to have become central in how political actors engage in processes of authority-building and in how they go about legitimizing it (Barnett & Finnemore, 2004; Maasen & Olsen, 2007).

Expertise as the basis for authority was central to Max Weber, who considered rationalisation as one of the most important characteristics of the development of western society and capitalism (Wrong, 1970). Yet, almost paradoxically, "the increased use of scientific expertise by policy-makers has not increased the degree of certainty, in fact it becomes de-legitimating" (Weingart, 1999, p. 151). The reason is that the increasing use of expertise inflates the demand for such expertise, which drives the "recruitment of expertise far beyond the realm of consensual knowledge (…) to the research frontier where knowledge claims are uncertain, contested and open to challenge" (Weingart, 1999, p. 158). It might also push towards a "politicisation" of expertise, where the objectivity of the expert scientist is brought in doubt due to his/her involvement in public policy controversies (Brooks, 1975).

Nevertheless, purely epistemic communities, to the extent that they exist (Haas, 1992), in principle do not work under the shadow of politicians; they work under the shadow of the rules of the expert community. Members of an expert community are each other's judges—accountability is turned inwards (Haas, 1990, 1992). Public officials—such as Commission SNEs—who evoke an *expert* role are expected to enjoy behavioural discretion, and are influenced by external professional reference groups (Wilson, 1989). They are assumed to prepare dossiers, argue and negotiate on the basis of their professional competences and to legitimate their authority on scientific competences (Haas, 1992). Their behaviour is expected to be guided by considerations of scientific and professional correctness and the power of the better argument (Eriksen & Fossum, 2000). Their role perceptions and loyalties are primarily directed towards their expertise and educational background as well as towards external professional networks. This is the "expert official" who perceives her-self to be an institutionally independent technocrat. She is driven by a so-called "technical self-determination" (Pentland, 1973, p. 74). Moreover, bureaucratic organizations infused with an epistemic logic are a challenge to institutional unity. Such institutions are characterized by being composed of loosely coupled experts with an "out-ward" orientation. Such organizations are typically porous and open, staffed by actors from different external expert institutions such as domestic agencies, universities, research institutions etc. (Olsen, 2007; Trondal, 2013).

### *2.2. Experts and Representative Bureaucracy*

The theory of RB assumes that the diversity and representativeness of the public sector workforce impacts on how public sector organizations perform, how they are internally controlled, how legitimate they are perceived to be, and how they relate to their constituent populations (Andrews,Boyne, Meier, O'Toole, Walker, 2005; Selden, 1997; Schröter & von Maravić, 2014; Stevens, 2009). This reflects the key notion that what civil servants bring with them into the organization is of significance to their conduct (Hooghe, 2005, 2012).

From a normative viewpoint, this implies that "representation and staffing carries important implications for the delivery of public services [and] the sharing of power in society" (Schröter & von Maravić, 2014, p. 6). That is, a more RB takes into account a wider variety of ideas and opinions in the society at large. RB has been linked to improved overall administrative performance (e.g., Kingsley, 2003), increased worker loyalty and job satisfaction (e.g., Choi, 2009) and higher legitimacy and accountability of the bureaucratic organization (e.g., Selden & Selden, 2001). RB has also been seen to play a symbolic role during the implementation of controversial or unpopular policy programs (Peters, Schröter, & von Maravić, 2013; Pitts, Hicklin, Dawes, & Melton, 2010) and with regards to opportunities and equity to public office (Gravier, 2013; Groeneveld & van de Walle, 2010; Peters et al., 2013).

From a RB perspective, the increasing reliance on external expertise in public policy-making (see above) raises important questions about experts' representa-

tiveness. The reason is that such experts are generally appointed to provide a specific type of information or knowledge. This is particularly so among experts who have temporal appointments and who are recruited largely outside the standard recruitment procedures for permanent staff. Clearly, such recruitment flexibility may be employed—whether consciously or subconsciously—to bolster staff contingents that are underrepresented in the permanent staff (or moderate staff contingents that are over-represented). If so, this may affect passive (or descriptive) representation within the bureaucracy. Nonetheless, when experts with (perceived) unfavourable characteristics—or policy opinions—become excluded, such recruitment flexibility may also induce a deterioration of the bureaucracy's representativeness. The latter is not an unrealistic scenario. Several observers indeed argue that it has "become commonplace that the adversarial parties (…) engage scientific experts to present evidence which supports their respective views" (Weingart, 1999, p. 156; see also Brooks, 1975).

The above discussion naturally raises the second question whether individuals with higher expertise levels are also more likely to perceive themselves as "independent experts" and act in accordance with the prescripts of such a role? According to the idea of individual pre-socialization outside organizations, officials may be "pre-packed" already before entering the organization (Pfeffer, 1982, p. 277; Selden, 1997). Individual pre-socialization outside organizations is important to account for, because most studies of elite socialization do not systematically control for the effect of pre-socialization and self-selection (Beyers, 2005, 2010; Hooghe, 2005). This article uses the following demographic factors as proxies of individual pre-socialization: age (in years), gender, educational background (fields of study, place of study, and level of graduation), and country of origin. Finally, seniority is applied as a control variable, such as to account for the idea that organizational re-socialization inside an organization may modify the effect of individual pre-socialization outside the organization.

First, on gender, studies suggest that female officials in the Commission have a somewhat different belief structure than male officials—for example with respect to their stronger general "supranational orientation" (Kassim et al., 2013, p. 111; Trondal, Murdoch, & Geys, 2014). Our question is whether the gender of experts leads to different emphasis on their expert role. Next, previous studies show no age effect as regards Commission officials' general beliefs (Kassim et al., 2013). Thus, the age variable is applied in this study without any predefined prediction. Third, the educational background of office holders has shown a significant effect in previous studies. A first education-related prediction is that length of education might matter—measured by the highest attained degree. We expect that individuals with a doctorate have (much) stronger perceptions of being an expert compared to those without a doctorate. Secondly, it may be expected that different fields of study vary in their influence on the strength of one's self-perceptions of being an expert. Conceptualised as a continuum, "hard" and "soft" disciplines are indeed often characterised by degrees of paradigmatic status and consensus (Becher, 1989; Braxton & Hargens, 1996; Smeby, 2000). Thus, officials with an educational background in "hard" sciences—such as physics, biology—may see themselves more strongly as experts than officials educated in *relatively* "soft" sciences—such as social sciences. Finally, we might expect that place of study matters. One might indeed hypothesize that having an international educational background may be conducive to evoking an expert role. The reason is that one's education then is not tied to one particular environment, but rather was obtained in a more diffuse array of settings. This, in turn, may induce a focus on the content—or expertise—of the study.

Finally, country of origin measures experts' national pre-socialization. One might expect that experts originating from new and "un-socialized" member states give more priority to national concerns whereas the expert role has been more internalized among their colleagues from earlier accession countries. Experts originating from the old EU member states might thus be expected to have learned the "expert game" better than their colleagues from the new(er) member states, who are likely to be less pre-socialised into a "European state of mind" (dominant in the Commission's DGs; Ban, 2013).

## 3. Empirical Analysis

### *3.1. Case Selection and Datasets*

Our empirical analysis of passive and active "expert" representation of Commission SNEs relies on a number of different data sources. First, to measure passive representation we collected information about the characteristics of the European population, since this is the most relevant comparison group to evaluate the representativeness of European-level bureaucrats (Gravier, 2008, 2013; Stevens, 2009). Information about the socio-demographic characteristics (i.e., gender, age, educational background and nationality) of the population in the EU27 was obtained from Eurostat. Second, we collected information about the staff composition of the Commission. This is obtained from official publications of the Commission including, but not restricted to, the 2011 *European Commission Human Resource Report*, the *Draft General Budget 2012* and online publications documenting the *Distribution of Staff by Statutory Links and DGs*. (European Commission, 2011a, 2011b, 2011c).[4]

[4] The year of analysis—2011—is determined by the year in

Secondly, to measure active "expert" representation we conducted a unique web-based survey administered between January and April 2011 to all 1098 then active SNEs in the Commission. This survey received 667 responses, which equals a response rate of just over 60 percent. As not all SNEs answered all questions relevant to the present analysis, the final sample employed in the analysis hovers around 400 to 450 respondents. It is important to note that the distribution of the SNEs in our final survey sample across Directorate-Generals (DGs) compares to that observed for all Commission SNEs in 2011. This similarity suggests that non-response within the targeted population was independent of the DG in which SNEs work, which improves the generalizability of the results reported below.

### *3.2. Passive Representation*

Table 1 presents the composition in terms of gender, education, age and geographical origin of the European population (EU27), the Commission's total staff, and Commission's SNEs. While the first three socio-demographic characteristics are commonly included in RB studies (Kennedy, 2014), the last characteristic (i.e., geographical origin) arguably becomes a more important dimension of representation for international bureaucrats (Egeberg, 2006; Gravier, 2008, 2013; Trondal, Suvarierol, & van den Berg, 2008). Table 1 documents geographical origin of officials by wave of enlargement (which reflects a country's EU membership seniority): countries in the original EU6 (Belgium, the Netherlands, Luxembourg, Italy, France and Germany) vs. EU15 (EU6 plus Sweden, Finland, Denmark, Spain, Portugal, Austria, Ireland, United Kingdom and Greece).

Looking first at standard demographic characteristics generally included in RB studies, Table 1 indicates that the gender composition of the total Commission workforce (52% female) very closely resembles that of the overall European population (52% female). Women are, however, substantially under-represented among SNEs (40% female). The same is also true among the Commission' permanent AD-level staff (40% female), which automatically implies that they are strongly over-represented in Assistant (AST) level positions that deal with assistant and secretarial tasks (65% female; not reported in Table 1). This gender division creates a significant potential for under-representation of female viewpoints in the Commission's policy work and expert input. The age distribution of the Commission's permanent staff witnesses an under-representation at both extremes of the age distribution, and is clustered strongly in the 40–60 age range (who is strongly over-represented compared to the EU27-population). The age distribution among SNEs to some extent corrects for both deviations. Yet, this correction is imperfect as SNEs themselves at best approach the age distribution of the EU27-population.

With respect to educational background, we naturally observe a very strong over-representation among SNEs for variables reflecting specific forms of expertise (i.e., having studied outside one's home country, or holding a doctorate). Just over 19% of all SNEs have completed at least part of their education outside their home country, and no less than 20% obtained a doctorate. The equivalent numbers in the EU27 population are 3% and 1%, respectively.[5] Moreover, while social scientists (including economists and political scientists) are slightly over-represented relative to the share of tertiary graduates with such a degree in the European population, lawyers are over-represented within the Commission's expert staff (16% versus 5% in the EU27). The latter may reflect that legal expertise is highly valued for drafting official documents and delimiting discussions within the boundaries of EU law.

Finally, compared to the share of the EU27-population living in EU6 (47%) and EU15 (80%) countries, Commission's permanent AD-level staff appears to face a slight over-representation of employees from the six "oldest" member states. The reverse conclusion holds among SNEs employed in the Commission, since the old(er) Member States are strongly under-represented in this group. The latter suggests that the Commission is using such temporary positions to incor-

**Table 1.** Representation by gender, education, age and geographical origin (per cent).

| | EU27 | All staff | SNEs |
|---|---|---|---|
| Women | 52 | 52 | 40 |
| Social Science | 28 [a] | na | 37 |
| Law | 5 [a] | na | 16 |
| Study Abroad | 3 [b] | na | 19 |
| PhD | 1 [c] | na | 20 |
| 19-40 years | 44 | 32 | 41 |
| 40-50 years | 23 | 37 | 30 |
| 50-60 years | 21 | 27 | 18 |
| 60-65 years | 11 | 4 | 11 |
| EU6 | 47 | 51 | 30 |
| EU15 | 80 | 80 | 62 |

Notes: [a] Share of tertiary graduates with a degree in a particular field of education; [b] Students studying in other EU27, EEA or candidate country, as percentage of total student population; [c] Estimate based on tertiary education graduates as percent of population in EU27 (23.7% in 2011) and the share of tertiary graduates finishing a doctorate (2.6% in 2004); na is 'not available'. Sources: Eurostat; OECD; European Commission (2011a, 2011b, 2011c); Authors' survey among Commission SNEs.

which our survey among the Commission's SNEs took place (see below).

[5] Note that the EU27 figures exclude individuals studying in, for instance, the United States, Canada or Asian countries. Nevertheless, since intra-EU study-related travel is more common than extra-EU travel, this is unlikely to have a significant influence on our results.

porate officials from countries that acceded to the EU in, or after, the 2004 accession round (see also Ban, 2013).

Table 1 only looks at the Commission *as a whole*. Yet, the results thus obtained need not play out similarly across all different sections of this large and diverse bureaucracy (Kennedy, 2012; Meier & Capers, 2013; Schröter & von Maravić, 2014). Research in organisation theory indeed indicates that decision-making logics vary substantially across policy areas (Egeberg, 2012a). Within the EU, for instance, it is easy to imagine that bureaucrats have less leeway for personal initiative in sensitive policy areas (such as agriculture, regional policy, or development aid) compared to less sensitive areas (such as research and innovation or mobility and transport). Different policy areas represented in the Commission may also foster different cultures of representation (Kennedy, 2014), which can become reflected in the (interpretation of) staffing policies (Cayer & Sigelman, 1980; Gravier, 2013; Murdoch & Geys, 2014). Consequently, and following recent suggestions to "bring institutional variety back into diversity research" (Schröter & von Maravić, 2014, p. 4), Table 2 depicts the representativeness of SNEs across seven sets of DGs covering distinct policy areas (previously differentiated by Murdoch and Trondal (2013)).[6]

As expected, the representation of different population groups varies across policy areas. This holds first of all in terms of educational background: that is, we observe substantial over-representation of social scientists in DGs occupied with External Relations and Research, while lawyers cluster in Central DGs. SNEs with a doctorate are, unsurprisingly, strongly represented in Research DGs. The same can also be observed with respect to SNEs' age distribution (i.e., younger SNEs are over-represented in Market and Provision DGs, and older SNEs in Supply and Provision DGs) and gender (i.e., while female SNEs face stronger under-representation in Market-, Supply-, and Research-related DGs, they are representative of the EU27-population in DGs linked to the Commission administration ("Central")). Although the latter could in part reflect that these DGs provide more "female" occupations (as also observed via the higher share of women in "female" Assistant positions),[7] it could also suggest that the administrative DGs in the Commission may have a stricter enforcement of gender-equality standards. These DGs may be more directly involved in setting up and maintaining administrative procedures such as non-discriminatory hiring arrangements.

### *3.3. Active Expert Representation: Does Background Matter?*

In this section, we turn to examining Commission SNEs' role perception as an "expert". The key question here is whether SNEs with higher expertise levels are also more likely to perceive themselves as independent experts in their day-to-day decision-making, and act in accordance with the prescripts of such an epistemic role. This is often expected from "administrators who perceive their role as that of an advocate or representative of minority interests" (Selden, 1997, p. 140), but has not been directly tested for experts. It is important to observe here that we operationalize active "expert" representation by SNEs' role perceptions (i.e., the extent to which they feel they perceive themselves as independent experts in their daily work) rather than actual policy decisions or outcomes. The reason behind this operationalization is that the discretionary power of bureaucrats is critical for active representation (Meier, 1993; Sowa & Selden, 2003). Final outputs, however, unlike personal decisions and individuals' perceptions thereof, are often determined by numerous factors beyond bureaucratic control (such as, for instance, citizen coproduction of public goods and services; Whitaker, 1980; De Witte & Geys, 2011, 2013), which limits their relevance in measuring active representation (Bradbury & Kellough, 2007). We thus study "the potential for active representation (…) rather than seeking evidence of policy outcomes in line with the interests of specific groups" (Bradbury & Kellough, 2007, p. 698). The analysis relies on the following simple regression model (with subscript i referring to SNEs):

$$\text{ExpertRole}_i = \alpha + \beta_1 \text{Gender}_i + \beta_2 \text{Age}_i + \beta_3 \text{EduType}_i + \beta_4 \text{StudyAbroad}_i + \beta_5 \text{PhD}_i + \beta_6 \text{EU6}_i + \beta_7 \text{EU15}_i + \beta_8 \text{SNEyear}_i + \varepsilon_i \quad (1)$$

Where "ExpertRole" is based on the question: "In your daily work, to what extent do you feel you act as an independent expert?". It is coded using a six-point scale from "fully" (coded as 0) to "not at all" (coded as 5), which requires estimating an ordered logit model. We also cluster standard errors by either DG or country of

[6] We lack similarly differentiated data about Commission's permanent staff, such that the analysis here necessarily relies on our sample of SNEs. The seven policy areas are "Market", which is comprised of DGs COMP, ECFIN, ENTR and MARKT; "External Relations" is DGs ELARG, DEVCO, FPI, ECHO and TRADE; "Social Regulation" is DGs CLIMA, EAC, EMPL, ENV, SANCO, HOME and JUST; "Supply" is DGs ENER, CNECT, MOVE, RTD and TAXUD; "Provision" is DGs AGRI, MARE and REGIO; "Research" is DGs ESTAT and JRC; Central consists of BUDG, COMM, IAS, BEPA, SJ and OLAF (DG acronyms are explained in the appendix).

[7] Job typology may indeed give rise to "gendered" expectations concerning the performance, ability or "fit" of job candidates for specific jobs. This may lead recruiters to have a preference for women over men (and vice versa) for certain types of jobs (Heilman, 1995; Watts, 2009), but may also affect applicants since gender stereotypes are known to have important self-fulfilling effects (Harris & Rosenthal, 1985; Miller & Turnbull, 1986).

origin to account for the fact that answers from SNEs within one DG (or from the same home country) may not be fully independent from one another.

The key explanatory variables are SNEs' age (in years), gender (1 if male), educational background ("EduType"; separate indicator variables for a degree in economics, political science or law), whether or not the SNE studied abroad (1 if yes) or obtained a doctorate (1 if yes), and SNEs' country of origin (separate indicator variables for EU6 and EU15). We also include the number of years (s)he has been working in the Commission, as exclusion of this variable may have a confounding effect of our estimate of the effect of SNEs' age. SNEs' seniority in the Commission is thus applied as a control variable, suggesting that organizational re-socialization inside the Commission to some extent may modify the effect of individual pre-socialization outside the Commission. The results are summarized in Table 3.

Table 3 suggests that only the educational background variable has a significant effect on SNEs' active representation as "experts". First, we see that SNEs with a doctorate are much *more* likely to invoke their role as an independent expert. Thus, the length of pre-socialization inside university organizations makes officials more expert-oriented. Secondly, SNEs with degrees in social sciences—such as economics and political science—are significantly *less* likely to state that they act as an independent expert in their daily work in the Commission (compared to law and "other" degrees). This suggests that social science degrees lead to lower expert orientations, which might reflect the relative absence of uncontested scientific "laws" in such disciplines (as compared to law or "hard" sciences such as physics and engineering). Other demographic variables such as age, place of education and country of origin have no explanatory power. Finally, and supporting previous research, organizational re-socialization *inside* organizations affects the role perceptions of office holders (e.g., Egeberg, Gornitzka, & Trondal, 2015) since we see that SNEs' self-perception as "expert" tends to *strengthen* with the number of years in the Commission. Though not reported above, these results are robust to the inclusion of direct controls for working in specific DGs, which implies that individuals' characteristics are driving the above results rather than the DGs SNEs work in within the Commission (see above).

## 4. Conclusion

Not surprisingly, in terms of a number of basic socio-demographic background characteristics, Commission SNEs can barely be called passively representative of the overall EU27-population. SNEs are significantly more likely to be male officials with a degree in law from the "new" member states that acceded in or after the 2004 accession round. The only exception is experts' age, since the age distribution among Commission's SNEs appears a substantially closer match to that of the EU27 population than the age distribution among Commission's permanent AD-level staff. More importantly, however, this study suggests that only the educational background variable—among all demographic variables—has a significant effect on active expert representation. Organizational re-socialization *inside* organizations appears a stronger signifier of role perceptions—such as the expert role—among office holders (e.g., Egeberg, Gornitzka, & Trondal, 2014), since we see that SNEs' self-perception as an independent expert tends to strengthen with the number of years in the Commission.

**Table 2.** Representativeness of Commission SNEs by policy area (N ≈ 452) (per cent).

| | **EU27** | Market (N = 71) | External Relations (N = 65) | Social Regulation (N = 123) | Supply (N = 87) | Provision (N = 25) | Research (N = 54) | Central (N = 20) |
|---|---|---|---|---|---|---|---|---|
| Women | **52** | 38 | 46 | 46 | 34 | 39 | 31 | 50 |
| Social Science | **28** [a] | 48 | 51 | 30 | 26 | 32 | 50 | 35 |
| Law | **5** [a] | 20 | 11 | 21 | 16 | 4 | 0 | 35 |
| Study Abroad | **3** [b] | 20 | 23 | 19 | 14 | 28 | 15 | 25 |
| PhD | **1** [c] | 18 | 17 | 24 | 18 | 8 | 31 | 10 |
| 19–40 years | **44** | 56 | 35 | 40 | 33 | 52 | 35 | 45 |
| 40–50 years | **23** | 30 | 32 | 29 | 31 | 12 | 33 | 40 |
| 50–60 years | **21** | 7 | 22 | 20 | 21 | 20 | 20 | 10 |
| 60–65 years | **11** | 7 | 11 | 11 | 15 | 16 | 11 | 5 |
| EU6 | **47** | 38 | 28 | 25 | 32 | 16 | 33 | 40 |
| EU15 | **85** | 72 | 71 | 61 | 63 | 48 | 54 | 70 |

Notes: [a] Share of tertiary graduates with a degree in a particular field of education; [b] Students studying in other EU27, EEA or candidate country, as percentage of total student population; [c] Estimate based on tertiary education graduates as percent of population in EU27 (23.7% in 2011) and the share of tertiary graduates finishing a doctorate (2.6% in 2004); 'Market' is DGs COMP, ECFIN, ENTR and MARKT; 'External Relations' is DGs ELARG, DEVCO, FPI, ECHO and TRADE; 'Social Regulation' is DGs CLIMA, EAC, EMPL, ENV, SANCO, HOME and JUST; 'Supply' is DGs ENER, CNECT, MOVE, RTD and TAXUD; 'Provision' is DGs AGRI, MARE and REGIO; 'Research' is DGs ESTAT and JRC; 'Central' consists of BUDG, COMM, IAS, BEPA, SJ and OLAF; Translation and administrative services are excluded. Source: Authors' survey among Commission SNEs

**Table 3.** Estimation results.

| | *ExpertRole (cluster by DG)* | *ExpertRole (cluster by country)* |
|---|---|---|
| Male (dummy) | –0.289 * (–1.83) | –0.281 (–1.61) |
| Age (years) | 0.004 (0.43) | 0.004 (0.53) |
| PhD | –0.628 ** (–2.48) | –0.641 *** (–3.50) |
| StudyAbroad | 0.201 (0.96) | 0.227 (0.97) |
| Economist (dummy) | 0.530 ** (2.44) | 0.512 ** (2.38) |
| Political Science (dummy) | 0.490 (1.46) | 0.475 * (1.89) |
| Lawyer (dummy) | 0.173 (0.60) | 0.158 (0.72) |
| EU6 (dummy) | –0.002 (–0.01) | –0.017 (–0.07) |
| EU15 (dummy) | –0.015 (–0.06) | –0.018 (–0.06) |
| SNE-year 2 (dummy) | 0.275 (0.80) | 0.280 (0.91) |
| SNE-year 3 (dummy) | –0.041 (–0.14) | –0.036 (–0.14) |
| SNE-year 4 (dummy) | –0.232 (–0.80) | –0.209 (–0.64) |
| SNE-year 5 (dummy) | –0.528 * (–1.89) | –0.526 * (–1.93) |
| Wald $chi^2$ | 48.25 *** | 68.78 ** |
| N | 408 | 409 |

Note: t statistics based on standard errors corrected for clustering at DG- or country-level between brackets, *** significant at 1%, ** at 5% and * at 10%. The dependent variable uses the question: "In your daily work, to what extent do you feel you act as an independent expert?", coded using a six-point scale from "fully" (coded as 0) to "not at all' (coded as 5).

The passive-active representation dichotomy remains under-studied and contested, and deserves more in-depth analyses in future research. Future research on RB should study in greater detail the conditions under which passive representation translates into (a potential for) active representation. Based on our findings, and in line with recent work on the European Parliament (Egeberg et al., 2014), pre-socialization outside organizations might be expected to matter less than organizational re-socialization inside organizations and organizational affiliation. That is, a study of European Parliament officials suggests that individual processes of pre-socialization outside the EP reveal non-significance. What matters is whether officials are employed by the EP secretariat or by the political groups ("organizational affiliation") and their length of service in EU institutions ("organizational socialization") (Egeberg et al., 2014). Also, a review of the literature on the role of nationality in Commission decision-making concludes that Commission officials' national background plays only a minor role. However, nationality matters somewhat more regarding commissioners' behaviour, but makes up only one of several components of their highly compound role (Egeberg, 2012b).

In particular, future research on active representation may consider how demographic variables matter under certain conditions: i.e., whether the organizational structure of a group is loose and supplies few relevant premises for behaviour; whether the actor participates in a fairly stable group with clearly stated goals; whether this group is perceived as important; whether membership is durable; whether the group and the values and identities it represents is generally accepted in society; whether there is a clear connection between what the group does and the life of the group members, and whether group belonging is conceived and an important reason for recruitment to the group (Lægreid & Olsen, 1978, pp. 28-29). Future research should thus examine whether expertise might affect decision-making behaviour (active expert representation) under such conditions.

**Acknowledgements**

We are grateful to CLENAD (especially its former president Matthew Snoding) and Nina Bonge (WZB Berlin) for invaluable assistance with the survey, to FWO Vlaanderen for financial assistance (grant nr. G.0022.12 to Benny Geys), and to the Norwegian Research Council ("EURODIV: Integration and division: Towards a segmented Europe?"). The usual caveat applies.

**Conflict of Interests**

The authors declare no conflict of interests.

**References**

Andrews, R., Boyne, G. A., Meier, K., O'Toole, L., & Walker, R. (2005). Representative bureaucracy, organizational strategy and public sector performance: An empirical analysis of English local government. *Journal of Public Administration Research and Theory*, *15*, 489-504.

Atkins, D. N., & Wilkins, V. M. (2013). Going beyond reading, writing and arithmetic: The effects of teacher representation on teen pregnancy rates. *Journal of Public Administration Research and Theory*, *23*, 771-790.

Ban, C. (2013). *Management and Culture in an Enlarged European Commission: From Diversity to Unity?* Basingstoke: Palgrave Macmillan.

Barnett, M., & Finnemore, M. (2004). *Rules for the World. International Organizations in Global Politics*. Ithaca: Cornell University Press.

Becher, T. (1989). *Academic Tribes and Territories.* Milton Keynes, UK: Society for Research into Higher Education & Open University Press.

Beyers, J. (2005). Multiple embeddedness and socialization in Europe: The case of Council Officials. *International Organization*, *59*, 899-936.

Beyers, J. (2010). Conceptual and methodological challenges in the study of European socialization. *Journal of European Public Policy, 17*(6), 909-920.

Bickerton, C. J. (2012). *European Integration*. Oxford: Oxford University Press.

Bradbury, M. D., & Kellough, J. E. (2007). Representative bureaucracy: Exploring the potential for active representation in local government. *Journal of Public Administration Research and Theory, 18*, 697-714.

Braxton, J. M., & Hargens, L. L. (1996). Variation among Academic Disciplines: Analytical Frameworks and Research. In J. C. Smart (Ed.), *Higher Education: Handbook of Theory and Research* (Vol. XI). New York: Agathon Press.

Brooks, H. (1975). Expertise and politics—Problems and tensions. *Proceedings of the American Philosophical Society*, *119*(4), 257-261.

Cayer, N. J., & Sigelman, L. (1980). Minorities and women in state and local government: 1973–1975. *Public Administration Review*, *40*, 443-450.

Choi, S. (2009). Diversity in the US Federal government: Diversity management and employee turnover in Federal agencies. *Journal of Public Administration Research and Theory*, *19*(3), 603-630.

De Witte, K., & Geys, B. (2011). Evaluating efficient public good provision: Theory and evidence from a generalised conditional efficiency model for public libraries. *Journal of Urban Economics*, *69*(3), 319-327.

De Witte, K., & Geys, B. (2013). Citizen coproduction and efficient public good provision: Theory and evidence from local public libraries. *European Journal of Operational Research*, *224*(3), 592-602.

Djelic, M.-L. (2006). Marketization, from Intellectual Agenda to Global Policy-Making. In M.-L. Djelic & K. Sahlin-Andersson (Eds.), *Transnational Governance. Institutional Dynamics of Regulation.* Cambridge: Cambridge University Press.

Drori, G. S., & Meyer, J. W. (2006). Scientization: Making a World Safe for Organizing. In M.-L. Djelic & K. Sahlin-Andersson (Eds.), *Transnational Governance. Institutional Dynamics of Regulation.* Cambridge: Cambridge University Press.

Drori, G. S., Meyer, J. W., Ramirez, F. O., & Schofer, E. (2003). *Science in the Modern World Polity*. *Institutionalization and Globalization.* Stanford: Stanford University Press.

Egeberg, M. (2006). *Multilevel Union Administration. The Transformation of Executive Politics in Europe*. London: Palgrave.

Egeberg, M. (2012a). How Bureaucratic Structures Matter: An Organizational Perspective. In B. G. Peters & J. Pierre (Eds.), *Handbook of Public Administration* (2nd ed.). London: Sage.

Egeberg, M. (2012b). Experiments in Supranational Institution-Building: The European Commission as a laboratory. *Journal of European Public Policy*, *19*(6), 939-950.

Egeberg, M., Gornitzka, Å., & Trondal, J. (2014). People who run the European Parliament. *Journal of European Integration*. doi: 10.1080/07036337.2014.935362.

Egeberg, M., Gornitzka, Å., & Trondal, J. (2015). An Organizational Approach to Governance. In C. Ansell & J. Torfing (Eds.), *Handbook on Theories of Governance*. Cheltenham: Edward Elgar.

Eriksen, E. O., & Fossum, J. E. (Eds.) (2000). *Democracy in the European Union. Integration through Deliberation?* London: Routledge.

European Commission. (2011a). *European Commission Human Resource Report 2011*. Brussels: European Commission.

European Commission. (2011b). Distribution of staff by statutory links and DGs (situation on 01/05/2011). Retrieved from http://ec.europa.eu/civil_service/about/figures

European Commission. (2011c). *Draft General Budget 2012, Section 3 European Commission, Appropriations Payments for 2011.* Brussels: European Commission.

Flinders, M. (2014). Explaining democratic disaffection: Closing the expectations gap. *Governance*, *27*(1), 1-8.

Gravier, M. (2008). The 2004 enlargement staff policy of the European Commission: The case for representative bureaucracy. *Journal of Common Market Studies*, *46*(5), 1025-1047.

Gravier, M. (2013). Challenging the enhancing of the EU's legitimacy? The evolution of representative bureaucracy in the Commission's staff policies. *Journal of Public Administration Research and Theory, 23*(4), 817-838.

Groeneveld, S., & van de Walle, S. (2010). A contingency approach to representative bureaucracy. *International Review of Administrative Sciences*, *76*(2), 239-258.

Haas, E. (1990). *When Knowledge Is Power. Three Models of Change in International Organizations*. Berkeley: University of California Press.

Haas, P. (1992). Epistemic communities and international policy coordination. *International Organization*, *46*(1), 1-35.

Harris, M., & Rosenthal, R. (1985). Mediation of interpersonal expectancy effects: 31 meta-analyses. *Psychological Bulletin*, *97*, 363-386.

Heilman, M. E. (1995). Sex stereotypes and their effects in the workplace: What we know and what we don't know. *Journal of Social Behavior and Personality*, *10*, 3-26.

Hindera, J. J. (1993). Representative bureaucracy: Further evidence of active representation in the EEOC district offices. *Journal of Public Administration Research and Theory*, *3*, 415-429.

Hooghe, L. (2005). Several roads lead to international norms, but few via international socialization. A case study of the European Commission. *International Organization, 59*, 861-898.

Hooghe, L. (2012). Images of Europe: How Commission officials conceive their institution's role. *Journal of*

*Common Market Studies, 50*(1), 87-111.

Joerges, C. (1999). Bureaucratic Nightmare, Technocratic Regime and the Dream of Good Transnational Governance. In C. Joerges & E. Vos (Eds.), *EU Committees: Social Regulation, Law and Politics*. Oxford: Hart Publishing.

Joerges, C., Ladeur, K.H., & Vos, E. (Eds.) (1997). *Integrating Scientific Expertise into Regulatory Decision-Making*. Baden-Baden: Nomos.

Kassim, H., Peterson, J., Bauer, M. W., Connolly, S., Dehousse, R., Hooghe, L., & Thompson, A. (2013). *The European Commission of the Twenty-First Century*. Oxford: Oxford University Press.

Kennedy, B. (2013). Sorting through: The role of representation in bureaucracy. *Journal of Public Administration Research and Theory*, *23*(4), 791-816.

Kennedy, B. (2014). Unravelling representative democracy: A systematic analysis of the literature. *Administration and Society*, *46*(4), 395-421.

Kingsley, J. D. (2003). Representative Bureaucracy. In J. Dolan & D. H. Rosenbaum (Eds.), *Representative Bureaucracy: Classic readings and Continuing Controversies*. New York: M. E. Sharpe.

Lægreid, P., & Olsen, J. P. (1978). *Byråkrati og Beslutninger*. Bergen: Universitetsforlaget.

Lim, H. (2006). Representative bureaucracy: Rethinking substantive effects and active representation. *Public Administration Review*, *66*, 193-205.

Maasen, P., & Olsen, J. P. (Eds.) (2007). *University Dynamics and European Integration*. Dordrecht: Springer.

Meier, K. J. (1993). Latinos and representative bureaucracy: Testing the Thompson and Henderson hypotheses. *Journal of Public Administration Research and Theory*, *3*(4), 393-414.

Meier, K. J., & Capers, K. J. (2013). Representative Bureaucracy: Four Questions. In B. G. Peters & J. Pierre (Eds.). *The Sage Handbook of Public Administration*. London: SAGE.

Meier, K. J., & Nicholson-Crotty, J. (2006). Gender, representative bureaucracy and law enforcement: The case of sexual assault. *Public Administration Review*, *66*, 850-860.

Miller, D., & Turnbull, W. (1986). Expectancies and interpersonal processes. *Annual Review of Psychology*, *37*, 233-256.

Mosher, F. (1968). *Democracy and the Public Service*. Oxford: Oxford University Press.

Murdoch, Z., & Geys, B. (2014). Institutional dynamics in international organisations: Lessons from the recruitment procedures of the European External Action Service. *Organization Studies*. doi: 10.1177/0170840614544558.

Murdoch, Z., & Trondal, J. (2013). Contracted government: Unveiling the European Commission's contracted staff. *West European Politics*, *36*(1), 1-21.

O'Connor, K. (2014). *Public Administration in Contested Societies*. Houndsmills: Palgrave Macmillan.

Olsen, J. P. (2007). The Institutional Dynamics of the European University. In P. Maasen, & J. P. Olsen (Eds.). *University Dynamics and European Integration*. Dordrecht: Springer.

Paradeise, C., Reale, E., Bleiklie, I., & Ferlie, E. (Eds.) (2009). *University Governance*. Dordrecth: Springer.

Pennock, J. R. (1968). Political Representation: An Overview. In J. R. Pennock & J. W. Chapman (Eds.), *Representation*. New York: Atherton Press.

Pentland, C. (1973). *International Theory and European Integration*. New York: The Free Press.

Peters, B. G., Schröter, E., & von Maravić, P. (2013). *Representative bureaucracy: Concept, Driving Forces, Strategy*. In P. von Maravić, B. G. Peters & E. Schröter (Eds.), *Representative Bureaucracy in Action*. Cheltenham: Edward Elgar Publishing.

Pfeffer, J. (1982). *Organizations and Organization Theory*. Marshfield: Pitman.

Pitkin, H. F. (1967). *The Concept of Representation*. Berkeley: University of California Press.

Pitts, D. W., Hicklin, A. K., Dawes, D. P., & Melton, E. (2010). What drives the implementation of diversity management programs? Evidence from public organizations. *Journal of Public Administration Research and Theory*, *20*(4), 867-886.

Radaelli, C. (1999).The public policy of the European Union: Whither politics of expertise? *Journal of European Public Policy*, *6*(5), 757-774.

Ramirez, F. O. (2006). The Rationalization of Universities. In M.-L. Djelic & K. Sahlin-Andersson (Eds.), *Transnational Governance. Institutional Dynamics of Regulation.* Cambridge: Cambridge University Press.

Rayner, S. (2003). Democracy in the age of assessment: Reflections on the roles of expertise and democracy in public-sector decision making. *Science and Public Policy*, *30*(3), 163-170.

Rhodes, R. A. W., Hart, P. 't, & Noordegraaf, M. (2007). *Observing Government Elites*. Houndmills: Palgrave Macmillan.

Rutgers, M. R., & Mentzel, M. A. (1999). Scientific expertise and public policy: Resolving paradoxes? *Science and Public Policy*, *26*(3), 146-150.

Savigny, H. (2013), The (political) idea of a university: Political science and neoliberalism in English higher education. *European Political Science*, *12*(4), 432-439.

Schröter, E., & von Maravić, P. (2014). Improving Administrative Performance? How High Hopes of Diversity May Be Dashed in the Public Sector. In G. Peters, E. Schröter, & P. von Maravić (Eds.), *The Politics of Representative Bureaucracy. Power, legitimacy, Performance*. Cheltenham: Edward Elgar Publishing.

Selden, S. C. (1997). *The Promise of Representative Bureaucracy: Diversity and Responsiveness in Govern-*

*ment Agency*. New York: M. E. Sharpe.

Selden, S. C., & Selden, F. (2001). Rethinking diversity in public organizations in the 21st century. *Administration and Society*, *33*(3), 303-329.

Smeby, J.-C. (2000). Disciplinary differences in graduate education in Norway. *Studies in Higher Education*, *25*(1), 53-67.

Sowa, J. E., &. Selden, S. C. (2003). Administrative discretion and active representation: An expansion of the theory of representative bureaucracy. *Public Administration Review*, *63*(6), 700-709.

Stevens, A. (2009). Representative bureaucracy: What, why and how? Evidence from the European Commission. *Public Policy and Administration*, *24*(2), 119-139.

Stone, D. (2012) Agents of Knowledge. In D. Levi-Faur (Ed.), *The Oxford Handbook of Governance*. Oxford: Oxford University Press.

Sutcliffe, K. M., & Weick, K. (2008). Information Overload Revisited. In G. P. Hodgkinson & W. H. Starbuck (Eds.), *The Oxford Handbook of Organizational Decision Making*. Oxford: Oxford University Press.

Trondal, J. (2013). Organized Systems and the Ambiguities of Behavior and Change: Observations from Universities and Jazz Orchestras. In J. Holbek, S. Kristiansen, & T. Randøy (Eds.), *Management for Progress*. Oslo: Novus Press.

Trondal, J. (2014). Agencification. *Public Administration Review, 74*(4), 545-549.

Trondal, J., Murdoch, Z., & Geys, B. (2014). Representative bureaucracy in international organizations. Unpublished paper.

Trondal, J., Suvarierol, S., & van den Berg, C. (2008). The compound machinery of government. The case of seconded officials in the European Commission. *Governance*, *21*(2), 253-274.

Watts, J. H. (2009). Leaders of men: Women "managing" in construction. *Work, Employment & Society*, *23*, 512-530.

Weingart, P. (1999). Scientific expertise and political accountability: Paradoxes of science in politics. *Science and Public Policy, 26*(3)*,* 151-161.

Whitaker, G. P. (1980). Co-production: Citizen participation in service delivery. *Public Administration Review*, *40*, 240-46.

Wilson, J. Q. (1989). *Bureaucracy.* New York: Basic Books.

Wrong, D. H. (1970). *Max Weber.* Englewood Cliffs: Prentice Hall.

**About the Authors**

**Dr. Jarle Trondal**

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

**Dr. Zuzana Murdoch**

Zuzana Murdoch is Senior Research Fellow at the University of Bremen and associated researcher at the University of Agder (Kristiansand, Norway). Her main research interests concern the role and influence of the administrative level in EU governance and policy-making. Some of her work has appeared in journals including *Organization Studies*, *Journal of European Public Policy*, *Journal of Common Market Studies*, *West European Politics* and *Public Administration*.

**Dr**. **Benny Geys**

Benny Geys is Research Professor at Vrije Universiteit Brussel (VUB) in Brussels and Associate Professor in Economics at the Norwegian Business School (BI) in Oslo. His research predominantly focuses on intergovernmental relations, civic engagement and political accountability. Some of his work has appeared in journals including *Economic Journal*, *Journal of the European Economic Association*, *Organization Studies*, *Public Opinion Quarterly* and *European Journal of Political Research*.

**Politics and Governance (ISSN: 2183-2463)**
**2015, Volume 3, Issue 1, Pages 37-48**
**Doi: 10.17645/pag.v3i1.240**

Article

# Cynical or Deliberative? An Analysis of the European Commission's Public Communication on Its Use of Expertise in Policy-Making

Cathrine Holst * and John R. Moodie

ARENA—Centre for European Studies, University of Oslo, 0855 Oslo, Norway; E-Mails: cathrine.holst@arena.uio.no (C.H.), j.r.moodie@arena.uio.no (J.R.M.)

* Corresponding author

Submitted: 5 February 2015 | In Revised Form: 19 March 2015 | Accepted: 25 March 2015 | Published: 31 March 2015

**Abstract**
The European Commission has faced increasing criticism that its use of expertise in policy-making is undemocratic and politicized. In response to critics, the Commission has produced a number of publicly available documents where its expert policies and practices are outlined and discussed. Cynics view public communications of this nature with skepticism, as organizations tend to adopt "smooth talk" and cosmetic rhetoric designed to placate critics and create a façade of compliance aimed at decreasing external pressure. An alternative deliberative approach, would expect the Commission to engage in a relatively open, reflective and reason-based interchange. The article's main aim is to assess the relative merits of these two approaches in capturing the Commission's framing of its public communication. Cynical expectations, prevalent among Commission critics, are confirmed by the Commission's silence on unpleasant topics including the undemocratic nature of existing expertise arrangements and the strategic uses of knowledge in EU policy-making. However, firm regulatory initiatives and the Commission's critical engagement with democratization demands and possible goal conflicts within their critics' agenda give significant leverage to a deliberative approach.

**Keywords**
deliberative democracy; European Commission; expertise; knowledge utilization; organized hypocracy; public communication

**Issue**
This article is part of the special issue "The Role of Expert Knowledge in EU Executive Institutions", edited by Professor Åse Gornitzka (University of Oslo, Norway) and Dr. Cathrine Holst (University of Oslo, Norway).



## 1. Introduction

The European Union's (EU) main executive body, the European Commission, routinely consults experts, and is reliant on knowledge as its main source of legitimacy (Boswell, 2008a; Dehousse, 2011; Ross, 1995). The increasing role of experts challenges established ideas of accountability and democratic decision-making and has spurred tension at the supranational level, contributing to the democratic deficit debate and the technocratic image of the EU (Featherstone, 1994; Radaelli, 1999). The most recent manifestation of this criticism came in October 2014 when the European Parliament placed a moratorium on funding for Commission expert groups, accusing them of being closed, dominated by vested corporate interests and lacking transparency (Alter-EU, 2014). As a result, the Commission has faced growing external pressure to change its expert advice approach and arrangements.

In response to critics, the Commission has published a number of publicly available documents examining the role and use of knowledge and expertise in EU policy-making. What can we expect from these documents? Which positions and perspectives will most likely prevail? The article addresses this question by contrasting two competing theoretical approaches.

A branch of organizational theory—we refer to its representatives as "the cynics"—would hypothesize that public communications of this nature are primarily cosmetic and to be viewed with skepticism as organizations will engage in symbolic rhetoric to defuse external criticism, obfuscate real motives, and defend existing internal structures. An alternative, deliberative perspective would anticipate that the Commission adopts a relatively open, reflective approach based on reason-giving. The article's main aim is to assess the relative merits of the two theoretical perspectives in capturing the Commission's framing of its public communication.

The next section introduces central features of the Commission's use of expert advice, and elaborates on recent controversies and criticisms that have been raised against the Commission's expert policies and practices. It is argued that critics attack the Commission for disregarding democratic concerns, but also for their strategic use of expertise. The following section presents the cynics' and deliberativists' competing approaches in more detail and spells out operational hypotheses. Section 4 reflects on data and methods, and is followed by section 5 which presents the analysis of the Commission's documents and main findings. It is argued that cynical expectations are confirmed by the Commission's silence on unpleasant topics. However, the introduction of regulatory initiatives and the Commission's critical engagement with democratization demands and possible goal conflicts within the critics' agenda, give significant leverage to a deliberative approach. The final section sums up the article and delineates a few implications.

## 2. The Commission under Fire: Democratic Deficit and Strategic Knowledge Utilization

Expertise is deeply entrenched within the institutional structure of the EU (Böhling, 2014; Boswell, 2008a; Egeberg, Schaefer, & Trondal, 2003; Radaelli, 1999; Rimkute & Haverland, 2014; Schrefler, 2010), and the European Commission, in particular, is reliant on knowledge and expert advice in lieu of a direct electoral mandate (Moodie, 2011; Trondal, 2001). In addition to its in-house expertise, the Commission now routinely consults external experts to assist in the formulation and implementation of policy (Metz, 2013; Schaefer, 2002). This recourse to expert knowledge and advice is reflected in the development of a large number of EU-level agencies, comitology committees and expert groups (Christiansen & Kricher, 2000; Christiansen & Larsson, 2007; Gornitzka & Sverdrup, 2008, 2010; Joerges & Neyer, 1997; Larsson, 2003; Pedler & Schaefer, 1996; Stie, 2013; Vos, 1997).

The growing number of expertise-based bodies at the supranational level has served to increase academic interest in the different functions of knowledge in EU policy-making (Haas, 2004; Radaelli, 1995). Building on literature examining knowledge utilization in public policy-making (Weiss, 1979, 1986, 1999), EU scholars have developed different ingrained conceptualizations of the Commission's uses of expertise, but discussions have tended to circulate around three main functions: the instrumental, the substantiating and the symbolic (Boswell, 2008a; Radaelli, 2009; Rimkute & Haverland, 2014; Schrefler, 2010).[1]

The Commission uses knowledge instrumentally when it turns to experts to provide background information, "evidence" and technical solutions to help assist in task performance, enhance understanding, increase the number of policy options available, and improve the quality of policy outputs (Boswell, 2008a; Haas, 2004; Majone, 1996; Radaelli, 2009; Rimkute & Haverland, 2014; Scharpf, 1999; Schrefler, 2010; Weiss, 1977). The instrumental use of expertise is viewed as central for ensuring the Commission's institutional autonomy and social legitimacy: its authority rests decisively on its ability to act in a neutral manner and base policies on sound evidence, rather than on political or strategic interests (Boswell, 2008a; Majone, 1996; Rimkute & Haverland, 2014). The instrumental function is also intimately linked to a standard approach to the normative legitimacy of expert involvement in policy-making: if expert involvement is defensible, it is defensible—or so it is often argued—on the grounds that it contributes to better and more "truth-sensitive" decisions, increases problem solving capacity and contributes to more effective policies (Christiano, 2012; see also Martí, 2006).

However, the way an organization actually uses expertise seldom fits neatly with the doctrine of instrumental knowledge utilization (Groenleer, 2009; Schrefler, 2013). Knowledge serves a substantiating function when expertise is used selectively to justify predetermined policy decisions, whereas the symbolic function of knowledge refers to institutions' use of expertise to enhance their position and power vis-à-vis other institutions and stakeholders (Haas, 2004; Herbst, 2003; Boswell, 2008; Rimkute & Haverland, 2014; Schrefler, 2010). The latter then is more about demonstrating competence and "epistemic authority", than about enlightening the case in question or solving specific policy problems (Geuss, 2001; Rimkute & Haverland, 2014).

These non-instrumental political or strategic uses of expertise[2] are less official. Most bureaucrats, including Commission officials, are, however, likely to be well

[1] What Schrefler (2010) identifies as the "symbolic" function of knowledge is referred to by Boswell (2008) and Rimkute and Haverland (2014) as the "legitimizing" function. Radaelli (2009) and Schrefler (2010) also refer to the "political strategic" use of knowledge; however, as Rimkute and Haverland (2014) point out, this use is closely interlinked with the symbolic function.

[2] In this article we will use the terms "strategic", "political", "politicized" and "non-instrumental" interchangeably when referring these utilizations of expertise.

acquainted with them (Aberbach, Putnam, & Rockman, 1981; Boswell, 2008; Ellinas & Suleiman, 2012). The political functions of knowledge in EU policy-making have also been given substantive attention in research, where some contributors have presented the Commission as a power-hungry organization that is adept at utilizing expertise strategically in order to enhance its policy preferences and competences (Green-Cowles, 1995; Eising, 2007; Sandholtz & Zysman, 1989).

Criticism of the Commission's political, non-instrumental uses of expertise has been raised outside academia as well. The role of knowledge and experts in EU policy-making has for a long time been a highly contested topic. In the early 1990s, a number of public controversies surrounding new risks and transformative technologies (genetically modified crops, biofuels, mad cow disease, stem cells, etc.) contributed to increased public skepticism towards the scientific establishment and the EU's expertise reliance (Fischer, 2008). The resignation of the Santer Commission in 1999 over allegations of corruption and nepotism further undermined public confidence in the Commission and gave fuel to the Eurosceptic critique that Europe is dominated by an unelected and unaccountable technocratic elite (Featherstone, 1994; Harcourt & Radaelli, 1999; Presson, 2007; Rhinard, 2002; Wallace & Smith, 1995). The 2008 financial crisis has once more served to enhance the Commission's technocratic image, as the Troika has become a symbol of the "façade democracy" or "post-democratic executive federalism" that is developing in the Union, according to critics (Habermas, 2012; Majone, 2014; Offe, 2014). More concretely, the European Commission expert group system has been criticized for being closed and dominated by vested corporate interests. This led the European Parliament, in October 2014 (and previously in November 2011 and March 2012), to place a moratorium on expert group funding until the Commission met demands to balance the composition of expert groups, develop an open calls system for the recruitment of members, and introduce fuller transparency measures (Alter-EU, 2013, 2014).

Critics of the Commission have coalesced around demands for greater "democracy" and "democratization" of expertise as an antidote to the increased leverage of experts and technocrats (Gornitzka & Sverdrup, 2008; Metz, 2013). However, critics are equally worried about political knowledge utilization and the Commission becoming what one critic, MEP Ingeborg Grassle, has described as a "self-serving bureaucracy" (cited in Dehousse & Thompson, 2013). A recurrent accusation is that the Commission utilizes expertise strategically to pursue predetermined policy goals and increase its own power. The problem is not only a lack of respect for "democracy", but also politicized modes of knowledge utilization that compromise instrumental knowledge utilization and the quality of policy outputs. As Alter-EU representative Yiorgos Vassalos (2013) notes: "when the expertise, on which a policy or legislation is based, is biased, the possibilities of getting a bad policy result increase—namely a policy that serves the interests of those capturing the advice rather than the general interest."

## 3. Analyzing the Commission's Public Communication: A Cynical Versus a Deliberative Approach

Critics' suspicions that the Commission is engaged in political knowledge utilization seem to reflect a more deep-seated skepticism towards the Commission's initiatives and responses. Accordingly, when the Commission has replied to criticism of its use of and approach to expertise, critics typically read this communication flow as cosmetic and failing to engage substantially with the concerns raised: "The Commission gives the impression that it is rather looking for alternative ways to keep up its privileged relationship with corporate interests than looking to express the majority of citizens" (Vassalos, 2013). The Commission is "found wanting", and accused of "broken promises" behind a façade of "commitment to reform": "Commission commitments currently (are) just hot air" (Alter-EU, 2013).

Is this rather cynical reading of the Commission's response to the criticism of its expert policies and practices fair? We will investigate this question on the basis of an organizational theory approach which links closely with this cynical perspective. These are theories of organizational behavior claiming that any organization's main aim is to survive and enhance its autonomy and authority (DiMaggio & Powell, 1983; Meyer & Scott, 1983; Scott, 2004). The typical strategy in situations of external pressure is then to adopt "smooth talk" and cosmetic rhetoric to placate critics and create a façade of compliance with their demands without seriously undermining the coherence of the organization's internal structures and priorities (DiMaggio & Powell, 1983). Meyer and Rowan (1977) refer to this as "institutional decoupling"; Nils Brunsson (2002) talks about "organized hypocrisy". Central to these theories are the various mediums through which an organization can interact "hypocritically" with their external environment, including official documents. From a cynical perspective, there is thus need to approach such documents with caution and skepticism, and as for organizations' public communication under pressure, the prediction would be little, substantial engagement with critics' concerns and demands. Genuine deliberations are perceived to take place in "private" or "back stage" settings only, whereas public "front stage" communication is imagined more as a public relations exercise.

Even cynics, however, would have to differentiate between different organizations and how their core norms and activities will vary according to their structure, demography, locus and level of institutionalization (Egeberg, 2004, pp. 201-205). Organizational theo-

ry argues that the relative strength of an organization's internal culture and norms will determine the nature of its response to external criticism (Boswell, 2008b; Meyer & Scott, 1983; Scott, 2004). In the case of the Commission, analyses tends to emphasize how it has developed "its own ethos and a strong *esprit de corps*", having become "'the House', as it is referred to colloquially and affectionately by its staff" (Egeberg, 2004, p. 214; see also Dehousse, 2011, Egeberg et al., 2003, Ross, 1995, Shore, 2000, p. 127, Trondal, 2001). Such high levels of organizational identification would suggest a strong inclination among Commission officials to protect the "House" ethos when faced with external criticism. Hence, if there is something to cynics' expectations of hypocritical decoupling within an organization, then the Commission would seem a most likely case.

Specific cynical hypotheses (CH) about the Commission's public communications on its use of expertise follow from this perspective concerning the approach to 1) critics' positions, 2) inconsistencies in critics' arguments and 3) unpleasant topics for the Commission. With regard to 1, we could expect the Commission to agree with critics' views to reduce external pressures, and so subscribe to the virtues of the official doctrine of instrumental knowledge utilization (CH1a), support demands to democratize Commission policy-making and expertise arrangements (CH1b), while denouncing strategic uses of knowledge (CH1c). With regard to 2, we could for similar reasons anticipate little or no focus on revealing the possible goal conflict between instrumental knowledge utilization and critics' democratization demands (CH2a). Finally, with regard to 3, the expectation would be little or no acknowledgment of undemocratic features of current Commission arrangements (CH3a), and no mentioning of the politicized knowledge utilization practices within the Commission's own ranks (CH3a) in order to avoid more critical exposure.

We will contrast the cynical approach and the above hypotheses with an alternative deliberative approach with competing expectations as to the Commission's communications on its expert policies and practices. Political philosopher Joshua Cohen (1997, p. 72) describes deliberative democracy and politics as being characterized by a "commitment" among participants "to the resolution of problem and collective choice through public reasoning" (see also Bohman & Rehg, 1997; Chambers, 2003; Gutmann & Thompson, 2004; Besson & Marti, 2006; Mansbridge & Parkinson, 2012). One could argue that a legitimate rule should be "deliberative", while at the same time denying that deliberation characterizes politics as it is currently practiced. However, deliberative theorists typically expect that deliberation takes place: "Rational choice" and "strategic calculations of mutual advantage" are central to political processes and discussion, but "reason-giving" is a primary coordinating mechanism (Eriksen, 2014, pp. 14, 26; see also Eriksen, 2009).

The deliberative approach also generally anticipates a positive relationship between publicity and the quality of deliberation as "the absence of publicity often limits deliberative capacity" (Mansbridge & Parkinson, 2012, p. 11; see also Chambers, 2004, p. 389). Mansbridge & Parkinson (2012) note that since topics of deliberations are "issues of common concern…epistemically well-grounded preferences, opinions, and decisions must be informed by, and take into consideration, the preferences and opinions of fellow citizens". This gives a different set of expectations to communication in public, front-stage settings: Where cynics would expect deliberations on the use and role of expertise by the Commission to take place primarily back stage, deliberativists will anticipate deliberation and reasoning in the Commission's public communications.[3]

Moreover, some deliberativists would anticipate greater deliberation within an EU context than at the national level (Eriksen, 2014; see also Joerges, 2001) because the EU is a "government without a state" (Eriksen & Fossum, 2012) and thus lacks the conventional coercive means of states. According to this reading of the EU project, EU integration, policy and decision-making is "non-coercive" and characterized by "learning and pragmatic problem-solving": "when the instruments of power are lacking, actors have to sort out their differences through argumentation in order to find a solution to a common problem" (Eriksen, 2014, p. 33). If so, the Commission is once more a most likely case: If a fit with the deliberative approach is to be found anywhere, it must be in the Commission's communications, considering this organization's role as pursuer of EU integration.

Specific deliberative hypotheses (DH) regarding the Commission's public communication on its use of expertise can be deduced from this branch of theory and contrasted with the cynical hypotheses outlined above. Concerning the approach to its critics' positions, we could expect the Commission to agree or disagree with their views on instrumental knowledge utilization (DH1a), democratization (DH1b) and strategic uses of expertise (DH1c), depending on what it finds reasonable. As for inconsistencies in critics' arguments, the general expectation would be that the Commission addresses them if it finds good reasons to do so, including the possible goal conflict between instrumental knowledge utilization and critics' democratization de-

[3] A key discussion in contemporary deliberative theory concerns the more exact scope conditions for the positive relationship between publicity and deliberative quality (see Chambers, 2004; Thompson, 2008). The ambition here is, however, to give a coherent presentation of a theoretical account with competing expectations to public communication relative to those of the cynical approach. Just like organizational theory, deliberative theory is a broad scholarly tradition, but a more detailed presentation and assessment falls beyond the scope of this article.

mands (DH2a). Finally, with regard to unpleasant topics for the Commission, we could anticipate potentially undemocratic features of current Commission arrangements (DH3a), as well as any politicized knowledge utilization practices (DH3b), to be recognized and openly discussed (see Table 1).

## 4. Data and Methodological Reflections

To test these hypotheses we have analyzed publicly available Commission documents. The documents that form the basis of our analysis include working documents, white papers, reports, action plans, framework papers, communications, and regulatory documents on principles and guidelines for the use and organization of expertise (European Commission, 2000, 2001a, 2001b, 2002a, 2002b, 2005, 2007, 2010a, 2010b, 2012, 2013). The final selection is the result of a wide search for documents that deal with the use and role of expertise in EU policy-making, and several of them are framed specifically as a direct response to the problems and criticisms raised by external actors. Most of the documents approach the topic generally, discussing "knowledge and society", "democratizing expertise", etc. as broader topics, while others discuss concrete expertise arrangements and expert advice procedures. As the Commission's system of expert groups have been a main target of critics, we have traced documents on this system in particular.

The documents cover the time period from 2000 to 2013. They reflect, therefore, an ongoing discussion over a 13 year period, and not merely a snapshot of the Commission's position at a certain moment in time. The selected documents are all within the range of what we could meaningfully refer to as this executive organization's "public communication". They are fully available in the public realm to all those who wish to consult them, and due to the heated debates on the Commission's use of expertise we could expect them to be scrutinized by a range of actors. The Commission may of course hold "private" views that are not covered by the documents. The documents are, finally, what the Commission communicates on its expertise policies and practices. This does not necessarily reflect what it does in practice.

In our analysis of these documents, we have systematically coded passages to assess the relative merits of the cynical and deliberative hypotheses. The method applied is qualitative content analysis.[4] In accordance with this approach, the hypotheses are in part deduced from theory, and in part the result of data familiarization. CH/DH2a can serve as an example. Silence/deliberation on potential conflicts within the critics' agenda is a theoretically deduced indicator, while the fully-fledged operational hypothesis on the instrumental knowledge utilization/democratization conflict is the product of a hermeneutical back and forth process between theory and documentary reading. To increase coding reliability, both authors have searched and coded the documents. Coded passages with multiple possible meanings have been highlighted and taken up for explicit discussion among the authors in the assessment process.

[4] See Mayring (2000), but also Hsieh and Shannon (2005) on "the directed approach".

**Table 1.** List of hypotheses about the European Commission's public communication on its use of expertise

| **Cynical hypotheses (CH) on Commission communication** | | **Deliberative hypotheses (DH) on Commission communication** | |
|---|---|---|---|
| CH1a | Agreement with critics' support of instrumental knowledge utilization | DH1a | Agreement or disagreement with critics' support of instrumental knowledge utilization |
| CH1b | Agreement with critics' demands for democratization | DH1b | Agreement or disagreement with critics' demands for democratization |
| CH1c | Agreement with critics' dismissal of politicized knowledge utilization | DH1c | Agreement or disagreement with critics' dismissal of politicized knowledge utilization |
| CH2a | Silence on instrumental knowledge utilization/democratization conflict | DH2a | Deliberation on instrumental knowledge utilization/democratization conflict |
| CH3a | Silence on undemocratic features of the Commission's ongoing expertise practices | DH3a | Deliberation on undemocratic features of the Commission's ongoing expertise practices |
| CH3b | Silence on the strategic uses of knowledge within the Commission's own ranks | DH3b | Deliberation on the strategic uses of knowledge within the Commission's own ranks |

## 5. Findings and Discussion

### *5.1. CH/DH1a and CH/DH1c: The Commission Subscribes To Instrumental Knowledge Utilization and Denounces Non-Instrumental Political Uses of Expertise*

The official function of expertise in policy-making is the instrumental, and it is perhaps not surprising that the Commission, just as their critics, subscribe without much ambivalence to the idea that expert bodies and expert advice should contribute to problem-solving and enlightenment. The Commission strives to make their activities and policies "knowledge-based": "(…) it is crucial that policy choices are based and updated on the best available knowledge", and "the right expertise at the right time" (European Commission, 2002a), to ensure "better quality decision-making" (European Commission, 2001b). Like its critics, the Commission also expresses concern about the strategic, politicized use of expertise. It recognizes firmly the "risk" of partial and selective knowledge utilization and of "policy-makers just listening to one side of the argument or of particular groups getting privileged access" (European Commission, 2002b).

These findings are equally compatible with a cynical and a deliberative approach. The Commission's positions can be built on reason-based conviction, but can also reflect an opportunistic, superficial adaption to critics' agenda with the aim of easing external pressure. Abstract, evaluative passages where the Commission states its support for "the best available knowledge", for "quality" of "expertise", "scientific expertise", "policies" and "decisions", and for "impartiality" and "neutrality" in expert selection and knowledge-production, easily lend themselves to cynical interpretations: These are low risk statements acknowledging "everyone's" concern.[5]

However, the definite regulatory character of some of the documents, gives leverage to a deliberative interpretation. In these documents, general talk of "quality", "transparency" and "accountability" of expertise is operationalized and made concrete via specific rules and regulations. The Commission promises to "publish guidelines on collection and use of expert advice so that it is clear what advice is given, where it is coming from, how it used and what alternative views are available" (European Commission, 2001a), adding to already existing measures—consensus conferences, citizens' juries and science shops—put in place to ensure more "impartial" and "democratized" expertise and expertise consultation processes (European Commission, 2000a, 2001b, 2002a). The Commission goes on to introduce a number of minimum requirements in relation to expert group composition: "When defining the composition of expert groups, the Commission and its departments shall aim at ensuring a balanced representation of relevant areas of expertise and areas of interest, as well as a balanced representation of gender and geographical location" (European Commission, 2005). More specifically, "where the Commission or its departments appoint the members of the expert groups, they shall seek a balance between men and women; the medium term aim shall be to have at least 40% of representatives of each gender in each expert group" (European Commission, 2005). And finally, "(w)hen creating the expert group, the DG concerned shall describe the composition of the group in general, indicating categories of experts forming part of it: national, regional or local public authority represented, civil society organization represented, interested parties, scientific or academic experts" (European Commission, 2005).[6]

Critics may, of course, disagree with some of these guidelines, consider them too weak or unambitious to protect the quality of expert advice from politicization and strategic use, or question the extent to which the Commission implements them effectively, or even intends to implement them effectively. However, these minimum requirements exist and provide a benchmark on which the Commission can be judged. They might not fully satisfy critics, but their existence creates a restrictive barrier against the non-instrumental uses of expertise making the development of "imbalanced" groups, consisting exclusively, or predominantly, of experts supporting the Commission's predetermined policy positions more complicated. In this regard, a cynical reading of the Commission's public communication on expertise has limited applicability.

### *5.2. CH/DH1b and CH/DH2a: The Commission Challenges Critics' Demands for Democratization and Addresses Potential Conflicts between Instrumental Knowledge Utilization and the Democratization of Expertise*

The Commission highlights its support for "democracy" and "democratizing expertise"; "(…) it (the Commission) wishes to stress that it will maintain an inclusive approach" to expert advice, "in line with the principle of open governance: Every individual citizen, enterprise or association will continue to be able to provide the Commission with input" (European Commission, 2002b), and "all relevant interests in society should have the opportunity to express their views" (European Commission, 2002b). Once more, such general state-

[5] See also Gallie (1956) on "essentially contested concepts".

[6] In addition to these regulatory minimum requirements, the Commission outlines, within Status Reports, compositional changes to expert groups specifically identified by the European Parliament and pressure groups as being unbalanced (European Commission, 2012, 2013).

ments fit well with a cynical reading of public documents. Statements of this nature may be based on conviction; they do not falsify deliberative expectations, but give deliberativists little to work with.

The Commission's overall message with regard to the democratization is, however, more complex. There are, firstly, the proposed regulations and reforms of the Commission's expertise arrangements with the aim of "democratizing" expertise as well as increasing "quality" and "impartiality": The introduction of binding requirements on gender balance, national composition, civil society participation, etc., decreases the impression of superficial responsiveness (European Commission, 2005; see also previous subsection).

Secondly, in these Commission documents, there is an ongoing explicit engagement with the relationship between instrumental knowledge utilization and participatory ideals. The Commission notes that expertise reliance and expert advice, if framed and institutionalized adequately, can go hand in hand with a democratization of knowledge utilization: "(…) by fulfilling its duty to consult, the Commission ensures that its proposals are technically viable, practically workable and based on a bottom-up approach. In other words, good consultation serves a dual purpose by helping improve the quality of the policy outcome and at the same time enhancing the involvement of interested parties and the public at large" (European Commission, 2002a).

Stress is here put on what is regarded as a positive relationship between greater epistemic diversity—or "knowledge plurality"—and high quality of policy outputs: "The final determinant of quality is pluralism. Wherever possible, a diversity of viewpoints should be assembled. This diversity may result from differences in scientific approach, different types of expertise, different institutional affiliations, or contrasting opinions over fundamental assumptions underlying the issue" (European Commission, 2002a). A central indicator of "plurality" is that expertise extends beyond scientific knowledge, including also practical and ethical knowledge. This will contribute to high quality decisions that are sufficiently "socially robust" ("(t)he objective is to deliver knowledge for decision-making that is socially robust"): "This implies a notion of expertise that embraces diverse forms of knowledge (plurality). Expertise should be multi-disciplinary, multi-sectoral and (…) include input from academic experts, stakeholders, and civil society", as well as from individual citizens ("ordinary members of the public, once they have all the information in their possession") (European Commission, 2000a), and expertise review that goes "beyond the traditional peer community, including, for example, scrutiny by those possessing local or practical knowledge, or those with an understanding of ethical aspects" (European Commission, 2001b).

The next step of the argument is to link this idea of "socially robust" high quality decisions through the promotion of epistemic diversity to a democratic lexicon relating to "democratization", "participation", "involvement", "transparency", "accountability" and "bottom-up" control: "(T)he quality of EU policy depends on ensuring wide spread participation throughout the policy chain" (European Commission, 2001a), and "involvement of interested parties through a transparent consultation process, which will enhance the Commission's accountability" (European Commission, 2002b). The Commission wants to ensure that "its proposals are technically viable, practically workable and based on a bottom-up approach. In other words, good consultation serves a dual purpose by helping improve the quality of the policy outcome and at the same time enhancing the involvement of interested parties and the public at large" (European Commission, 2002a). In short: in the Commission's communications, expertise-based policy-making *and* enhanced democracy are simultaneously possible and desirable.

One may agree or disagree with the Commission's views, but its position has seemingly come about after some argumentative work reflected in many of the documents; in particular, in the "Taking European Knowledge Society Seriously" expert group report (European Commission, 2007), which discusses recent academic research on the epistemic merits of cognitive pluralism. Cynics could, however, question the depth and sincerity of these deliberations[7], and take them to be a somewhat more sophisticated variant of low risk "smooth talk" framed to make critics satisfied.

However, parallel to the harmonizing picture outlined above, runs a story of how "democratization" and "participation", if taken too far or institutionalized in the wrong way, could be an obstacle to effective expert advice and knowledge-based policy-making. Following this line of reasoning, increased decision quality and the democratization of expertise are no longer two sides of the same coin. Rather, the Commission admits, the twin concerns of "legitimacy and efficiency" may entail some potential "trade-offs" (European Commission, 2001b), and the need to create a balance between "adequate input" and "swift decision-making" (European Commission 2002b).

One expression of this non-harmonizing approach is the Commission's apparent need to put some limits on the transparency and democratization agenda in order to maintain knowledge-based and swift decision-making. Concerns of this kind are reflected in general remarks on expertise and what a sound, "balanced" approach to expert advice would look like; for example,

[7] A cynic would not have to doubt the real engagement and sincerity of the 2007 expert group report authors, several of them prominent academics in their field. What they would argue, rightfully or not, is that the Commission uses this report strategically to give its "smooth talk" on the use and role of expertise some apparent grounding.

with regard to "openness": "(…) there are circumstances when too much openness could be detrimental to the quality of advice, or may damage the legitimate interest of those concerned with the process. The level of openness should be tailored in proportion to the task at hand" (European Commission, 2002a). Discussions relating to the potential limits of "democratizing expertise" also come up directly in relation to the expert group system and the guidelines for this system. There is, for example, a concern that the desire for greater participation may lead to overcrowding in groups which will compromise their effectiveness and problem-solving capacities. There is, therefore, a need to "ensure that an excessive multiplication of expert groups is avoided", and that "the number of members in the group" remains "limited in order to guarantee the effective operation of the group and ensure the quality of expertise" (European Commission, 2005).

Finally, there are passages where the Commission suggests that critics' demands for democratization are normatively and institutionally misplaced, or at least potentially in tension with sound intuition about how knowledge should be utilized and the nature of democracy in the EU. An example of this is the Commission's concern that the idea of "democratizing expertise" is understood as an idea of "majority voting in science", that expert advice is dismissed and considered illegitimate if it is not in accordance with majority views. The Commission is also uneasy with how its use of expertise has been made a key target of critics of the EU's democratic deficit when the main challenges to the deficit arguably lie elsewhere. There may be "no contradiction between wide consultation and the concept of representative democracy. However, it goes without saying that, first and foremost, the decision-making process in the EU is legitimized by the elected representatives of the European people" (European Commission, 2002b). The contention here is that proponents of the democratization of the expertise approach tend to confuse the democratic deficit debate, fixating on the Commission and ignoring the larger institutional context and the fundamental role, not least, of the European Parliament and the Council for developing EU democracy and problematically replacing the normative ideal of "representative democracy" with that of "consultation" democracy.

Again, one may or may not share these worries and be more or less convinced by the Commission's trade-off arguments, and as they are discussed symbiotically with a harmonization discourse, the idea of a hard choice between democratization and instrumental knowledge utilization is articulated with considerable ambivalence. There is no doubt, however, that the Commission problematizes the democracy, accountability and transparency demands of critics substantively. There are few traces of cosmetic or hypocritical responses to critics' concerns on this point; on the contrary, Commission critics, their agenda and parameters are challenged and critically engaged with in a way that fits badly with a cynical reading.

### *5.3. CH/DH3a and CH/DH3b: The Commission Tends to Avoid the Unpleasant Topics of Internal Democratic Deficiencies and Politicized Uses of Expertise within Its Own Ranks*

The Commission documents provide, however, no descriptions, analyses or assessments of the Commission's current practices of expert organization and advice from a democratic perspective. The Commission subscribes generally to ideals of democracy and of democratizing expert bodies and procedures despite its concern that "too much" of this or using it "in the wrong way" could compromise problem-solving merits. Several of the proposed regulations of the Commission's expert arrangements, moreover, indirectly recognize critics' democratic concerns. As we have argued, all these findings give leverage to a deliberative reading of the documents. Scrutiny of the Commission's ongoing internal practices from a democratic point of view could, however, have brought attention to democratic deficiencies, in the eye of critics, but also in the eye of the Commission itself. When the documents avoid this issue, this is accordance with cynical expectations of avoiding unpleasant topics.

The topic of politicized use of expertise within the Commission's own ranks is also avoided, exactly as cynics would anticipate. Once more, the Commission recognizes the problem in general terms. The problem of selective and opportunistic use of expertise is discussed and problematic implications are highlighted, varying from reduced public "trust" in expert arrangements and a decrease in "the credibility of science" to lower quality policy outcomes (European Commission, 2001b). And, once more, the problem is recognized indirectly through the introduction of concrete regulatory prescriptions. A focused discussion and assessment of the Commission's non-instrumental knowledge utilization practices as a characteristic of this organization and something concretely and ongoing, is however missing from the documents. Such practices have been identified in research on the Commission's use of expertise, and they are most likely well known among Commission officials themselves. When they are not recognized and addressed, this is in accordance with the cynical expectation of avoiding delicate and difficult issues.

## 6. Conclusions and Precautions

Overall, we can conclude that cynical expectations are in accordance with a dominant interpretative scheme among Commission critics, and supported by a branch of organizational theory, but only partially supported

by our data. Firstly, even if the Commission's support for instrumental knowledge utilization and firm dismissal of the strategic uses of expertise is compatible with a cynical reading, the introduction of concrete regulatory initiatives by the Commission to ensure neutrality and problem-solving credentials in its expert advice practices gives leverage to a deliberative approach. Secondly, the Commission problematizes critics' democratization demands and addresses possible contradictions between these demands and the concern for high quality decisions and good policy outcomes. These findings indicate deliberation and counter the expectations of the cynical approach. Cynical hypotheses about the Commission's approach to unpleasant topics are, however, strengthened.

The partial confirmation of deliberative hypotheses is not totally unsurprising and supports existing studies of the Commission that already challenge the cynical perspective (Cini, 2014; Cram, 1994; Heritier, 1999; Kassim, 2008; Pollack, 2003; Wille, 2013). Our study also adds to existing scholarship on deliberation in EU policy and decision-making (Eriksen, 2009, 2014; Eriksen & Fossum, 2012; Joerges, 2001; Sjursen, 2011; Stie, 2013).

A promising branch of EU deliberation studies have developed the quality of deliberation indicators, which makes it possible to measure the more detailed levels and characteristics of deliberation (Bächtiger, Niemeyer, Neblo, Steenbergen, & Steiner, 2010; see also Neblo, 2007). We did not apply such indicator sets in our study because our aim was to compare the relative merits of a cynical and a deliberative approach, and high scores on deliberative indicators often lend themselves equally well to both cynical and deliberative readings, i.e. it is notoriously hard to say whether "good arguments" in public communication reflect "a commitment to public reasoning" (Cohen, 1997), or a cynical attempt to look like a "good deliberator".

Furthermore, what we have assessed in this article are particular branches and interpretations of organizational and deliberative theory and a limited set of hypotheses. Our attention has, moreover, been on the Commission's communications about its expertise policies and practices and not on actual implementation. Obviously, more studies are needed to get a fuller picture.

Finally, we believe our findings raise significant normative questions. One is whether critics are right in dismissing strategic practices of knowledge utilization outright, or whether a normative case can be made for such practices that are no doubt ongoing in the Commission and other executive organizations. Another is whether the Commission is right to keep so quiet about it.

**Acknowledgements**

Drafts of this paper have been presented at the Oslo network for research on science, expertise and policy advice Winter 2014/2015 workshop, at the *Nytt Norsk Tidsskrift* editorial seminar and in the Quality of Government (QoG) institute seminar series, University of Gothenburg. We thank participants on these occasions and three anonymous reviewers for useful comments.

**Conflict of Interests**

The authors declare no conflict of interests.

**References**

Aberbach, J., Putnam, R., & Rockman B. (1981). *Bureaucrats and politicians in Western Democracies*. Cambridge: Harvard University Press.

Alter-EU. (2013). A year of broken promises: Big business still put in charge of EU Expert Groups despite commitment to reform. *Alter-EU Europe's campaign for lobbying transparency*. Retrieved from http://www.alter-eu.org/sites/default/files/documents/Broken_Promises_web.pdf

Alter-EU. (2014). Draft amendment for Expert Groups budget freeze. Retrieved from http://www.alter-eu.org/documents/2014/09-5

Bächtiger, A., Niemeyer, S., Neblo, M., Steenbergen, M. R., & Steiner, J. (2010). Disentangling diversity in deliberative democracy: Competing theories, their blind spots and complementarities. *Journal of Political Philosophy*, *18*(1), 32-63.

Besson S. & Martí, J. L. (2006). *Deliberative democracy and its discontents.* Aldershot: Ashgate.

Böhling, K. (2014). Sidelined member states: Commission-learning from experts in the face of comitology. *Journal of European Integration*, *36*(2), 117-134.

Bohman, J. & Rehg, W. (1997). *Deliberative democracy: Essays on reason and politics.* Cambridge: The MIT Press.

Boswell, C. (2008a). The political functions of expert knowledge and legitimation in European Union immigration policy. *Journal of European Public Policy*, *15*(4), 477-488.

Boswell, C. (2008b). Evasion, reinterpretation and decoupling: European Commission responses to the "external dimension" of immigration and asylum. *West European Politics*, *31*(3), 491-512.

Brunsson, N. (2002). *The organization of hypocrisy: Talk, decisions and actions in organizations*. Copenhagen: Abstrakt & Liber.

Chambers, S. (2003). Deliberative democratic theory. *Annual Review of Political Science*, *6*, 307-326.

Chambers, S. (2004). Behind closed doors: Publicity, secrecy, and the quality of deliberation. *The Journal of Political Philosophy*, *12*(4), 389-410.

Christiano, T. (2012). Rational deliberation among experts and citizens. In J. Parkinson & J. Mansbridge (Eds.), *Deliberative systems: Deliberative democracy at the large scale* (1st ed., pp. 27-51). Cambridge:

Cambridge University Press.
Christiansen, T., & Kricher, E. (2000). *Europe in change: Committee governance in the European Union*. Manchester: Manchester University Press.
Christiansen, T., & Larsson, T. (2007). *The role of committees in the policy-process of the European Union: Legislation, implementation and deliberation*. Cheltenham: Edward Elgar Publishing.
Cini, M. (2014). The European Commission after the reform. In J. Magone (Ed.), *Routledge handbook of European politics.* London: Routledge.
Cohen, J. (1997). Deliberation and democratic legitimacy. In J. Bohman & W. Rehg (Eds.), *Deliberative democracy: Essays on reason and politics* (1st ed., pp. 67-91). Cambridge: MIT Press.
Cram, L. (1994). The European Commission as a multi-organization: Social policy and IT Policy in the EU. *Journal of European Public Policy*, *1*(2), 195-217.
Dehousse, R. (2011). *The community method: Obstinate or obsolete?* Palgrave Macmillan: London.
Dehousse, R., & Thompson, A. (2013). The Commission in the EU institutional system: A citadel under siege. In Hussein, K. Peterson, J. Bauer, M. W. Connolly, S. Dehousse, R. Hooge, L., & Thompson, A., *The European Commission of the 21st century*. Oxford: Oxford University Press.
DiMaggio, P. J., & Powell, W. W. (1983). The iron cage revisited: Institutional isomorphism and collective rationality in organizational fields. *American Sociological Review*, *48*(2), 147-160.
Egeberg, M., Schaefer, G., & Trondal, J. (2003). The Many faces of EU Committee governance. *West European Politics*, *26*(3), 19-40.
Egeberg, M. (2004). An organizational approach to European integration: Outline of a complementary perspective. *European Journal of Political Research*, *43*(2), 199-219.
Eising, R. (2007). The access of business interests to EU institutions: Towards elite pluralism. *Journal of European Public Policy*, *14*(3), 384-403.
Ellinas, A., & Suleiman E. (2012). *The European Commission and bureaucratic autonomy. Europe's custodians.* New York: Cambridge University Press.
Eriksen, E. O. (2009). *The Unfinished democratization of Europe*. Oxford: Oxford University Press.
Eriksen, E. O. (2014). *The normativity of the European Union*. New York: Palgrave Macmillian.
Eriksen, E. O., & Fossum, J. E. (2012). *Rethinking democracy and the European Union*. London: Routledge.
European Commission. (2000). Commission Working Document: Science, Society and the Citizen in Europe. SEC (2000)1973, 14 November 2000. Brussels, Belgium: EU Commission.
European Commission. (2001a). European Governance: A White Paper. COM(2001) 428 final, 25 July 2001. Brussels, Belgium: EU Commission.
European Commission. (2001b). Report of the Working Group "Democratizing Expertise and Establishing Scientific Reference Systems", final version, 2 July 2001. Brussels, Belgium: EU Commission.
European Commission. (2002a). Communication from the Commission on the Collection and Use of Expertise by the Commission: Principles and Guidelines—"Improving the Knowledge Base for Better Policies", COM (2002) 713 final, 11 December 2002. Brussels, Belgium: EU Commission.
European Commission. (2002b). Communication from the Commission: Towards a Reinforced Culture of Consultation and Dialogue—General Principles and Minimum Standards for Consultation of Interested Parties by the Commission, COM (2002) 704 final, 11 December 2002. Brussels, Belgium: EU Commission.
European Commission. (2005). Communication from the President to the Commission in Agreement with the Vice-President Responsible for Administrative Affairs and the Member of the Commission Responsible for Financial Programming and Budget—Framework for Commission Expert Groups: Horizontal Rules and Public Register. C(2005)2817, 27 July 2005. Brussels, Belgium: EU Commission.
European Commission. (2007). *Taking European Knowledge Society Seriously—Report of the Expert Group on Science and Governance to the Science, Economy and Society Directorate, Directorate-General for Research, European Commission*. Luxembourg: European Communities.
European Commission. (2010a). Communication from the President to the Commission: Framework for Commission Expert Groups: Horizontal Rules and Public Register. C(2010) 7649 final, 11 November 2010. Brussels, Belgium: EU Commission.
European Commission. (2010b). Commission Staff Working Document Accompanying Document to the Communication from the President to the Commission - Framework for Commission Expert Groups: Horizontal Rules and Public Register. SEC(2010) 1360 final, 10 November 2010. Brussels, Belgium.
European Commission. (2012). State of Play Concerning the Condition set by the European Parliament to Lift the Reserve in the 2012 Budget With Regards to Groups of Experts (EUR 2 million), September 2012. Retrieved from http://www.alter-eu.org/sites/default/files/documents/State%20of%20play%20_%206%20SEPTEMBER%202012%20_%20CLEAN.pdf
European Commission. (2013). Informal Dialogue on Expert Groups Initiatives Taken by Commission. State of Play—February 2013. Retrieved from http://www.alter-eu.org/sites/default/files/documents/COMMISSION_STATE%20OF%20PLAY%20_%20FEBRUARY%202013%20_%20FINAL.pdf
Featherstone, K. (1994). Jean Monnet and the "democratic deficit" in the European Union. *Journal of*

*Common Market Studies*, *32*(2), 149-170.

Fischer, R. (2008). European governance still technocratic? New modes of governance for food safety regulation in the European Union. *European Integration Online Papers*, *12*(66), 1-22. Retrieved from http://eiop.or.at/eiop/index.php/eiop/article/view/2008_006a/83

Gallie, W. B. (1956). Essentially contested concepts. *Proceedings of the Aristotelian Society*, *56*, 167-198.

Gornitzka, Å., & Sverdrup, U. (2008). Who consults? The configuration of Expert Groups in the European Union. *West European Politics*, *31*(4), 725-750.

Gornitzka, Å., & Sverdrup, U. (2010). Access of experts: Information and EU Decision-Making. *West European Politics*, *34*(1), 48-70.

Green-Cowles, M. (1995). Setting the agenda for a new Europe: The ERT and the EC 1992. *Journal of Common Market Studies*, *33*(4), 501-526.

Groenleer, M. (2009). *The autonomy of European Union agencies: A comparative study of institutional development.* Delft: Eburon.

Geuss, R. (2001). *History and Illusions in Politics*. Cambridge: Cambridge University Press.

Gutmann, A., & Thomposon D. (2004). *Why deliberative democracy?* Princeton: Princeton University Press.

Haas, (2004). When does power listen to truth? A constructivist approach to the policy process. *Journal of European Public Policy*, *11*(4), 569-592.

Habermas, J. (2012). *The crisis of the European Union: A response*. Cambridge: Polity Press.

Harcourt, A., & Radaelli, C. (1999). Limits to EU technocratic regulation? *European Journal of Political Research*, *35*(1), 107-122.

Herbst, S. (2003). Political authority in a mediated age. *Theory and Society, 32*, 481-503.

Héritier, A. (1999). *Policy-making and diversity in Europe. Escaping from deadlock*. Cambridge: Cambridge University Press.

Hsieh, H.-F., & Shannon E. S. (2005). The approaches to qualitative content analysis. *Qualitative Health Research*, *15*(9), 1277-1288.

Joerges, C. (2001). Deliberative supranationalism: A defence. *European Integration Online Paper*, *5*(8). Retrieved from http://eiop.or.at/eiop/texte/2001-008a.htm

Joerges, C., & Neyer, J. (1997). From intergovernmental bargaining to deliberative political processes: The constitutionalism of comitology. *European Law Journal*, *3*, 273-299.

Kassim, H. (2008). "Mission impossible", but mission accomplished: The Kinnock reforms and the European Commission. *Journal of European Public Policy*, *15*(5), 648-668.

Larsson, T. (2003). *Pre-cooking in the European Union: The world of Expert Groups*. Stockholm: Ministry of Finance.

Majone, G. (1996) *Regulating Europe*. London: Routledge.

Majone, G. (2014). *Rethinking the Union of Europe post-crisis. Has integration gone too far?* Cambridge: Cambridge University Press.

Mansbridge J., & Parkinson J. (2012). *Deliberative systems: Deliberative democracy at the large scale.* Cambridge: Cambridge University Press.

Martí, J. L. (2006). The epistemic conception of deliberative democracy defended. In S. Besson & J. L. Martí (Eds.), *Deliberative democracy and its discontents* (pp. 27-56). Aldershot: Ashgate.

Mayring, P. (2000). Qualitative content analysis. *Qualitative Social Research*, *1*(2). Retrieved from http://www.qualitativeresearch.net/index.php/fqs/article/view/1089/2385%3E

Metz, J. (2013). Expert Groups in the European Union: A suis generis phenomenon? *Policy and Society*, *32*(3), 267-278.

Meyer, J. W., & Rowan, B. (1977). Institutionalized organizations: Formal structure as myth and ceremony. *American Journal of Sociology*, *83*(2), 340-363.

Meyer, J. W., & Scott, W. R. (1983). *Organizational environments: Ritual and rationality*. Sage: London.

Moodie, J. (2011). The European Commission and European Technology platforms: Managing knowledge and expertise in European research and technology policy (Doctoral dissertation). Retrieved from https://theses.ncl.ac.uk/dspace/handle/10443/1820

Neblo, M. A. (2007). Family disputes: Diversity in defining and measuring deliberation. *Swiss Political Science Review*, *13*(4), 527-557.

Offe, C. (2014). *Europe entrapped*. Cambridge: Polity.

Pedler, R. H., & Schaefer, G. F. (1996). *Shaping European law and policy: The role of committees and comitology in the political process*. Maastricht: European Institute of Public Administration.

Pollack, M. (2003). *The engines of European integration: Delegation, agency and agenda-setting in the EU*. Oxford: Oxford University Press.

Presson, T. (2007). Accountability and expertise in the European Union. Presented at the CONNEX-RG2 Workshop on "Delegation and Mechanisms of Accountability in the EU". Uppsala, Uppsala University, 8-9 March 2007.

Radaelli, C. (1995). The role of knowledge in the policy process. *Journal of European Public Policy*, *2*(2), 159-183.

Radaelli, C. (1999). *Technocracy in the European Union*. London & New York: Longman.

Radaelli, C. (2009). Measuring policy learning across Europe: Regulatory impact assessment in comparative perspective. *Journal of European Public Policy*, *16*(8), 1145-1164.

Rhinard, M. (2002). The democratic legitimacy of the European Union Committee system. *Governance: An International Journal of Policy, Administration*

*and Institutions*, *15*(2), 185-210.
Rimkute, D., & Haverland, M. (2014). How does the European Commission use scientific expertise? Results from a survey of scientific members of the Commission's Expert Committees. *Comparative European Politics*. Retrieved from http://www.palgrave-journals.com/cep/journal/vaop/ncurrent/full/cep201332a.html
Ross, G. (1995). *Jacques Delors and European integration.* Cambridge: Polity Press.
Sandholtz, W., & Zysman, J. (1989). Recasting the European bargain. *World Politics*, *42*(1), 95-128.
Schaefer, G. (2002). *Governance by committee: The role of committees in European policy-making and policy implementation*. Luxembourg: European Communities.
Scharpf, F. (1999). *Governing in Europe: Effective and democratic?* Oxford University Press
Schrefler, L. (2010). The usage of scientific knowledge by independent regulatory agencies. *Governance: An International Journal of Policy, Administration and Institutions*, *23*(2), 309-330.
Schrefler, L. (2013). *Economic knowledge in regulation: The use of expertise by independent agencies*. Colchester: ECPR Press.
Shore, C. (2000). *Building Europe: The cultural politics of European integration*. London: Routledge.
Scott, R. W. (2004). Reflections on a half-century of organizational sociology. *Annual Review of Sociology,* 30, 1-21.
Sjursen, H. (2011). Not so intergovernmental after all? On democracy and integration in European Foreign and Security Policy. *Journal of European Public Policy*, *18*(8), 1078-1095.
Stie, A. E. (2013). *Democratic decision-making in the EU: Technocracy in disguise?* London: Routledge.
Thompson, D. (2008). Deliberative democratic theory and empirical political science. *Annual Review of Political Science*, *11*, 497-520.
Trondal, J. (2001). Is there any social constructivist-institutionalist divide? Unpacking social mechanisms affecting representational roles among EU decision-makers. *Journal of European Public Policy*, *8*(1), 1-23.
Vassalos, Y. (2013).European Commission's Expert Groups: Damocles' sword over democracy. *Juridikum*, 1.
Vos, E. (1997). The rise of committees. *European Law Journal*, *3*(3), 210-229.
Wallace, W., & Smith, J. (1995). Democracy or technocracy? European integration and the problem of popular consent. *West European Politics*, *18*(3), 137-157.
Weiss, C. (1977). Research for policy's sake: The enlightenment function of social research. *Policy Analysis, 3*(4), 531-545.
Weiss, C. (1979). The many meanings of research utilization. *Public Administration Review*, *39*(5), 426-431.
Weiss, C. (1986). Research and policy-making: A limited partnership. In F. Heller (Ed.), *The use and abuse of social science* (pp. 214-235). London: Sage.
Weiss, C. (1999). The interface between evaluation and public policy. *Evaluation, 5*(4), 468-486.
Wille, A. (2013). *The normalization of the European Commission: Politics and bureaucracy in the EU executive*. Oxford: Oxford University Press.

**About the Authors**

**Dr. Cathrine Holst**
Cathrine Holst is a Senior Researcher at ARENA—Centre for European Studies, University of Oslo where she coordinates the project *Why not epistocracy?* (EPISTO). Holst's research interests are democratic theory, political epistemology, expertise politics, European studies, and gender studies. Recent publications are "Why democracy? On the relationship between gender democracy and gender equality in the EU", and "Jürgen Habermas on public reason and religion: Do religious citizen suffer an asymmetrical cognitive burden, and should they be compensated?" (with Anders Molander).

**Dr. John. R. Moodie**
John. R. Moodie is a post-doctoral research fellow working on the EPISTO project at ARENA—Centre for European Studies, University of Oslo. His research interests include technocratic theory and the role, function and legitimacy of knowledge and expertise-based bodies in EU policy-making, particularly in the area of European research and technology policy. He obtained his PhD in Political Science from the University of Newcastle upon Tyne in 2011 and has an MA in Politics (Research) from the University of Newcastle upon Tyne.

**Politics and Governance (ISSN: 2183-2463)**
**2015, Volume 3, Issue 1, Pages 49-60**
**Doi: 10.17645/pag.v3i1.80**

Article

# Epistemic Dependence and the EU Seal Ban Debate

Lars Christian Blichner

Department of Administration and Organization Theory, University of Bergen, 5007 Bergen, Norway;
E-Mail: lars.blichner@aorg.uib.no; Tel.: +47-55-58-21-75/78; Fax: +47-55-58-98-90

Submitted: 31 May 2014 | In Revised Form: 15 August 2014 | Accepted: 16 September 2014 |
Published: 31 March 2015

**Abstract**
On September 2009 the European Union (EU) adopted a regulation banning the import of seal products into the EU or placing seal products on the EU market. The European Parliament was the main driving force behind the regulation and the EU has been criticised by affected countries outside the EU for not basing this decision on the available expert knowledge. The questions asked are how, given epistemic dependence, non-experts may challenge an expert based policy proposal. Can non-experts hold experts accountable, and if so in what way? Three main tests and ten subtests of expert knowledge are proposed and these tests are then used to assess whether the European Parliament did in fact argue in a way consistent with available expert knowledge in amending the Commission proposal for a regulation.

**Keywords**
accountability; democracy; epistemic dependence; European Parliament; expert knowledge; globalisation; seal ban

**Issue**
This article is part of the special issue "The Role of Expert Knowledge in EU Executive Institutions", edited by Professor Åse Gornitzka (University of Oslo, Norway) and Dr. Cathrine Holst (University of Oslo, Norway).



## 1. Introduction

Political decisions are sometimes either made by experts or are based on expert knowledge. This gives rise to what may be called epistemic dependence (Hardwig, 1985). By epistemic dependence I refer to a situation where the reasons for making a particular decision in part or entirely are made with reference to knowledge the decision maker, someone else responsible for that decision or those affected by the decision, cannot or have difficulties in assessing. In the following the focus will be on political decisions made by politicians on behalf of others and affecting a third party. Typical cases include political decisions with a global reach. I will concentrate on one such decision; the European Union (EU) "regulation of the European Parliament (EP) and of the Council of 16 September 2009 on trade in seal products" (EP & Council, 2009). This regulation has been criticised by representatives of countries outside the EU for being based on emotions and not facts. What we have then is a political decision partly dependent on expert knowledge, that some claim was not made based on expert knowledge.

In a recent comment Canada's Fisheries Minister Gail Shea argued that the seal ban was based on emotions, and had "no basis in fact or in science". [1] Other commentators have made similar statements critical of a ban, and a recent article concludes that in the European Parliament "arguments based on scientific investigations and expert evaluations were downplayed or not mentioned at all" and contrary to this "the Commission and Norway/Canada" based their arguments on scientific ground, they "spoke the same language" in the sense that "they agreed on what represented a valid and legitimate argument" (Wegge, 2013, p. 270). Thus at least part of this argument is that the Commis-

[1] Minister Gail Shea said this in relation to a WTO panel required by Canada to challenge the ban. According to her this would help take the emotion out of a ban. Palmer (2011, February 11).

sion, together with the governments of Norway and Canada, "lost the case"[2] because the case was not decided by science but by something else, be it issues of ethical identity linked to animal welfare, a strategic wish for re-election on the part of the EP members, or as argued by others and alluded to in the article; emotions.[3]

The seal ban case is obviously complicated. As well as animal welfare issues, it involves legal issues, Inuit people's rights issues, and resource management issues, to name a few[4]. In a short paper like this there is a need to reduce this complexity. The point of departure is the observation that the amendments made by the EP in the European Parliament's Draft Regulation (Committee on the Internal Market and Consumer Protection [IMCO], 2009) differed substantially from the Commission proposal (European Commission [EC], 2008a) purportedly based on expert knowledge. The Commission proposal with these amendments made by the EP, by and large, later became the EU regulation on a ban. Moreover, as Wegge (2013, p. 270) states: "the lobbying strategies towards the Council did not matter much in the larger picture, as the Parliament was acknowledged by all to be the lead institution in this case". Thus, even if the regulation was adopted using the co-decision procedure, only the Parliament's arguments will be analyzed. The question is if the amendments made by the European Parliament, amendments that in essence later were reflected in the final regulation (EP & Council, 2009), really were made without taking into account the expert knowledge available, as the critics claim? In relation to the Commission's exclusive right[5] to submit a legislative proposal, the Commission provides expert knowledge in support of EU decision-making (European Commission [EC], 2002). This means that the Commission, in submitting a proposal for a regulation, may issue an explanatory statement, often, as in the seal ban case, based on internal and external expert advice. The question asked is if the European Parliament took this expert knowledge into account or not when reaching a different conclusion than the Commission?

In order to arrive at a different result to those of the experts while still respecting expert knowledge, there will have to be a way for non-experts, in this case members of the European Parliament, to legitimately test the expert knowledge. Three main tests and ten subtests will be proposed as possible candidates. The general question then is if non-experts may realistically conduct such tests.

If the European Parliament actually did test the expert knowledge this should be revealed in the amendments made to the Commission proposal by the EP. Thus, the document that will be used to capture the European Parliament's view on the ban is the report delivered by the responsible committee in Parliament, the Committee on the Internal Market and Consumer Protection (IMCO, 2009) containing the "Draft European Parliament Legislative Resolution" concerning trade in seal products, the Commission proposal for a regulation, the opinions of the Committee on the Environment, Public Health and Food Safety (ENVI, 26.1.2009) and the Committee on Agriculture and Rural Development (AGRI, 18.2.2009), as well as the explanatory statements from the rapporteurs for the three committees. Thus in what follows IMCO (2009), containing these different documents, will be the main reference to the European Parliament's arguments. The emphasis will be on the amendments suggested by the different parliamentary committees and the justifications for these.

In a highly politicised and epistemically complicated case like the one discussed here, there may be reasonable disagreement on the issue of who the real experts are and as to what should be considered reliable knowledge. The point of reference in the following will be the knowledge provided by the Commission in the Commission's "Explanatory Memorandum" in the proposal for a regulation on a ban (EC, 2008a), an accompanying Commission Staff "Working Document" on the potential impact of a ban (EC, 2008b) and the two expert reports (European Food Safety Authority [EFSA], 2007; COWI, 2008) ordered by the Commission. The Commission formulated its proposal for a ban based on this. The Parliament reached a different conclusion to that of the Commission. The question is if the Parliaments conclusion is compatible with the expert knowledge that the Commission based its proposal on.

As indicated, this case is complicated as a host of different interests and goals were activated at different times in the decision making process (Sellheim, 2014). I will concentrate on the animal welfare aspects of the case that dominated both the expert reports and the discussion in Parliament (IMCO, 2009). The aim is limited to finding out if the Parliament used the expert knowledge made available by the Commission in amending the Commission proposal on issues linked to animal welfare, not the larger issue of whether the regulation as such was right, just or correct from the perspective of EU law, international trade regulations, resource management or the rights of indigenous peoples, to name some of the issues at stake in this case.

The expectation is that the Parliament, in amending the Commission proposal and arguing in favour of a stricter ban, in some way would take into account the

[2] In the sense that the original Commission proposal was changed substantially to the effect of banning most products from commercial seal hunt from the EU market.

[3] For similar arguments see Perišin (2013, pp. 375, 395-396).

[4] See for example Fitzgerald (2011), Howse and Langille (2012), Perišin (2013), Nielsen and Calle (2013) and Cambou (2013).

[5] With some exceptions.

expert knowledge provided by the Commission. Still, how can politicians, here considered non-experts, challenge a decision based on expert knowledge; that is, test whether the expert knowledge is correct, accurate, relevant, sufficient, consistent with the conclusions reached, and so on? Generally speaking, is it at all possible for non-experts to hold experts accountable, and if so in what way? Expert knowledge gives legitimacy to political decisions, but so does public opinion. When these two clash, as has apparently been the case when it comes to the seal products ban, one may expect legitimacy to be restored only by reconciling the two; either by a reconsideration of the expert knowledge involved or through a change in public opinion. I will concentrate on the former. The general question addressed then is whether or not the European Parliament was able to reconcile these two bases of legitimacy by way of the available expert knowledge. This will be done by considering if any of the ten tests developed (section three) were in fact conducted by the European Parliament (section four), but first a brief outline of the decision making process (section two).

## 2. The Decision Making Process

The political decision making process can, in brief, be described in five steps.[6] First, the initiative leading up to a declaration on seal hunting in the European Parliament (European Parliament [EP], 2006) in September 2006 was based on pressure from civil society organisations and backed up by a large majority in the European Parliament. Second, the Commission accepted that this was a matter to be decided at the EU level with reference to the need for consistent legal rules throughout the common market. Some member states had already passed laws banning seal products and other member states had made plans to do so.

As indicated, the Commission ordered two separate expert investigations into the matter, one linked to animal welfare under the Directorate General for Environment, conducted by the European Food Safety Authority (EFSA, 2007), and another on the possible impacts of a ban conducted by external experts (COWI, 2008).

The result of this process was a proposal to ban the import and placing on the market of seal products throughout the EU, but with potentially wide ranging exceptions being made for seals that were killed without avoidable pain, what will be referred to as the Commission proposal (EC, 2008a). In practice this would mean that a large seal hunting country, such as Canada (as argued by the rapporteur for the responsible committee, Diana Wallis, in her "Explanatory Statement" criticising the Commission proposal) (IMCO, 2009, p. 28), might well have been exempted from the ban. The proposal, according to the Commission, besides the formal objective of market harmonisation, had two "overarching objectives" that is; first, to "protect seals from acts that cause them avoidable pain, distress, fear, and other forms of suffering during the killing and skinning process", and second, "to address the concerns of the general public with regard to the killing and skinning of seals" (EC, 2008b, pp. 23, 51).

Third, on 5 March 2009 IMCO, as the responsible committee, issued its amendments to the Commission proposal for a ban. Four committees had been asked for opinions. As indicated, in the end, two committees (ENVI and AGRI) of four issued opinions to the responsible committee (IMCO). All three committees (IMCO, ENVI and AGRI) issued justificatory or explanatory statements and proposed concrete amendments to the Commission proposal (IMCO, 2009).[7] As stated, the end result of these amendments to the Commission proposal for a ban was that the European Parliament recommended a much stricter ban.

Both at the second stage and this third stage was civil society actively involved. The animal welfare movement, but also those arguing against a ban had their say, and formal meetings with different stakeholders were conducted. These included indigenous peoples representatives and consultations involving experts from seal hunting nations like Norway and Canada.[8]

Fourth, the European Parliament adopted the regulation with a massive majority. The Council adopted the regulation with three countries abstaining (Wegge, 2013, p. 268). The result was a total ban, but with an exception for indigenous people, showing that the lobbying had been effective in the sense that an exemption was made for hunting based on justifications linked to cultural survival. An exemption was even made for non-commercial resource management hunting, and for products carried into the European Union

[6] For a more comprehensive description of this process see Howse and Langille (2012), Wegge (2013) and Sellheim (2014).

[7] In addition, the Committee on Legal Affairs later (1 April 2009), on its own initiative, issued an opinion on the legal basis of the proposed regulation.

[8] As stated by the Commission: "The stakeholders were invited to express their opinion on the completeness and reliability of the data presented in the draft report prepared by the EFSA working group, in order to avoid any possibility of leaving out some important scientific evidence. Moreover, the European Commission organised a workshop with experts from sealing countries, animal welfare non-governmental organisations as well as fur trade and hunters associations with the objective to receive feedback on the factual information under the country reporting exercise (national hunt management systems) conducted in the framework of the overall Commission assessment. Bilateral meetings were also held with a range of stakeholders, and took place at a political, as well as at a technical level." (EC, 2008a, p. 9, see also EC, 2008b, p. 12)

that were bought elsewhere and were for private use only. The final EU regulation on principle followed the Commission proposal as amended by the European Parliament; a total ban with exemptions for indigenous peoples and non-commercial resource management hunting.

Fifth, the regulation was challenged in court both at the European level and the global level. At the European level the General Court concluded the regulation to be legal (European General Court [EGC], 2013) and the European Court of Justice subsequently denied an appeal (European Court of Justice [ECJ], 2013). At the global level the WTO Appellate Body, based on complaints from Norway and Canada, issued its report on May 22, 2014 (World Trade Organization [WTO], 2014). According to one interpretation, the Appellate Body found that "some aspects of the EU Seal Regime were discriminatory," but also that "the measure was provisionally justified under the public morals exception" (Howse, Langille, & Sykes, 2014), in general meaning that the ban on products from commercial seal hunt is acceptable, while the exemptions made had not been fairly applied. Thus legally speaking, one may argue that the EU lost the case since the EU Seal Regime was deemed discriminatory (Fitzgerald, 2014). Howse et al. (2014) on the other hand argue that, "these concerns should be relatively easy for the EU to address". The practical result of this decision is most likely that the EU seal ban, at least in relation to large-scale commercial seal hunt, will continue. The media and many of those in favour of a ban, most notably animal rights organisations, have interpreted the decision as a (EU) victory, while many of those opposed to a ban, most notably representatives of indigenous communities, have criticised the decision. The Canadian Government, in a brief news release after the Appellate Body's decision, understandably was more reluctant to draw any firm conclusions, but relevant to this paper repeated that "The ban on seal products adopted in the European Union was a political decision that has no basis in fact or science" (Department of Foreign Affairs, Trade and Development Canada, 2014). No doubt the EU ban on seal products was a political decision, the question is if it really did not have any basis in fact or science?

## 3. Epistemic Dependence and Politics

Decisions made in a democracy may be more or less dependent on expert knowledge. What then decides the level of epistemic dependence? I suggest two dimensions, first the epistemic requirements in order to make a decision, and second, the epistemic transparency of a decision. By epistemic requirement I understand how much and varied expertise is needed in order to make a rational decision and the practical availability of this expertise. Generally speaking, the less expertise needed and the more available the expertise, the less epistemic dependence. By epistemic transparency I mean the degree to which it is possible to validate the expert knowledge by non-experts (including the degree to which knowledge is openly accessible to everyone). Generally speaking the lower the level of transparency, the higher the level of epistemic dependence. Epistemic dependence then, when making a decision, is determined on the one hand by the level of expertise needed and if it is readily available, and on the other hand the possibility to confirm if the expert knowledge is correct and precise enough to be useful for a particular purpose. In the following I will concentrate on this latter practical epistemological aspect of epistemic dependence.

In a modern society there is typically a high degree of epistemic dependence not only when it comes to the relationship between experts and non-experts, but also among experts. This may be seen as a problem when it comes to democratic decision-making. According to Hardwig (1985) however, a person can make rational decisions based on information this person cannot personally validate. Moreover, a person who trusts his or her own instincts or conclusions over those of a trustworthy and competent expert is irrational. Hardwig's point is that people in a modern world, inside and outside science, to a large extent will have to trust established scientific results in order to have rational beliefs. Thus, applying Hardwig's "principle of testimony", "if A has good reason to believe that B has good reason to believe p, then A has good reason to believe p" (Hardwig, 1985, p. 336, 1991, p. 697), and A's believes are on principle rational even if p occasionally may turn out to be wrong. If the opposite were to be true, that this makes A irrational based on an individualist epistemology that says that you may only rationally believe what you yourself have proven true or right, most of modern science and most of people's believes in general will be irrational. That the number of dependencies, even among experts, only increases with the development of modern science adds to the complexities involved (e.g. If A has good reason to believe that B has good reason to believe that C has good reason to believe that D has good reason to believe (and so on) p; where B, C and D (and so on) are experts) (Hardwig, 1985, 1991).

This however does not necessarily mean that experts may always be trusted and that politicians and other citizens have no responsibility when it comes to evaluating experts and expert knowledge. A non-expert should have good reason to believe that an expert has good reason to believe something. The question is how a non-expert may establish a good reason to believe that an expert has good reason to believe something. Inspired by Hardwig's sceptical view (1985), but mainly indebted to Melissa Lane's (2014)[9] recent review of the

[9] Melissa Lane, in her comparisons of different views on how

current literature on the subject I have tentatively established three general "tests" a concerned party may conduct; a first order quality test, a second order quality test, and a bias test. Based on these distinctions we may roughly specify at least ten subtests that may be conducted in order to try to substantiate or challenge the expert view (see Table 1). In the following a brief explanation of these tests are given and possible tentative examples relating to the ban on seal products in the EU are indicated.

**Table 1.** Three basic tests and ten subtests of expert knowledge.

| First Order Quality Tests | Second Order Quality Tests | Bias Tests |
|---|---|---|
| **1.** Examining the practical results of expert knowledge<br>**2.** Examining the content of expert knowledge<br>**3.** Examining the evaluative standard used by the expert<br>**4.** Communication by experts of expert knowledge | **5.** Expert recognition<br>**6.** Agreement among experts | **7.** Bias linked to relational norms and values<br>**8.** Bias linked to material interests<br>**9.** Psychological bias<br>**10.** Political bias |

### *3.1. First Order Quality Tests*

A first order quality test involves first an examination of the practical results of expert knowledge, second, an examination of the content of the knowledge, third an examination of the evaluative standards involved and fourth an examination of the expert's ability to communicate this knowledge in a way that makes it understandable to non-experts. It is a first order test because it aims at a more or less direct assessment of the quality of the knowledge involved. In the first subtest (1) one has to presume that even though the non-expert does not fully understand or may be totally ignorant about the epistemic base of a particular decision the practical results may be evaluated according to different standards. If the expert's predictions come true (or clearly do not) the epistemic dependence may in some instances be reduced to a level where trust is not any longer an issue.

*(1) The EP found that the expert proposal does not work as intended.*

In the second subtest (2) the presumption is that even though the non-expert may not fully grasp the explanations given by the expert, the non-expert may never the less be able to reduce the level of epistemic dependence through investigating parts of the explanations involved, for example try to establish the level of uncertainty linked to the expert knowledge or more generally by assessing the relative accuracy of a particular field of expertise. Uncertainties are almost always present to some degree, but both the type of uncertainty and the level of uncertainty differ (Lane, 2014).

*(2) The EP found that the expert proposal was based on irrelevant or too uncertain scientific evidence.*

The third subtest (3) is based on the premise that expert knowledge involves an evaluative standard. This evaluative standard may be constitutive of the knowledge in question or it may be more contingent, as when the expert mandate establishes a particular evaluative standard and in the process determines to some degree what expert knowledge is relevant. In either case non-experts may question the relevance of the standard used relative to a particular political issue.

*(3) The EP found the evaluative standard used by the experts wanting.*

The fourth subtest (4) arguably linked to the first three subtests, presupposes that an expert is able to explain to others in a relatively clear and understandable way what knowledge they possess and in so doing is able to justify the relevance of this knowledge relative to the decision being made. A willingness and ability to do this in an understandable way will reduce epistemic dependence.

*(4) The EP found that the expert opinion was unclear and difficult to understand and as a result the relevance of the expert knowledge was not appropriately justified.*

In sum we may ask to what degree it is possible for a non-expert to even understand in any depth the premises of the conclusions reached by experts (Hardwig, 1985). This will differ from one type of expert knowledge to the next, but the premise in relation to the first order quality test is that some knowledge is better than no knowledge, and that the easier it is to understand the practical results, the logic behind expert knowledge, in addition to the standards of evaluation used, the less the epistemic dependence. After all, one reason why political scientists and others are preoccupied with how much knowledge people in general have on different politically relevant issues, for example climate change (Markowitz & Shariff, 2012), is because they believe they can use this as an indication of a population's ability to understand and make up an

citizens may evaluate the claims of scientific experts, draws mainly on LaBarge (1997), Goldman (2001), Anderson (2011), and Brewer (1998).

opinion on an issue (Estlund, 2008, p. 260). In the seal ban case the claim has been made that people in general are not rational in making up their minds on the issue of seal hunt because they lack knowledge and hold false beliefs concerning how seal hunting is conducted (Perišin, 2013, p. 396).

### *3.2. Second Order Quality Tests*

A second order quality test is based on the belief that there are reasons to trust that institutional structure; other experts and personal qualities of the experts may assure that expert knowledge is trustworthy. The fifth subtest (5) is premised on the belief in institutions (based on rules, ethical standards and sanctions) such as universities, expert commissions, peer-review, public track records and collegial credentials to produce trustworthy knowledge. It may also depend on personal traits such as proven trustworthiness. This should give the expert some unbiased credentials that the public may trust and thus reduce the problem of epistemic dependence.

> *(5) The EP challenged the experts with reference to their professional credentials.*

The sixth subtest (6) is premised on the view that disagreement among experts makes epistemic dependencies more problematic, given it is impossible through a first order quality test or subtest five to decide who is most trustworthy. This does not mean that agreement implies that the expert knowledge is always correct, only that for non-experts not to trust such knowledge, without further qualification, is irrational.

> *(6) The EP referred to or engaged alternative experts with a different view than those engaged by the Commission.*

Even the second order quality test is imperfect, but the general presumption is that the better the institutional safeguards when it comes to controlling expert knowledge in a society and the more there is agreement among experts, the less problematic is epistemic dependence.

The first order quality tests and the second order quality tests are positive in the sense that they aim at making sure the expert knowledge is correct. In addition to these two tests and independent of the results of these tests, an additional "negative" test should be conducted; a bias test. It is negative in the sense that it aims at discovering non-scientific reasons not to trust the expert knowledge under scrutiny.

### *3.3. Bias Test*

A bias test involves trying to assess if expert advice is in some way affected by non-scientific or non-expert concerns. According to the seventh subtest (7) expert knowledge may be affected by relational ties as when colleagues or friends cover for each other, when arguments are not communicated in fear of embarrassment for some experts involved, concerns for the expert's reputation if proven that some results are incorrect, protection of one's colleagues, that the research has fallen victim to groupthink and so on. This test is notoriously difficult to conduct by non-experts.

> *(7) The EP argued that the experts involved in the process consisted of a group of people with relatively tight relational ties and with a common and positive view on seal hunting.*

The eighth subtest (8) is more straightforward and involves possible material benefits the experts may gain from promoting certain results and subduing others (more or less consciously). There may be reason not to trust the information due to factors such as suspicion that the research is unduly interest driven, that it gives in to different external pressures or internal interests, like concerns for further research funding or work opportunities more generally. Even this confidence test is difficult to conduct; still sometimes such investigations at least may give reason for scepticism.

> *(8) The EP challenged the experts on the ground that they had previous economic ties with seal hunting and depended on this for their professional career, especially focusing on advice emerging from experts representing seal hunting nations.*

The ninth subtest (9) is basically psychological and is linked to experimental findings that humans, including experts in their capacity as experts, tend to interpret the world differently dependent on factors such as changes in how information is presented, the circumstances under which the information is presented or some inbuilt preferences for some information rather than other. Such effect as the framing effect, wishful thinking, confirmation bias and others will generally increase the problem of epistemic dependence, but awareness of such biases and efforts to overcome them, for example through reframing, may to a degree at least partly compensate for this.[10]

> *(9) The EP argues that the expert opinion is unduly affected by the framing of the killing of seals as hunting and proposes a reframing emphasising the killing as slaughter.*

Political bias, the tenth subtest (10), means that the work of experts may in some way be unduly affected

[10] For a review see Gowdy (2008).

by the experts' personal political point of view, by power politics more generally or institutional epistemic doctrines bordering on the political.

*(10) The EP would argue that the experts are tied to and dependent on a relatively small sector likely to colour their political view or that the expert proposal is based on too liberal a view of free trade and a political reading of the possible legal reactions to a more extensive ban.*

## 4. To What Extent Did the European Parliament Test the Expert Knowledge?

The European Parliament reached a different conclusion than the Commission and the question is if these different conclusions are consistent with the facts as presented by the experts or in some way legitimately challenge these facts. Does the European Parliament argue in consequentialist terms and engage the scientific evidence? If not, if it all comes down to emotions, identity or strategic manoeuvrings, it would seem that the European Parliament is factually irrational. Is a more charitable interpretation possible? One that makes more sense of the fact that the EP rejected the positions of the Commission, Norway and Canada? Again, the question asked here is not what the correct decision should be, obviously people disagree on this, the question is if the EP presented arguments that in some way related to, took into account or criticised the expert knowledge relating to animal welfare? More concretely, the question is which of the ten tests, if any, the EP conducted?

### *4.1. First Order Quality Tests*

In the seal ban case the Commission proposal was never implemented and the EP had no way of deciding if it actually worked or not; that is if it had resulted in less or no avoidable suffering for the seals and at the same time had satisfied the public. The EP then could not really conclude decisively on the first subtest. What the EP did however was to conduct an abstract test. They simply did not believe that the measures proposed by the experts would have the predicted effects. Even if we implement these measures the EP argued, seals will still suffer and people will not be satisfied. This did not mean that the EP rejected the expert view that it may be possible to kill seals without them suffering. The opinion of ENVI argued in the following way; "The question here is not whether seals can be killed humanely in theory but if they can be consistently killed humanely in the field environment in which seal hunt occur" (IMCO, 2009, p. 37). In the final regulation, the wording was as follows: "Although it might be possible to kill and skin seals in such a way as to avoid unnecessary pain, distress, fear or other forms of suffering, given the conditions in which seal hunting occurs, consistent verification and control of hunters' compliance with animal welfare requirements is not feasible in practice or, at least, is very difficult to achieve in an effective way, as concluded by the European Food Safety Authority on 6 December 2007" (EP & Council, 2009, p. 37).

In applying the second subtest the non-expert will look at the content of the expert's opinion and ask if the measures proposed in its name can be trusted to achieve the purpose of a political proposition. The expert knowledge used to justify a decision may be scrutinised by non-experts in order to, for example, decide the relevance and uncertainties of the expert knowledge. In the seal ban case, the responsible committee claimed "there is clear evidence that seals killed in commercial seal hunts consistently suffer pain, distress and other form[s] of suffering" (IMCO, 2009, p. 7). The Commission proposal at this point referred directly to the EFSA report in arguing "that it is possible to kill seals rapidly and effectively without causing them avoidable pain or distress, whilst also reporting that in practice, effective and humane killing does not always happen" (IMCO, 2009, p. 7). In the actual report EFSA in its conclusion writes, "There is strong evidence that, in practice, effective killing does not always occur…" (EFSA, 2007, p. 94). One may argue that the EP formulation gives the impression that every seal always suffers when killed, but it is also possible to interpret it to the effect that whenever seal hunt takes place a fair amount of the animals will in fact suffer. The problem here is that the facts as reported by the two expert reports are unclear and inconclusive. There is simply not enough research that has been done on the actual suffering of seals and the research that has been conducted suffers from various methodological deficiencies. Moreover, the different veterinary experts' opinions on the Canadian seal hunt, reviewed by the EFSA, disagree. The European Parliament, in order to substantiate its amendments to the Commission proposal empirically, may have referred to one or more of the more critical studies on Canadian seal hunt with citations from the EFSA report like: "existing regulations are neither respected or enforced" and commercial seal hunt "results in considerable and unacceptable suffering" (EFSA, 2007; p. 59, Burdon et al., 2001), or "there was widespread disregard for the Marin[e] Mammal Regulations by sealers" and "a minimum of 82% of shot seals were not killed by the first shot" (EFSA, 2007, p. 55; Butterworth, Gallego, Gregory, Harris, & Soulsbury, 2007). The point here is not to argue that the EP formulation in some way was more accurate or correct than the formulation proposed by the Commission, only that both formulations arguably may be defended based on the expert knowledge provided by the EFSA report.

The responsible committee similarly argued that "humane killing methods cannot be effectively and

consistently applied", that "effective monitoring" of seal hunting would be "impossible" and that "only a comprehensive ban…would meet the citizens' demands to see an end to the trade in seal products" (IMCO, 2009, p. 11). The first part of this argument is hard to substantiate by experts since no one can know what may or may not be possible in the future when it comes to seal hunting. On a charitable reading the European Parliament may be seen to argue that there are already comprehensive rules linked to seal hunting in Canada; there is enough evidence that these rules are not always followed in practice and that as a result seals do suffer. It would be unlikely therefore that better rules would give a much better result.

When it comes to the second part of the argument linked to the stated objective to convince the public that seal hunt is humanely conducted, this offers more empirical problems for experts and parliamentarians alike. The premise that the public actually wants a ban is open to discussion based on the expert studies. The COWI report covers this issue in some detail with reference to the public consultation procedure conducted by the Commission. People were asked to answer a questionnaire on a voluntary basis (questions only in English) and the consultation was placed on the net and was open for eight weeks (20.12.07–13.2.08).

73.153 persons from 160 different countries responded to the inquiry (COWI, 2008, p. 125), of these 32.061 from the EU member states (COWI, 2008, p. 129).

This of course is not a scientific study on the public attitude in the EU towards seal hunting, as clearly stated by COWI (2008, p. 124). However, the report continues to present the results in a way that may easily come across as scientific in form and concludes in its final recommendation to the Commission that "…it must be acknowledged that the public perception of seal hunting at large is against seal hunting for principal reasons…" (COWI, 2008, p. 136). If the public is seen as equated with the people answering the questionnaire, the European Parliament is probably right in arguing that the public will not be convinced by the Commission proposal. Of the respondent from the 27 EU member states 72.5% "Do not accept hunt on principle" about the same percentage that are in favour of a strict ban (73.0%) (COWI, 2008, p. 129). The Commission is more positive to the prospects of convincing the public through information campaigns. This conclusion is partly based on the fact that even people most interested in the issue of seal hunting (those that answered) are largely misinformed on the methods used to hunt seals. Again it is difficult to determine based on the expert knowledge provided who is right here, the Commission or the European Parliament. The main point is that part of the Parliament's justification may be reasonably defended with reference to the premises laid down in the COWI report and reported by the Commission as an indication of the public view (EC, 2008b, p. 11).

In addition, the EP may have argued more forcefully[11], as the EU later argued in its first written submission to the WTO (European Union [EU], 2012, p. 24), that opinion polls in some EU countries showed that the public is opposed to a ban. These, opinion polls cannot however, while applying the same strict scientific criteria as those used by the EFSA, represent the entire population of the EU. Moreover, these opinion polls were mostly commissioned by IFAW, an organisation that, according to its own homepage, was "founded in 1969 to stop" the "cruel hunt for seals" (International Fund for Animal Welfare, [IFAW], n.d.). This does not necessarily imply a lack of trust in a market research company like Ipsos-MORI that in 2011 conducted a survey for IFAW on the seal ban. Even though this survey was conducted after the EU regulation was adopted, the survey may still be used to illustrate the difficulties involved in getting reliable and independent data on a highly politicised issue like the EU seal ban, in particular maybe when the clients have a vested interest in one particular result. Ipsos-MORI conducted a survey for IFAW including eleven EU countries. Five hundred interviews were made in each country. The survey found that the support for a ban was overwhelming with 56% answering that they "Strongly support" a ban. Prior to answering the question the respondents were read a statement, which according to Ipsos-MORI provided "respondents with some information on commercial seal hunting and the EU ban on the sale of seal products" (Ipsos-MORI, 2011, p. 1). Interestingly, in Great Britain half of the survey was conducted with the introductory statement and half without it.[12] With the introductory statement 56% (the same as in all countries combined) were "strongly opposed" to a ban. Without the introduction this dropped to 46%, while the "Neither/nor" or "Don't know/no opinion" options combined increased by 10%. As suggested by subtest nine, this illustrates the well-known insight that the ways questions are framed heavily influence the answers you get. One may of course argue that those with better information were more sceptical to seal hunt, but then again, one has to decide if the information given in the introductory statement was sufficiently balanced.

In order to document the lack of knowledge in a certain field of inquiry one clearly needs experts as demonstrated in this case. Most of the experts' reports however concerned what is actually known and that would be relevant for the decision of a ban. This expertise was basically linked to the effectiveness of different killing methods and rules regulating seal hunt in different countries. The goal was to come up with best

[11] This was argued by Rapporteur Frieda Brepoels in her justificatory statement for the ENVI (IMCO, 2009, p. 32).

[12] The sample size in Great Britain was double of that in the other countries surveyed (1004 respondents).

practices that could be used to establish a regulatory regime that could in turn be used by the EU to decide what hunting should be accepted and what not. This issue is intimately linked to subtest three.

Subtest three is about the evaluative standards used by the experts, whether these standards are inherent to the field of expertise or are linked to the mandate given to the experts by political authority. In the seal ban case the EP criticised the Commission for the mandate given to the experts and even the EFSA for its recommended method for killing seals humanely. In its justification the responsible committee wrote: "The Commission did not ask EFSA to assess whether commercial seal hunt is currently conducted in a humane fashion, but rather the most appropriate killing methods for seals to reduce as much as possible unnecessary pain, distress and suffering. The killing methods recommended in EFSA's report and the draft Regulation do not prescribe humane killing as any reputable veterinary authority would define it" (IMCO, 2009, p. 8). Based on its findings (best practices) EFSA suggested establishing rules and regulations that as far as possible would relieve the seals of suffering. For the responsible committee however this was not enough. The committee went on to criticise not only the mandate, but also the criteria for what suffering should mean. It argues, "The concern of European citizens is about a trade involving suffering of wild animals, not only suffering which is avoidable. Unavoidable suffering may be very considerable." (IMCO, 2009, p. 8). This is also later linked to the second main objective; that of convincing the public that the regulation of a ban would improve the situation to their satisfaction. The responsible committee argues, "the removal of the word 'avoidable' is warranted since all the evidence indicates that EC citizens are concerned about the suffering caused by the hunting of seals, not only suffering which is avoidable" (IMCO, 2009, p. 11). The ENVI justified this in the following manner: "Unavoidable suffering may be very considerable given the term is not quantifiable" (IMCO, 2009, p. 38). Thus the committee refuted the evaluative standard used by the Commission and the experts alike and opted for a no suffering standard.

The result of this stricter standard, in addition to the results of the European Parliament's arguments in relation to the two first subtests, was that much of the references to the experts' knowledge or conclusions based on expert knowledge were deleted from the Commission proposal by the Parliament. Much of the expert knowledge provided by the Commission and the experts' reports, were deemed largely irrelevant.

Subtest four is about the way experts are able to communicate and thus justify the conclusions reached, to the non-expert. In this case there is no indication that the EP did not understand or more directly criticised the experts involved on this account.

The first order quality test then seems to have mixed results. What stands out is rather the lack of proper expert knowledge than the Parliament's lack of empirical references. The facts simply were not very clear. When it comes to consequentialist arguing relative to the first of the two "overarching objectives" for the ban (EC, 2008b, p. 7), the one linked to animal welfare, the Parliament may be seen to argue as convincingly as the Commission. The Commission argued that strict demands for detailed and enforceable rules for how to conduct seal hunt would give seal hunting nations an incentive to clean up their act. The Parliament came to the conclusion that the link between formal regulations and actual practice was hard to establish, and instead argued that a strict ban would lead to less hunting, and less hunting to less suffering. That the Parliament had a point is shown by the dramatic drop in the number and the price of landed seals in Newfoundland in the aftermath of the Parliament's 2006 initiative to establish a ban (Sellheim, 2014). As the final regulation for a ban states, "in order to restore consumer confidence…it is also necessary to take action to reduce the demand leading to marketing of seal products and, hence, the economic demand driving the commercial hunting of seals" (EP & Council, 2009, p. 37).

### *4.2. Second Order Quality Tests and Bias Tests*

The three parliamentary committees that participated directly in the discussions on the revision of the Commission proposal for a ban (IMCO, 2009) did not (as revealed by the documents) directly criticise or comment on either the credentials of the experts, disagreement among experts or at least three of the four bias tests proposed. The possible exception is subtest nine which relates to a critique that generally would claim that the experts or the experts' knowledge is in some way biased due to psychological factors that tend to influence experts' and non-experts' choices. Subtest nine is generally relevant in this case, as proponents of a ban have been criticised for basing their decision on emotions and not facts and with giving too much weight to the animal welfare issue relative to, for example, the effects of a ban on indigenous peoples (Cambou, 2013). The question I pose here however is if the Parliament, as revealed by the arguments presented in the IMCO report in some way criticised the expert knowledge for being biased in this way. The seal ban case may be framed in a number of ways, and the way the issue is framed may affect one's position. As indicated it may be framed as a legal issue, as an animal welfare issue, as a human welfare issue or as a resource management issue, an issue concerning the Arctic region or as a case of "public morals," to name the most obvious.[13] The

[13] For a discussion on the many and changing goals linked to

IMCO report touched on all of these aspects, but no doubt the animal welfare issue was the dominant one, and so it was for the experts. Both expert reports, and in particular EFSA's, were dominated by this concern. Still, the Parliament and the experts, as we have seen, framed the animal welfare issue differently. For the experts this was a question of making seals suffer as little as possible given that seal hunt should continue. For the dominant view in the Parliament it was a matter of the public perception of the hunt that led them to a standard of not making seals suffer at all and made amendments to the Commission proposal with the aim of possibly stopping seal hunt altogether. As indicated only such a strict standard would convince the public according to the majority in Parliament, and the public seems to have been understood as the people answering to the Commission's consultation questionnaire and summed up by COWI (2008).

Regarding the second order quality tests and the three remaining bias tests these were not used in the arguments presented in the IMCO report. Still, even these tests are interesting in the sense that the parliamentary committees may have used them, much in line with how these tests and the bias tests actually were used by the two expert reports. The expert reports (EFSA, 2007; COWI, 2008) based their findings on studies carried out by other experts, and it was the quality and possible bias of this research that was subject to the tests. First, as indicated, peer review was seen as a quality criterion, and most of the research subjected to scrutiny was not peer reviewed (subtest five). Second, the consulted experts disagreed substantially on the question of how much seals in practice suffer when hunted, if regulations are followed in practice and if the hunting may be seen as humane (subtest six). Third, it was argued that the people doing the research or the people providing the material for the research (e.g., videos of the seal hunt or reports by officially assigned inspectors of the hunt) could be biased due to interest linked to the outcome of the research (subtests seven and eight). Finally, since politics is not mentioned directly in the experts' reports it is not possible to conclude positively on subtest ten. Still, the issue of seal hunt is obviously highly politicised and the question as to the widely different interpretation of seal hunting practice and the questionable methods used leave the impression that at least organisational affiliation and politics in a wide sense may have influenced the research and that, whatever research is presented, a hidden political motive may be suspected (subtest ten). Together with the experts' methodological critique of the expert studies (subtest two) all this led to the conclusion by EFSA and COWI that the research on the effect of regulations on the practice of seal hunting was seriously flawed from the perspective of the goal to get a scientifically valid and unbiased picture of how humane seal hunt in practice were conducted globally.

the seal ban case see Sellheim (2014).

## 5. Conclusion

In many ways the decision of a ban may be seen as an example of how democratic decisions should be made. The decision was democratically initiated, thoroughly investigated by experts, civil society was actively involved all through the process, it was decided upon by a vast majority of a directly elected body (European Parliament), together with an indirectly elected body (Council) and finally accepted as legal inside the EU (General Court and European Court of Justice) and, at least provisionally, at the global level (WTO). Nevertheless, the regulation was criticised for not being based on the available expert knowledge. Can we conclude then that the European Parliament's justification for a strict ban was compatible with the expert knowledge available? The short answer is yes.

Surprisingly, after years of discussions over the seal hunt issue, expert knowledge is lacking on the most important questions linked to the Commission's two stated "main overarching objectives" (EC, 2008b, p. 7); we do not know the degree to which seals suffer when killed, or more to the point; the degree to which stricter regulations would help, and we do not know based on the expert reports, what attitudes EU citizens have regarding seal hunt. The European Parliament did not test the expert knowledge in the sense of criticising the expert findings, but the changes in the Commission proposal made by the Parliament and the justifications for these may, as argued, be as reasonably defended with reference to the available expert knowledge presented by the experts engaged by the Commission (EFSA and COWI) as the Commission proposal, the main problem for both the Commission and the Parliament being the lack of relevant and valid expert knowledge. The COWI report was particularly clear on this issue: "…the study cannot on the basis of empirical evidence document a possible correlation between legislation and practice", this correlation is rather an assumption based on the expectation that under a well functioning rule of law system people will follow the law (COWI, 2008, 19-20). As argued by the EP, this general assumption may reasonably be doubted based on the evidence on Canadian seal hunt (as presented by the expert reports), when it comes to the specific issue of seal hunt.

So are Tenenbaum and Wildawsky (1984, p. 83) right that "data do not and cannot determine policy; rather, it is the policy perspectives of the participants that determine what data are important?" At least this case seems to confirm this thesis. One interpretation of the Commission proposal is that it started from the available data and presented a solution that could be backed up with those data. If accepted, "the experts'

perspective" would have prevailed. The European Parliament, on the other hand, started with a stated goal of no suffering based on public opinion and used the data to explain the necessity of a strict ban. In the end it was the Parliament's perspective that prevailed. There was little explicit disagreement on the facts or the lack thereof. The Parliament, as one might have expected from the critique levelled against it, did not cherry-pick data in order to make their case, but rather based it on the general results presented by the experts. The question still remains if more data could have moved the Parliament to reach a different conclusion? Possibly, with independent and scientifically valid detailed data on the public opinion showing an acceptance for sustainable seal hunt together with robust and unanimously accepted data showing that seals may be killed, in practice, without suffering. Another more basic question still in need of an answer is what perspective is most correct from a moral or ethical point of view, the experts' perspective or the European Parliament's?

**Acknowledgements**

Thanks to the editors for comments on an earlier draft.

**Conflict of Interests**

The author declares no conflict of interests.

**References**

Anderson, E. (2011). Democracy, public policy and lay assessments of scientific testimony. *Episteme*, *8*, 144-164.

Brewer, S. (1998). Scientific expert testimony and intellectual due process. *The Yale Law Journal*, *107*, 1535-1681.

Burdon, R. L., Gripper, J., Longair, J. A., Robinson, I., Ruehlmann, D., & Fielder, J. (2001). *Veterinary Report*. Prince Edward Island, Canada: Commercial Seal Hunt.

Butterworth, A., Gallego, P., Gregory, N., Harris, S., & Soulsbury, C. (2007). *Welfare Aspects of the Canadian Seal Hunt: Preliminary Report and Final Report*. Document submitted to EFSA. Retrieved from http://www.harpseals.org/politics_and_propaganda/welfareaspectsofcanadiansealhunt_butterworth.pdf

Cambou, D. (2013). The impact of the European ban on seal products on Inuit people a European concern. *The Yearbook of Polar Law*, *5*, 389-415.

Committee on the Internal Market and Consumer Protection (IMCO). (2009). *Report on the Proposal for a Regulation of the Parliament and of the Council Concerning Trade in Seal Products* (A6-0118/2009). Brussels, Belgium: European Parliament.

COWI. (2008). *Assessment of the Potential Impact of a Ban of Products Derived from Seal Species*. Brussels, Belgium: European Commission.

Department of Foreign Affairs, Trade and Development Canada. (2014). Harper Government Responds to WTO Decision on EU Ban on Seal Products. *Department of Foreign Affairs, Trade and Development Canada.* Retrieved from http://www.international.gc.ca/media/comm/news-communiques/2014/05/22b.aspx?lang=eng

Estlund, D. M. (2008). *Democratic Authority: A Philosophical Framework*. Princeton: Princeton University Press.

European Commission (EC). (2002). *Communication from the Commission on the Collection and use of Expertise by the Commission: Principles and Guidelines, "Improving the knowledge base for better policies"* (11.12.2002 COM(2002) 713 final). Brussels: European Commission.

European Commission (EC). (2008a). *Proposal for a Regulation of the European Parliament and of the Council Concerning Trade in Seal Products* (COM(2008) 469 final). Brussels, Belgium: European Commission.

European Commission (EC). (2008b). *Commission Staff Working Document Accompanying Document to the Proposal for a Regulation of the European Parliament and of the Council Concerning Trade in Seal Products* (Impact Assessment, SEC(2008) 2290/2). Brussels, Belgium: European Commission.

European Court of Justice (ECJ). (2013). Judgment of the European Court of Justice (Grand Chamber), Appeal – Regulation (EC) No 1007/2009 – Trade in seal products – Restrictions on importing and marketing such products – Action for annulment – Admissibility – Right of natural or legal persons to institute proceedings – Fourth paragraph of Article 263 TFEU – Concept of 'regulatory act' – Legislative act – Fundamental right to effective judicial protection. Luxembourg: European Court of Justice.

European Food Safety Authority (EFSA). (2007). *Scientific Opinion of the Panel on Animal Health and Welfare on a Request from the Commission on the Animal Welfare Aspects of the Killing and Skinning of Seals*. Parma, Italy: European Food Safety Authority.

European General Court (EGC). (2013). Judgment of the General Court (Seventh chamber), 25 April 2013. Trade in Seal Products: Regulation (EC) No 1007/2009. Brussels, Belgium: European General Court.

European Parliament (EP). (2006). *Declaration P6–TA(2006)0369. Banning Seal Products in the European Union*. Brussels, Belgium: European Parliament.

European Parliament (EP), & Council (2009). Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products, L 286/36. *Official Journal of the European Union*. Brussels, Belgium: EP/Council.

European Union (EU). (2012). *European Communities—*

*Measures Prohibiting the Importation and Marketing of Seal Products*. Brussels, Belgium: European Union.

Fitzgerald, P. L. (2011). "Morality" may not be enough to justify the EU seal products ban: Animal welfare meets international trade law. *Journal of International Wildlife Law & Policy*, *14*, 85-136.

Fitzgerald, P. L. (2014). The WTO, seal-hunting, and public morality. *Animal Law Committee Newsletter*, *Summer*, American Bar Association.

Goldman, A. I. (2001). Experts: which ones should you trust? *Philosophy and Phenomenological Research, 63*(1), 85-110.

Gowdy, J. M. (2008). Behavioural economics and climate change policy. *Journal of Behaviour and Organization*, *68*, 632-644.

Hardwig, J. (1985). Epistemic dependence. *The Journal of Philosophy*, *82*(7), 335-349.

Hardwig, J. (1991). The role of trust in knowledge. *The Journal of Philosophy*, *88*(12), 693-708.

Howse, R., & Langille, J. (2012). Permitting pluralism: The seal products dispute and why the WTO should permit trade restrictions justified by noninstrumental moral values. *Yale Journal of International Law*, *37*, 366-432.

Howse, R., Langille, J., & Sykes, K. (2014). Sealing the deal: Animal welfare, public morals and trade: The WTO panel report in EC—Seal products. *American Society of International Law Insights*, *18*(2). Retrieved from http://www.asil.org/insights/volume/18/issue/12/sealing-deal-wto's-appellate-body-report-ec—-seal-products

International Fund for Animal Welfare (IFAW). (n.d.). Saving seals section. *International Fund for Animal Welfare.* Retrieved from http://www.ifaw.org/international/our-work/seals/ending-canadas-cruel-commercial-hunt

Ipsos-MORI. (2011). Ban on sale of seal products—Poll of 11 EU countries, topline results. Retrieved from https://www.ipsos-mori.com/Assets/Docs/ipsos-mori-seal-hunting-2011-topline.pdf

LaBarge, S. (1997). Socrates and the Recognition of Experts. In M. L. McPherran (Ed.), *Wisdom, Ignorance, and Virtue: New Essays in Socratic Studies* (pp. 51-62). Edmonton: Academic Printing and Publishing.

Lane, M. (2014). When the experts are uncertain: Scientific knowledge and the ethics of democratic judgement. *Episteme*, *11*, 97-118.

Markowitz, E. M., & Shariff, A. F. (2012). Climate change and moral judgement. *Nature Climate Change*, *2*, 243-247.

Nielsen, L., & Calle, M.-A. (2013). Systematic implications of the EU-seal products case. *Asian Journal of WTO & International Health Law and Policy*, *8*, 41-75.

Palmer, R. (2011, February 11). Canada seeks WTO review of EU ban on seal products. *Reuters*. Retrieved from: http://uk.reuters.com/article/2011/02/11/us-seals-idUKTRE71A3AV20110211

Perišin, T. (2013). Is the seal products regulation a sealed deal? EU and WTO challenges. *International and Comparative Law Quarterly*, *62*(2), 373-405.

Sellheim, N. (2014). The goals of the EU seal products trade regulation: From effectiveness to consequence. *Polar Record*, in press.

Tenenbaum, E., & Wildawsky, A. (1984). Why politics control data and data cannot determine politics. *Scandinavian Journal of Management Studies*, *November*, 83-100.

Wegge, N. (2013). Politics between science, law and sentiments: Explaining the European Union's ban on trade in seal products. *Environmental Politics*, *22*(2), 255-273.

World Trade Organization (WTO). (2014). *Appellate Body Report, European Communities-Measures Prohibiting the Importation and Marketing of Seal Products, Dispute Settlement, Dispute* (WT/DS400/AB/R, WT/DS401/AB/R). Geneva, Switzerland: World Trade Organization.

**About the Author**

**Dr. Lars Christian Blichner**

Lars Christian Blichner is Associate Professor at the University of Bergen, Norway. Articles include "The anonymous hand of public reason: Interparliamentary discourse and the quest for legitimacy" (2000), "Political integration in Europe and the need for a common political language" (2007), "Juridification from below: The dynamics of Neil Maccormick's institutional theory of law" (2011), and "Mapping juridification" (with Anders Molander, 2008).

**Politics and Governance (ISSN: 2183-2463)**
**2015, Volume 3, Issue 1, Pages 61-72**
**Doi: 10.17645/pag.v3i1.117**

Article

# The Unexpected Negotiator at the Table: How the European Commission's Expertise Informs Intergovernmental EU Policies

Meng-Hsuan Chou [1] and Marianne Riddervold [2,*]

[1] Public Policy and Global Affairs Programme, School of Humanities and Social Sciences, Nanyang Technological University, 637332 Singapore, Singapore; E-Mail: hsuan@cantab.net
[2] ARENA—Centre for European Studies, University of Oslo, 0318 Oslo, Norway;
E-Mail: marianne.riddervold@arena.uio.no

* Corresponding author

Submitted: 4 June 2014 | In Revised Form: 12 September 2014 | Accepted: 14 October 2014|
Published: 31 March 2015

**Abstract**
How, if at all, does the Commission's expertise inform intergovernmental decision-making within the EU? In this article, we aim to capture the relationship between the Commission's expertise and its influence within intergovernmental policy-areas through a study of Commission influence in two least likely sectors: security and defence policies (military mission *Atalanta* and EU Maritime Security Strategy) and external migration (EU mobility partnerships with third countries). In these cases we observe that the Commission strongly informs policy developments even though it has only limited formal competences. To explore whether and, if so, how this influence is linked to its expertise, we develop and consider two hypotheses: The *expert authority hypothesis* and the *expert arguments hypothesis.* To identify possible additional channels of influence, we also consider the relevance of two alternative hypotheses: The *strategic coalition hypothesis* and the *institutional circumvention hypothesis*. We find that the Commission's use of its expertise is indeed key to understanding its *de facto* influence within policy-areas where its formal competences remain limited. Our findings add to the existing literature by revealing how expertise matters. Specifically, our cases show that the Commission informs intergovernmental decision-making by successfully linking discussions to policy-areas where it holds expert authority. However, the Commission also informs EU policies by circumventing the formal lines of intergovernmental decision-making, and by cooperating with member states that share its preference for further integration.

**Keywords**
argument-based learning; bargaining; EU; European Commission; expert knowledge; expertise; foreign policy; influence; institutional circumvention; institutionalism; intergovernmental policies

**Issue**
This article is part of the special issue "The Role of Expert Knowledge in EU Executive Institutions", edited by Professor Åse Gornitzka (University of Oslo, Norway) and Dr. Cathrine Holst (University of Oslo, Norway).



## 1. Introduction

This article explores the relationship between expertise and the European Commission's influence on outcomes in European Union's (EU) formally intergovernmental issue-areas. We start from the observation that despite *de jure* having only limited competence in these domains, a growing number of studies suggest that, *de facto*, the Commission increasingly informs their decision-making—in security, defence, migration, and education (Gornitzka, 2009; Jørgensen, Oberthür, & Shahin, 2011; Riddervold & Sjursen, 2012). Other studies tell us that unpacking the ways in which international bureaucracies use their "expert knowledge" may hold the key to un-

derstanding their impact on policy outcomes (Barnett & Finnemore, 1999, 2004; Checkel, 2001; Copeland & James, 2014; Cross, 2010; Haas, 1992; Hooghe, 2005; Joerges & Neyer, 1997; Martens, 2008). Yet whether, and, if so, how, the Commission's observed influence on formally *intergovernmental* policies is linked to its expertise remains unexplored in the literature. This is puzzling because, as Hooghe (2001, p. 7) argues, the Commission is "a body of unelected officials appointed for their *expertise*" (emphasis added). In Community policy-areas where it has competence, Commission expertise is a well-established indicator of why it has been able to successfully propose new regulatory measures. Hence, our research question is: How, if at all, does the Commission's expertise inform *intergovernmental* decision-making?

To tease out how the Commission's expertise putatively influences formally intergovernmental EU policies, we develop and operationalise two hypotheses. The first, the *expert authority hypothesis,* builds on sociological institutionalist role theory and suggests that the European executive may influence EU policies by linking intergovernmental discussions to policy-areas where it holds expert authority (Barnett & Finnemore, 2004; Elgstrøm & Smith, 2006). The second, *the expert arguments hypothesis*, builds on communicative action theory and suggests that the Commission may influence member states' decisions by presenting convincing expertise-based arguments (Eriksen, 2005; Riddervold, 2011; Risse, 2000; Sjursen, 2004). We apply them to study the Commission's influence in two least likely sectors: security and defence policies (the cases of *Atalanta* military mission and EU Maritime Security Strategy, EUMSS), and external migration policies (EU mobility partnerships). In these cases, the European executive's formal competences are limited, but it is seen to be strongly informing policy outcomes. We expect both hypotheses to contribute to capturing its ability to penetrate sectors and decision-making processes where we would not ordinarily anticipate a strong Commission impact. It may also be that, however, the Commission's influence is linked to other factors than its expertise. To control for this possibility, we consider the relevance of two alternative hypotheses: the *strategic coalition-building hypothesis* and the *institutional circumvention hypothesis*. By examining the relevance of these four analytically distinct, yet empirically overlapping, hypotheses, we seek to offer a more comprehensive understanding of the relationship between Commission expertise and its influence in intergovernmental EU policies. In so doing, we also aim to provide an improved understanding of the different functions of expertise in EU decision-making processes, more generally, and the Commission's role within European intergovernmental policymaking, more specifically.

This article is organised as follows. First, we develop and operationalise two hypotheses concerning how the Commission may putatively use its expertise to influence EU intergovernmental policymaking before presenting the two alternative hypotheses. Second, we show how the Commission's *de facto* influence over EU intergovernmental decisions exceeds its formal competence in security, foreign and external migration policy-areas. Third, we analyse how the observed influence may be explained by considering the relevance of our four hypotheses. We conclude by discussing our overall findings and their implications for studies of Commission expertise and EU intergovernmental policies.

## 2. How Can the Commission Influence through Its Expertise?

There is a rich literature in both international relations and EU studies that examine the linkage between non-governmental actors' expert knowledge and their influence in international policymaking (cf. Barnett & Finnemore, 2004; Busch & Liese, 2014; Elgström & Smith, 2006; Joerges & Neyer, 1997). Most of this literature assumes that all actors, regardless of their institutional affiliation, are rational and capable of adapting to changing situations. What differ in their assumptions are the explanatory mechanisms involved in this change process. Based on these studies, we develop two hypotheses concerning how the European executive may influence intergovernmental decisions through its expertise: (1) influence by evoking the role of expert authority (*expert authority hypothesis*), and (2) influence by presenting convincing expert arguments (*expert arguments hypothesis*).

The *expert authority hypothesis* builds on the insights of sociological institutionalist role theory. Here, roles refer to "patterns of expected or appropriate behaviour" (Elgstrøm & Smith, 2006, p. 5) or "those expectations that other actors (alter) prescribe and expect the role-beholder (ego) to enact" (Kirsten & Maull, 1996, cited in Aggestam, 2006, p. 18). Put simply, roles define expectations according to behaviour in line with March and Olsen's (1998) "logic of appropriateness". It follows that one would expect that "actors seek to fulfil the obligations encapsulated in a role, an identity, a membership in a political community or group, and the ethos, practices and expectations of its institutions" (March & Olsen, 2006, p. 689). Building on this perspective, the decision-makers' expectations of the Commission's role would determine the influence it is able to exercise. If a particular issue is defined or treated as intergovernmental, the corresponding expectation of the Commission's role or appropriate behaviour would be that its involvement should be limited.

The EU is, however, a complex institution. This complexity suggests that, if a different role-expectation is introduced, the Commission's room for manoeuvre in intergovernmental settings could increase. In particular, we suggest that the European executive could expand its capacity to act across intergovernmental issue-

areas if the role it plays in Community policy-areas (i.e., those at the heart of creating the Single Market) is evoked. This is because, within Community policy-areas, the Commission is the recognised and acknowledged authority; its particular involvement and influence in policymaking are taken for granted (Barnett & Finnemore, 2004). Hooghe (2001) tells us that the Commission suggests, controls, and manages policy developments in the various policy-areas its departments and services (Directorates-General, DGs) cover. On this basis, we expect that the Commission may influence EU intergovernmental decisions if its "Community expert authority" is successfully evoked when the intergovernmental issues under discussion are linked with those in which it has Treaty competence. If successful, we would observe changes in the policymakers' expectations of its involvement: instead of playing an outsider's role, the European executive would be expected to enact its "normal" role as the competent policy initiator and guardian of the Treaties.

Analytically, our *expert authority hypothesis* is akin to Rittberger's (2012) hypothesis of the Lisbon Treaty's empowerment of the European Parliament. He argues that the introduction of qualified-majority voting automatically led member states to accept Parliamentary involvement in policymaking: When applying particular decision-making procedures, the Parliament should play its role of co-decision-maker. Similarly, our *expert authority hypothesis* anticipates that linking an intergovernmental issue area (e.g., security) to Community policy-areas would lead to the acceptance of Commission participation and influence over such decision-making. Following Rittberger (2012), we would expect to observe the following if the *expert authority hypothesis* is valid: (1) Commission proposals or suggestions would be linked to existing Community policy-areas; (2) Commission involvement in decision-making would not be contested; and (3) Commission proposals and suggestions would be adopted more or less automatically, i.e., with "little justification but also hardly any articulation" (Rittberger, 2012, p. 32). When this role is activated through referencing Community issues, the member states are more inclined "to copy what the Commission says and does" (Martens, 2008, p. 637).

In new policymaking situations, however, studies find that there is often little opportunity in practice for copying, role-enactment or institutionalised behaviour (cf. Checkel, 2001; Eriksen & Fossum, 2000; Risse, 2000; Rittberger, 2012). When facing new developments that have not previously been discussed nor regulated at the EU-level, such as defence or environmental issues, there is less certainty about which norms and roles should apply. Thus, instead of mimicking earlier behaviour or drawing on established role-expectations, decision-makers "have to figure out the situation in which they act, apply the appropriate norms, or choose among conflicting rules" (Risse, 2000, p. 6). As Rosén (2014, p. 4) notes, norms have to be activated in order to have an impact on decision-making. We know that in Council meetings where foreign policies are discussed, European policymakers present and assess norms and information before any action is taken (Lewis, 2011). Put simply, norms are not seen as given, but are instead articulated, justified, discussed, and evaluated.

Based on these insights, we suggest an additional hypothesis of how the Commission's expertise may putatively influence intergovernmental EU policies: The *expert arguments hypothesis*. This hypothesis builds on communicative action theory's basic assumption that decision-makers are communicatively rational, meaning that they have the ability to offer reasons for their positions and actions, and to assess reasons others give (Deitelhoff, 2009; Eriksen & Fossum, 2000; Riddervold, 2011; Risse, 2000; Sjursen, 2004). When applying a communicative approach in descriptive or explanatory studies, there is thus an underlying assumption that actors are able to learn on the basis of arguments others present. Consequently, the arguments and reasons provided may lead to agreement on a given policy (Deitelhoff, 2009; Eriksen, 2005; Sjursen, 2004). As Eriksen and Fossum (2000, p. 257) put it: "Co-operation comes about when the process of reason-giving generates a capacity for change of viewpoints". Similarly, Sjursen (2004, p. 115) argues that it is through a communicative process in which arguments are rationally assessed and their relevance for policy decisions established. The arguments leading to agreements could refer to material gains, threats or promises as part of a bargaining game, but they could also refer to expert knowledge or different types of norms.

This perspective may be useful for understanding the European executive's influence because it allows us to specify a micro-mechanism through which Commission expertise may affect intergovernmental decision-making. The "explanatory power" of arguments, according to Eriksen (2005, p. 17), "is based on the *motivational force of reason*, namely, that insights into good reasons have behavioural consequences" (emphasis original). Specifically, we suggest that the Commission may exercise influence through the mechanism of argument-based learning: If it presents expertise-based arguments that (at least some of) the decision-makers perceive as convincing and therefore change their positions accordingly (Riddervold, 2011). If the *expert arguments hypothesis* accounts for its influence in formally intergovernmental issue-areas, we expect to observe the following: (a) evidence of the European executive justifying its proposals by explaining them based on its expert knowledge; (b) evidence confirming that Commission arguments affected the decision-makers' positions and thus the policies they eventually adopt. Indications of (b) could come in the form of learning: Decision-makers justifying their positions in a similar way as the Commission's position.

While our focus is on specifying the ways in which

the Commission influences intergovernmental decisions through its expertise, we do not exclude the possibility that its expert knowledge may account for only a part, or even none, of the explanation. To control for this possibility, and thus tease out the extent to which expertise accounts for the influence observed, we also consider the relevance of two alternative hypotheses. We developed these hypotheses from two sets of mainstream literature in international relations and EU studies: rational-choice theory and institutionalist theory. The first alternative hypothesis—the *strategic coalition hypothesis*—stems from the well-known rational-choice bargaining literature. It proposes that the Commission's capacity to influence intergovernmental policies may be due to its ability to build alliances with member states that share its preferences (cf. Pollack, 1997; Schmidt, 2001, p. 41; Tallberg, 2008).

The second alternative hypothesis—the *institutional circumvention hypothesis*—assumes that the Commission's ability to influence policy developments is linked to "opportunities and constraints in the internal and external environment" (Olsen, 2009, p. 25). More precisely, building on Egeberg (2006), we consider whether the Commission has exploited the unique EU organisational structure to informally bypass or "circumvent" the established intergovernmental decision-making structure. In instances of institutional circumvention, we expect that it may occur in at least two ways: (i) the Commission cooperates directly with national bureaucrats to indirectly influence the member states' positions (bureaucrats prepare national positions, but do not decide); or (ii) the Commission cooperates with other EU-level institutions (e.g., the military committee or the European External Action Service, EEAS) to affect EU intergovernmental policies. We treat all four hypotheses as complementary rather than as mutually exclusive in the analysis. The aim of these hypotheses is thus to help capture empirical realities, and their relevance may vary across the different cases.

Methodologically, we adopt an interpretative approach and seek to uncover the Commission's involvement and influence in three decision-making processes from the actors' perspective (Eliaeson, 2002, p. 52). To do so, we define influence in an inter-relational way to mean that the Commission has influence when evidence suggests that its interactions with other actors during the decision-making process affected the contents of EU policies or positions (Riddervold, 2015). The Commission's influence over policy outcomes may be strong or weak, short or long-term, direct or accumulative, but we consider these to be empirical questions. Our definition of influence is thus broader than the conventional understanding, where actor A's influence is linked to whether or not he/she can "cause" or implicitly coerce actor B to do something he/she would otherwise not have done (Dahl, 1957). Similarly, we define expertise widely to refer to both coordinative and practical "know-how" or "ways of doing things" and sector-specific, specialist knowledge (cf. Chou, 2012a). We define "influence" and "expertise" broadly to enable us to account for the empirical complexity of multi-level decision-making.

Our data for *Atalanta* and the EUMSS consists of 26 semi-structured interviews with participating actors, follow-up interviews (phone, email), and primary documents. We also obtained the different drafts of the Communication and the EUMSS (from 2012–2014), and observed some of the informal discussions between the Commission and member state officials in May 2014, prior to the Council's decision to adopt the Strategy. For EU mobility partnerships, we rely on 30 semi-structured interviews carried out between September 2009 and August 2010, primary documents, and published studies. The majority of our interviewees agreed to speak only under the condition of anonymity. Hence, the interview data we use and quote in our cases contain the speaker's institutional affiliation and interview date (see Appendix). We rely primarily on the 56 interviews and we control for consistency by triangulating across different data sources: Between different actors and institutions involved in decision-making, between arguments and actual behaviour, and across the three cases. While our findings may reveal if and how expertise matters in accounting for the Commission's growing influence in some intergovernmental issue-areas, our limited case selection indicates that further studies are needed before any generalisation can be made.

## 3. The Case of Security and Defence: The *Atlanta* Military Mission and EUMSS

Decision-making on *Atalanta* and *the EU Maritime Security Strategy* formally falls under the framework of the EU's Common Security and Defence Policies (CSDP), which is "subject to specific rules and procedures" (Council of the European Union, 2012). Following these procedures, decision-making powers formally lie exclusively with the Council and its preparatory bodies; decisions are reached through unanimity following discussions among the member states' Permanent Representatives and its special foreign and security committee, the Political and Security Committee (PSC). Accordingly, the Commission has very limited *formal* decision-making powers in these two cases (Merket, 2012, p. 628). Indeed, within the CSDP, the Commission does not have monopoly of initiative, it cannot take cases of non-compliance to the European Court of Justice, and it has no budgetary powers over EU military missions. The European executive does not have formal connections with, or control over, the intergovernmental external action units in the new "EU foreign service", the EEAS (Thym, 2011, p. 16).

### *3.1. Atalanta*

Launched in December 2008, *Atalanta* is the EU's first

and still on-going naval operation and allows for the use of force to "contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast" (Council of the European Union, 2008). As with all military EU operations, it is *ad hoc*, and any military contribution is voluntary for the member states.

Our interviewees revealed that the Commission was very much involved in the process leading to the launch of *Atalanta*. "They were in all the meetings" (NatDel#4); "involved in the entire process…Meetings, correspondence, emails etc." (NatDel#6). Moreover, rather than being a passive observer, the Commission "gains influence by sitting in on the meetings" (NatDel#5). According to national delegates, NATO officials, and the Commission itself, it moreover had a particular impact on *Atalanta* through its legal and development instruments: It secured agreements with countries in the region for transferring suspected pirates (Interviews, 2010, 2013). This was crucial because such agreements were a necessary condition for *Atalanta*'s launch. The member states did not want to bring the pirates to Europe out of fear that they might seek asylum, while at the same time they were concerned with securing their basic rights (Riddervold, 2014). The solution was to establish third country agreements, and such agreements could not be established without the Commission's involvement. As a national delegate put it: The member states needed "the expertise of DG DEVCO and…Justice" (NatDel#1). Most importantly, by working with the Commission, the French Presidency could draw on its "financial instruments in order to push for a conclusion of these agreements…There were some benefits for the countries who signed…They got in return some financial support from the EU" (NatDel#2).

But did the Commission use these financial instruments as a bargaining tool to influence *Atalanta*? The data does not support this hypothesis. Contrary to expectations following the bargaining hypothesis, we did not find that the Commission strategically log-rolled or threatened its way into the *Atalanta* decision-making process. Similarly, we did not find evidence to suggest that the Commission influenced the decision to launch *Atalanta* by cooperating directly with national ministries or officials from other EU institutions to circumvent the member states. Instead, we found the Commission's involvement was wanted by the member states and that it cooperated directly with the EU Presidency to realise an EU mission based on its expertise across the fields its DGs covered. As an EU parliamentarian interviewee argued, the Commission's increasing involvement in military missions at the informal planning phase "is also [based] on the expertise" (EP#1). The Commission is involved because its competence in Community policy-areas makes it "able to advise, on what they could do and on the timing, and that can lead to some adjustments in the planning" (NatDel#2). It "has power through its competences and skills" (NatDel#6), and, therefore, "they should be present and available for consultation" (NatDel#1). Even within the CFSP "it is only the big member states [that]…can challenge the Commission's competence in some areas" (NatDel#6). Summarising Commission involvement in intergovernmental decision-making nicely, a national delegate said: "Where CSDP Security stops and the Commission begin, there is an overlap…especially when it comes to rule of law" (NatDel#4).

### *3.2. EU Maritime Security Strategy*

The Council (2010) adopted its first Conclusions on an EU Maritime Security Strategy in April 2010. In December 2013, the European Council (2013, p. 4) tasked the EEAS and the Commission to present a joint communication on "an EU Maritime Security Strategy by June 2014". Published in March 2014, the Communication contained a list of maritime threats and suggested EU actions. The Greek Presidency, however, wanted its own paper; it introduced an informal text which the "Friends of the Presidency" group discussed six times before the General Affairs Council adopted the EUMSS in June 2014. While the text changed and some suggested actions removed, the main ideas remained.

The Commission's influence is clear in the EUMSS case. In 2010, the Council (2010) emphasised that preparation would occur within the CFSP/CSDP framework. Nonetheless, the Commission started drafting it with the EEAS in mid-2012, co-chairing regular meetings between them (Comm#2–#5; EEAS#1, #3)—18 months before the European Council tasked them to prepare the text. The Commission and the EEAS moreover were at all the "Friends of the Presidency" meetings, where they spoke and successfully proposed amendments (NatDel#8; NatDel#9).

In particular, we find that the Commission influenced the EUMSS in three central ways. First, it reframed the Strategy's scope so much that "the member states" intention was very different from what became the process and the outcome (Comm#2). While the initial Council decision was for the EEAS to explore a *military/security-focused* EUMSS, the final Strategy was *cross-sectoral*, involving issues under the Community integrated maritime policy and other Community policy-areas (Comm#1–#5; EEAS#1–#3). Second, the Commission literally wrote the Communication which the member states revised and adopted, together with the EEAS. Eleven DGs contributed text (e-mail with EEAS#1; EEAS#3). Third, even though the EEAS formally led the intergovernmental EUMSS process, the Commission successfully introduced "the Commission policymaking procedures" for preparing the Communication (EEAS#3). Consequently, the Communication was "not to be shared with the outside world, not even the member states, before it is fin-

ished" (EEAS#3), and all Commissioners had to sign the Communication before its official presentation to the Council and its underlying bodies, and the member states' adoption (Comm#2; EEAS#1; EEAS#3). So, then, how can we account for the Commission's influence? How, if in any way, was it linked to its expertise?

Both expert hypotheses find support in the EUMSS case. First, the *expert arguments hypothesis* accounts for how the Commission was able to change the Strategy's scope in line with its preferences for cross-sectoral maritime security policies. Our interviewees tell us that the *more* cross-sectoral, the *wider* the implications, and the *more likely* that the Commission would be involved in following-up (Comm#2; Comm#5). The "big discussions" between the EEAS and the Commission during the Communication drafting process were precisely on whether the Strategy should be military/security-oriented or cross-sectoral (EEAS#1; EEAS#3; Comm#2; Comm#4). Following the 2010 Council Conclusion, the EEAS suggested to focus on developing a military-oriented strategy, which the Commission opposed: "We didn't see the added value" and therefore "we stopped the process" (Comm#4). Also according to the EEAS, it "came to a standstill […] Because it is absolutely not possible to do it without the Commission […] Sometimes I joke that […] if you read an American maritime security strategy, it is about the employment and deployment of carrier battle groups. If you read the European maritime security strategy, it is all about keeping the Commission on board" (EEAS#1).

When the EEAS re-started the process in 2012, it was from the perspective of developing a cross-sectoral strategy. However, while the Commission's bargaining tactics placed the cross-sectoral approach on the preparation table, it also had to convince the EEAS to endorse this in the Communication. And in line with the *expert arguments hypothesis*, the Commission convinced the EEAS with expert-based argumentation: "A European security strategy without the involvement of the Commission is not worth anything because […] you would devise the complete wrong instrument for a type of problem that is of a completely different nature…you can say now we have reconsidered and have said well […] our approach to maritime security needs to be comprehensive. This first attempt was not good enough" (EEAS#1. Also EEAS#2; EEAS#3). When presented with the Commission's suggestion, the EEAS "got very interested […] they saw the benefit of linking it to the integrated maritime policy" (Comm#4). Thus, the cross-sectoral approach the member states adopted later was "a necessary and logical conclusion of our analysis" (EEAS#1).

Second, when successfully reframing the EUMSS's scope, the Commission activated its role as an *expert authority* in interlinked Community areas. Eleven DGs contributed directly to the Communication based on their sectoral skills and knowledge: DG MOVE adding text on port and ship security, DG DEV on development issues, and DG Taxud on surveillance etc. (Comm#2; Comm#3; Comm#5; EEAS#1; EEAS#3). Interestingly, lending support to the *expert authority hypothesis*, both Commission and EEAS interviewees said that all DGs' text suggestions were incorporated into the Communication directly, without any discussions or objections. This suggests that, after having agreed to a cross-sectoral strategy, DG proposals were automatically incorporated precisely because they were the recognised experts on these issues (Comm#1–#5; EEAS#1–#3). The following quote from a Commission official immediately prior to the Communication's release is telling: "Discussions between the DGs and in the meetings and with the EEAS have not been so much on the content because the text from the different DGs is taken in directly [into the Communication]" (Comm#2).

Following the Communication's publication, the Commission also drew on its expert authority to influence the "Friends of the Presidency" Group's discussions in preparing the June Council meeting. Here, the Greek Presidency introduced two substantial changes: reducing the number of actions and strengthening focus on security and defence (authors' copy). In the final Strategy, however, all but the actions suggesting concrete legislation were re-introduced. During these meetings, the Commission spoke and proposed amendments. According to national delegates, the Commission successfully proposed amendments because these amendments were seen as convincing (NatDel#8; NatDel#9). Most importantly, however, the Commission's attempts to re-introduce issues succeeded as a result of member states wanting to focus on other issues. Since the member states' discussions concentrated on "more important" nationally sensitive areas such as maritime surveillance, defence capabilities and NATO references, they had little interest in debating Commission proposals linked to existing Community areas. This resulted in most of the Commission's suggestions being kept in the EUMSS, and "this gives the Commission a lot of influence" (NatDel#8). To sum up: the Commission's influence appears to be linked to its ability to convince the EEAS to initially accept its arguments for a cross-sectoral approach.

These observations point to the *institutional circumvention hypothesis* as being relevant to fully account for the Commission's influence in the EUMSS case: It gained its influence through working with the EEAS, as well as with the Greek presidency during May and June 2014. During the Communication preparation process, both EEAS and the Commission consulted member states informally (Comm#5; EEAS#1; EEAS#3; NatDel#2), anticipating that "every big country has particular interests" (Comm#4; EEAS#3). However, our interviewees revealed that "the EEAS and the Commission have been left to themselves" to decide the content (Comm#3; Comm#4). "The member states have not been involved so much" (Comm#4). Indeed, only when the Communication was published did the

PSC and the CSFP decision-making machinery start, with the member states' ambassadors "complain[ing] that you did not consult us" (Comm#4).

According to national delegates, "this whole idea of joint communications, that is problematic for the member states, because…member states are not involved in the drafting […] So that is a mixed blessing, because on the one hand they see the advantage of bringing in the Commission, sort of this joint communication, on the other hand they don't have control over it" (NatDel#4). After the Communication's publication, the Commission worked very closely with bureaucrats from the Greek Presidency to prepare texts for the "Friends of the Presidency" meetings (Comm#4; NatDel#8; NatDel#9). One of the authors also observed that the Commission sought to influence national bureaucrats in between the "Friends of the Presidency"/PSC meetings (Observations May 2014). To do so, the Commission again drew on its expert knowledge, approaching bureaucrats working in similar fields and trying to convince them to persuade their governments to support particular issues in the Communication (Observations May 2014).

Lastly, the Commission influenced the EUMSS through its institutional "know-how". Specifically, the EEAS followed "the Commission's modus operandi" (EEAS#3; EEAS#1; Comm#4–#5) because it lacked an established institutional procedure to lead the EUMSS process. According to a Commission interviewee, the member states "created an EEAS without defining how it should function…There is no proper road map leading to the strategy, no developed procedure" (Comm#2). "It took some time to ripen…with the post-Lisbon world" (EEAS#3). While there was an initial "lack of trust" between the two institutions (Comm#5), an EEAS interviewee explained that "because you cannot keep doing these informal consultations, at some moment in time you need formal mechanisms, a formal structure, and that is what we have designed and created" (EEAS#1). Thus, even if joint communications fall under the CSDP intergovernmental framework, they follow the "normal" Community approach in practice: "From an institutional perspective, this will be very productive. Now we have a framework, a structure on how to work in the future" (Comm#3).

## 4. The Case of External Migration: EU Mobility Partnerships

Migration policy is an established issue area in European cooperation. Ever since the member states decided to realise the "free movement of labour" by removing internal border controls, the strengthening of their common external borders was considered an essential corollary (Geddes, 2008). Hence, through successive treaty revisions, from Maastricht to the Lisbon Treaty, we see that migration has moved from "an area of common interests" for the member states to a "communitarised policy area". This is now generally understood to mean that the central institutions—i.e., the Commission, the European Parliament, and the Court of Justice—possess their "ordinary" regulatory competence (Council of the European Union, 2012). We chose the "external dimension" of European migration cooperation as a case study because it is an exception to this "communitarisation" trend.

Institutional and legal innovations in European migration policy cooperation, according to several observers, are not uncommon (Chou, 2009; Peers, 2000; van Selm, 2002). In the main, these "exceptions" are meant to accommodate the different national preferences on certain migration issues, notably labour migration, and to allow the member states to retain decision-making powers in their hands. Hence, even though migration policy cooperation is said to be "communitarised", we observe that "the right of Member States to determine volumes of admission of third-country nationals" is not to be compromised (Council of the European Union, 2012). Put simply, European cooperation on selected migration issues, if and when it occurs, would be intergovernmental. Below, we investigate an instance of intergovernmental migration cooperation—the EU mobility partnerships—to consider whether, and, if so, how, the Commission influences its decision-making through expertise.

Similar to EU's military operations, EU mobility partnerships are *ad hoc*, voluntary, and involve only those member states and partner third countries interested in pursuing closer migration cooperation. It is a unique migration instrument that belongs to the EU's external policies and, hence, the decision-making and operational rules governing that cooperation are to apply. It is useful to note that the origin of EU mobility partnerships stems from the Union's initial failure to adopt a Council directive by the end of the Tampere period (i.e., 2004) that would regulate the entry and residence of migrants for employment purposes. Noting this in 2006, and wanting to promote the "Global Approach to Migration (and Mobility)" (GAMM), the European Council invited the Commission to propose "how to better organize and inform about the various forms of legal movement between the EU and third countries" (European Commission, 2007, p. 2). In response, the Commission launched the EU mobility partnership in 2007 as a "new instrument" for external migration cooperation.

To date, the EU has signed seven mobility partnerships: with Cape Verde and Moldova in May 2008; Georgia (November 2009); Armenia (October 2011); Morocco (June 2013); Azerbaijan (December 2013); and Tunisia (March 2014) (European Commission, 2014, p. 2). The EU mobility partnership is now the main instrument with which the Union engages with the Arab Spring countries in the migration sector. Given the overall trend towards "communitarisation" in this sector, this turn towards preferring intergovernmental

cooperation and its successful expansion is fascinating. Indeed, it allows us to approach the role of Commission expertise, as well as inter-institutional dynamics more generally, from another angle: How and why did the member states fail to prevent the European executive from influencing intergovernmental processes? This question points to an underlying assumption about the "nature" of intergovernmental cooperation in European integration, namely, that it involves only national officials representing the participating member states at the "expense" of central institutions. As briefly noted at the beginning, there are a growing number of studies pointing to the Commission's increased influence in areas where it lacks or has limited competence. As we shall show below, its cross-sectoral expert knowledge is a crucial contributing factor to this development.

To start, there is evidence to confirm that the participating member states did not seek to exclude the Commission from the preparation, negotiation, and even the implementation of the mobility partnerships. Put differently, the member states "failed" to prevent the Commission because they never intended to do so in the first place. Indeed, the Commission has been *the* coordinator in this process. In interviews with Frontex officials, Djupedal (2011, p. 40) described the Commission as the "node" around which the implementation of EU–Cape Verde mobility partnership revolved: "we have regular meetings in Brussels, and we are all invited by the Commission. We discuss proposals […] and the progress of the mobility partnership is measured [by] the Commission task force". Confirming that the Commission's involvement was welcomed, we find that it is even a signatory to the EU mobility partnerships and some of its proposals were also included (see Annex of all mobility partnerships). This led an official from the legal service of the Council's General-Secretariat to remark that the EU mobility partnership is legally "experimental" because the Commission also signs (quoted in Chou & Gibert, 2012, p. 210). Others have noted its "non-binding nature" (House of Lords, 2012, p. 53) and "soft legal nature" (Van Vooren, 2012, p. 210), pointing to the "flexibility" that EU mobility partnership offers to the participating states.

The inclusion of the Commission in the EU mobility partnerships did not mean that the member states were not cautious or inattentive to its role or influence. On the contrary, Reslow (2012, p. 228) argues that the Commission was very much a "Limited Policy Initiator". This is because the EU mobility partnerships were designed to consider the possibility of labour mobility between participating member states and third countries. According to her, "Member states will indicate when the Commission is going too far in its proposals, for instance by incorporating issues which they see as falling under their competence, or which are particularly sensitive" (Reslow, 2012, p. 229). This perspective, however, does not explain the Commission's active role in this process. Indeed, Reslow (2012, p. 229) admits that it was the Commission that "suggested potential partner countries, gauged the level of interest of the member states, conducted exploratory talks with partner countries, and had a coordinating role in the negotiations between the member states and partner countries". So why is the Commission a central actor in the preparations and negotiations for EU mobility partnerships?

Our findings lend support to the *expert authority hypothesis* in two ways. First, the Commission has the cross-sectoral knowledge of the three issues at the heart of mobility partnerships: development (i.e., capacity-building, training), migration and security (border management, trafficking, asylum, return, labour market access, visa facilitation). At the departmental-level, the corresponding Commission DGs involved at the time included Home (lead DG), Development, and Aid (Djupedal, 2011, p. 39). Similar to its role in drafting the EUMSS, the Commission also prepared the GAMM, which outlined the mobility partnerships' operational goals, and was responsible for GAMM's subsequent reporting (European Commission, 2011). Unlike the EUMSS, however, the Commission was not responsible for widening the scope of GAMM, which strategically linked development with migration and security. According to Chou (2012b, pp. 22-24), EU high-level discussions concerning how to operationalise the "migration-development nexus" for achieving security goals have been on-going since the late 1990s (cf. Lavenex & Kunz, 2008). By tasking the Commission to explore ways of implementing the GAMM, and, in so doing, acknowledging its expert authority on these issues, the European Council also paved the way for its inclusion in the intergovernmental decision-making.

Second, more than some participating member states, the Commission has the organisational "know-how" and resources to make negotiating and implementing the mobility partnerships possible. In terms of coordination, DG Home acted as the nerve centre in Brussels with EU delegations at the capitals of participating third countries (Dakar, Praia) its nerve extension (Djupedal, 2011, pp. 39-42). According to our Commission interviewee (Comm#6), EU delegations prepared the meetings in partner third countries, while DG Home, liaising with their missions in Brussels, would oversee those meetings. Similar to the case of *Atalanta*, the Commission's considerable tools in the development sector (i.e., aid and field knowledge) were crucial: They enticed partner third countries to the talks (Chou & Gibert, 2012), and provided the specialist knowledge on the grounds. DG Development officials accompanied DG Home official regularly at the start of negotiations (Comm#6; Comm#7; Comm#8). We found that the Commission did not use development aid as a bargaining tool to insert itself at the negotiation table; it also did not circumvent or convinced the member states with expert arguments. Several DG Home inter-

viewees (Comm#6; Comm#9) revealed what the member states appreciated the most: Regularly updated scoreboard showing not only progress, but also those responsible for task implementation (i.e., which member state, EU agency, third country ministry or agency, or the Commission). To sum up, these attributes made the Commission a "one-stop-shop" for the member states when they sought a reliable coordinator to assist in these intergovernmental arrangements.

Finally, examining the failed negotiations with Senegal to conclude an EU mobility partnership offers another insight concerning the Commission's role in intergovernmental decision processes. The Commission approached Cape Verde and Senegal at the same time, but suspended talks with the latter due to a lack of progress. According to Chou and Gibert (2012, p. 409), this failure can be attributed to a combination of factors, notably the "unfavourable cost-benefit calculus by the French and Senegalese parties to the negotiation" and "an unclear and awkward negotiating strategy on the part of the European Commission". They showed that France was not interested in an EU instrument overseeing its well-functioning bilateral migration cooperation with its former colony. Quoting a French interviewee in Dakar, Chou and Gibert (2012, p. 420) tell us that "'France will be happy to take part in the mobility partnership if Senegal is willing" […] but "France […] does not wish to take the lead on this and will stay behind the EU'". It is France's unwillingness to openly oppose these talks that lead us to propose that the Commission has another function in intergovernmental discussions with third countries: it represents the Union in the absence of a united front. While this mobility partnership did not materialise, our findings showed that the Commission exercised considerable influence through its expertise during these intergovernmental decision processes.

## 5. Conclusion

This article set out to consider whether and, if so, how the Commission's expert knowledge contributed to accounting for empirical observations of its growing influence in intergovernmental policy-areas. We find that, indeed, the Commission's use of expertise captures much of its *de facto* influence in issue-areas where its competence remains formally limited. By distinguishing between two expertise-based hypotheses (*expert authority* and *expert arguments*), we are able to say more about how its expertise matters than the existing literature provides. Specifically, in several of our cases, the Commission used its expert arguments to influence the member states' and other actors—most notably the EEAS'—positions on common policies. Most importantly, in all cases the Commission informed decision-making by successfully linking discussions to policy-areas where it possesses expert authority. This suggests that, despite the member states' attempts to formally maintain a division between "Community" and "intergovernmental" policies, this division is difficult to enforce in practice given the centrality of the Commission's expertise in informing the member states' subsequent policy decisions. This mutual reliance may be one of the "hidden" dynamics of European integration that helps us make sense of how and why European cooperation has intensified and deepened in sectors and on issue-areas at the heart of national sovereignty.

Our findings revealed that, while expertise accounts substantially for our empirical observations of growing Commission influence in formally intergovernmental EU policy-areas, bargaining tactics and institutional circumvention are also important. Our limited number of case studies suggests that these are fruitful avenues for further research before any generalisation can be made about Commission expertise in intergovernmental policy-areas. The EUMSS in particular is still a work in progress (in terms of implementation), so any conclusions about the "real" influence of the Commission would be premature at this stage. While our framework offers the first step for an improved understanding of the different functions of expertise in EU decision-making processes, we believe that, in particular, our *expert arguments hypothesis* can be usefully applied to investigate how transnational non-governmental actors may affect intergovernmental agreements and outcomes more generally. To sum up, this article suggests that it is the Commission's expert arguments and invoking of expert authority that have paved the way for how it can exercise its Treaty powers in intergovernmental and *non-communitarised* issue-areas.

## Acknowledgement

We want to thank the editors, Åse Gornitzka and Cathrine Holst, as well as four anonymous reviewers for their valuable questions and comments that have improved this article. A previous version of this paper was presented at the ECPR General Conference in Bordeaux, 5–7 September 2013. We would like to thank all the panel participants for their helpful suggestions and Tom Delreaux for his comments and for organising the panel on "The Institutional Dimension of the EU's External Relations". Meng-Hsuan Chou wants to thank the School of Humanities and Social Sciences (Nanyang Technological University) and Marianne Riddervold the Norwegian Ministry of Defence for financing this research.

## Conflict of Interests

The authors declare no conflict of interests.

## References

Aggestam, L. (2006). Role Theory and European Foreign

Policy. In O. Elgstrøm & M. Smith (Eds.), *The European Union's Roles in International Politics* (pp. 11-29). London: Routledge.

Barnett, M. N., & Finnemore, M. (1999). The politics, power, and pathologies of international organizations. *International Organization*, *53*(4), 699-732.

Barnett, M. N., & Finnemore, M. (2004). *Rules for the World*. Ithaca: Cornell University Press.

Busch, P. O., & Liese, A. (2014). A framework for a comparative analysis of expert authority of international public administrations. Paper presented at the 2014 ECPR Joint Sessions.

Checkel, J. T. (2001). Why comply? Social learning and European identity change. *International Organization*, *55*(3), 553-588.

Chou, M. H. (2009). The European security agenda and the "external dimension" of EU asylum and migration cooperation. *Perspectives on European Society and Politics*, *10*(4), 541-559.

Chou, M. H. (2012a). Constructing an internal market for research through sectoral and lateral strategies. *Journal of European Public Policy*, *19*(7), 1052-1070.

Chou, M. H. (2012b). EU Mobility Partnerships and Gender. In R. A. Sollund (Ed.), *Transnational Migration, Gender and Rights* (pp. 11-31). Bingley: Emerald.

Chou, M. H., & Gibert, M. (2012). The EU–Senegal mobility partnership. *Journal of Contemporary European Research*, *8*(4), 409-426.

Copeland, P., & James, S. (2014). Policy windows, ambiguity and Commission entrepreneurship. *Journal of European Public Policy*, *21*(1), 1-26.

Council of the European Union. (2008). Council joint action 2008/851/CFSP of 10 november 2008: On a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the somali coast. *Official Journal of the European Union*, *L 301*(12 November 2008), 33-37.

Council of the European Union (2010). Council conclusions on a Maritime security strategy 309th Foreign Affairs Council meeting. Luxembourg, 26 April 2010.

Council of the European Union (2012). *Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union* (6655/7/08 REV7). Luxembourg: Publications Office of the European Union.

Cross, M. (2010). Epistemic Communities and the Transnational Network Approach to EU Diplomacy and Security Policy. In C. M. Costantinou & J. Derian (Eds.), *Sustainable Diplomacies* (pp. 192-212). Houndmills: Palgrave Macmillan.

Dahl, R. (1957). The concept of power. *Behavioral Science*, *2*(3), 201-215.

Deitelhoff, N. (2009). The discursive process of legalization. *International Organization*, *63*(1), 33-65.

Djupedal, A. K. (2011). *Recent Developments in the EU Migration Management Policy*. Master Thesis, Department of Political Science, University of Oslo.

Egeberg, M. (2006). *Multilevel Union Administration. The Transformation of Executive Politics in Europe*. Houndmills: Palgrave Macmillan.

Elgstrøm, O., & Smith, M. (2006). *The European Union's Roles in Internationanl Politics*. London: Routledge.

Eliaeson, S. (2002). *MaxWeber's Methodologies*. Oxford and Malden: Blackwell Publishers.

Eriksen, E. O. (2005). Reflexive Integration in Europe. In E. O. Eriksen (Ed.), *Making the European Polity. Reflexive Integration in the EU* (pp. 9-29). London: Routledge.

Eriksen, E. O., & Fossum, J. E. (2000). *Democracy in the European Union: Integration through Deliberation?* London: Routledge.

European Commission. (2007). *Communication on Circular Migration and Mobility Partnerships Between the European Union and Third Countries* (COM(2007)248 final). Brussels, Belgium: European Commission.

European Commission. (2011). *Communication on the Global Approach to Migration and Mobility*. (COM(2011)743 final). Brussels, Belgium: European Commission.

European Commission. (2014). *Annexes to the Report on the implementation of the Global Approach to Migration and Mobility 2012–2013.* (COM(2014)96 final). Brussels, Belgium: European Commission.

European Council. (2013) *European Council 19/20 December 2013 Conclusions, Brussels, 20 December 2013, EUCO217/13*. Brussels, Belgium: European Council.

Geddes, A. (2008). *Immigration and European integration: Beyond fortress Europe?* Manchester: Manchester University Press.

Gornitzka, Å. (2009). Networking Administration in Areas of National Sensitivity. In A. Amaral, P. Maassen, C. Musselin & G. Neave (Eds.), *European Integration and the Governance of Higher Education and Research* (pp. 109-131). Dordrecht: Springer.

Haas, P. M. (1992). Introduction: Epistemic communities and international policy coordination. *International Organization*, *46*(1), 1-35.

Hooghe, L. (2001). *The European Commission and the Integration of Europe.* Cambridge: Cambridge University Press.

Hooghe, L. (2005). Several roads lead to international norms, but few via international socialization. *International Organization*, *59*(4), 861-898.

House of Lords. (2012). *The EU's Global Approach to Migration and Mobility*. Report from the European Union Committee, 8th Report of Session 2012–2013 (HL Paper 91). London: The Stationery Office Limited.

Joerges, C., & Neyer, J. (1997). From intergovernmental bargaining to deliberative political processes. *European Law Journal*, 3, 273-299.

Jørgensen, K. E., Oberthür, S., & Shahin, J. (2011).

Introduction: Assessing the EU's performance in international institutions—Conceptual framework and core findings. *Journal of European Integration*, *33*(6), 599-620.

Lavenex, S., & Kunz, R. (2008). The migration-development nexus in EU external relations. *Journal of European Integration*, *30*(3), 439-457.

Lewis, J. (2011). EU Policy on the Iraq War and Its Aftermath. In D. C. Thomas (Ed.), *Making EU Foreign Policy* (pp. 10-28). Houndmills: Palgrave Macmillan.

March, J. G., & Olsen, J. P. (1998). The institutional dynamics of international political orders. *International Organization*, *52*(4), 943-969.

March, J. G., & Olsen J. P. (2006). The Logic of Appropriateness. In M. Moran, M. Rein & R. E. Goodin (Eds.), *The Oxford Handbook of Public Policy* (pp. 689-708). Oxford: OUP.

Martens, M. (2008). Administrative integration through the back door? *Journal of European Integration*, *30*(5), 635-651.

Merket, H. (2012). The European External Action Service and the nexus between CFSP/CSDP and development cooperation. *European Union foreign Affairs Review, 17*(4), 625-652.

Olsen, J. P. (2009). Change and continuity: An institutional approach to institutions of democratic government. *European Political Science Review*, *1*(1), 3-32.

Peers, S. (2000). *EU Justice and Home Affairs Law*. London: Longman.

Pollack, M. A. (1997). Delegation, agency and agenda setting in the European Community. *International Organization*, *51*(1), 99-134.

Reslow, N. (2012). Deciding on EU external migration policy. *Journal of European Integration*, *34*(3), 223-239.

Riddervold, M. (2011). From reason-giving to collective action: Argument-based learning and European integration. *Cooperation and Conflict*, *46*(4), 563-580.

Riddervold, M. (2014). Different threat, different response. EU and NATO in the fight against Somali piracy. *European Security*. doi: 10.1080/09662839.2014.937337.

Riddervold, M. (2015). (Not) in the hands of the member states. How the European Commission influences the CSDP. Under review.

Riddervold, M., & Sjursen, H. (2012). Playing into the Hands of the Commission? In O. Costa & K. E. Jørgensen (Eds.), *The Influence of International Institutions on the EU*. London: Palgrave Macmillan.

Risse, T. (2000). Let's argue! Communicative action in world politics. *International Organization*, *54*(1), 1-39.

Rittberger, B. (2012). Institutionalizing representative democracy in the European Union. *Journal of Common Market Studies*, *50*(S1), 18-37.

Rosén, G. (2014). EU confidential: The European Parliament's involvement in EU security and defence policy. *Journal of Common Market Studies*, in press. doi:10.1111/jcms.12154

Schmidt S. K. (2001). Only an agenda setter? The European Commission's power over the Council of Ministers. *European Union Politics*, *1*(1), 37-61.

Sjursen, H. (2004). Changes to European security in a communicative perspective. *Cooperation and Conflict*, *39*(2), 107-128.

Tallberg, J. (2008). Bargaining power in the European Council. *Journal of Common Market Studies*, *46*(3), 685-708.

Thym, D. (2011). Holding Europe's CFSP/CSDP executive to account in the age of the Lisbon Treaty. *Serie Union Europea*, *53*.

van Selm, J. (2002). Immigration and Asylum or Foreign Policy. In S. Lavenex & E. M. Uçarer (Eds.), *Migration and externalities of European Integration* (pp. 143-160). Oxford: Lexington Books.

Van Vooren, B. (2012). *EU External Relations Law and the European Neighbourhood Policy*. Abingdon: Routledge.

**About the Authors**

**Dr. Meng-Hsuan Chou**

Dr. Meng-Hsuan Chou is Nanyang Assistant Professor in Public Policy and Global Affairs Programme at Nanyang Technological University (NTU), Singapore.

**Dr. Marianne Riddervold**

Dr. Marianne Riddervold is a post-doctoral fellow at ARENA—Centre for European Studies, at the University of Oslo, Norway.

**Appendix: List of interviewees**

**Comm#1**: Commission official 26/2-2014
**Comm#2**: Commission official 26/2-2014
**Comm#3**: Commission official 27/2-2014
**Comm#4**: Commission official 11/3-2014
**Comm#5**: Commission official 27/2-2014
**Comm#6**: Commission official 15/9-2009
**Comm#7**: Commission official 23/9-2009
**Comm#8**: Commission official 23/9-2009
**Comm#9**: Commission official 17/9-2009
**EEAS# 1**: European External Action Service official 13/2-2014
**EEAS# 2**: European External Action Service official 19/6-2014
**EEAS#3**: European External Action Service official 27/2-2014
**EP#1**: European Parliament advisor 17/6-2013
**EUSPHoA#1**: Official at EU Special representative for the Horn of Africa, European External Action Service 17/2-2014
**IMO#1**: National representative, the IMO 21/6-2010
**NatDel#1**: Official at Permanent national delegation to the EU 19/6-2013
**NatDel#2**: Official at Permanent national delegation to the EU 19/6-2013
**NatDel#3**: Official at Permanent national delegation to the EU 19/6-2013
**NatDe#4**: Official at Permanent national delegation to the EU 19/6-2013
**NatDel#5**: Official at Permanent national delegation to the EU 18/6-2013
**NatDel#6**: Official at Permanent national delegation to the EU 4/6-2013
**NatDel#7**: Official at Permanent national delegation to the EU 23/5-2013
**NatDel#8**: Official at Permanent national delegation to the EU 28/5-2014
**NatDel#9**: Official at Permanent national delegation to the EU 3/6-2014
**NATO #1**: NATO military staff 17/6-2010
**NATO#2**: NATO military staff, 27/8-2010
**NATO#3**: NATO military staff 17/6-2013
**NATO#4**: NATO military staff 24/6-2010
**NATO#5**: NATO military staff 20/6-2013
**OpCen#1**: Official at EU operations center 17/6-2013
**OpCen#2**: Official at EU operations center 17/6-2013

COGITATIO

**Politics and Governance (ISSN: 2183-2463)**
**2015, Volume 3, Issue 1, Pages 73-89**
**Doi: 10.17645/pag.v3i1.81**

Article

# Expertise and Power: Agencies Operating in Complex Environments

Anthony R. Zito

School of Geography, Politics and Sociology, Newcastle University, Newcastle upon Tyne, NE1 7RU, UK;
E-Mail: anthony.zito@ncl.ac.uk; Tel.: +44-1912087554; Fax: +44-1912085069

Submitted: 2 June 2014 | In Revised Form: 14 February 2015 | Accepted: 19 February 2015 |
Published: 31 March 2015

**Abstract**
This contribution investigates the strategies that environmental agencies develop to enhance their policy autonomy, in order to fulfil their organisational missions for protecting the environment. This article asks whether there are particular strategic moves that an agency can make to augment this policy autonomy in the face of the principals. Critiquing principal agent theory, it investigates the evolution of three environmental agencies (the European Environment Agency, the England and Wales Environment Agency and the United States Environmental Protection Agency), focusing on the case study of climate change. The contribution examines how the agencies influence environmental policy on domestic, regional and global levels, with a special focus on the principals that constrain agency autonomy. A greater focus on different multi-level contexts, which the three agencies face, may create other possible dynamics and opportunities for agency strategies. Agencies can use particular knowledge, network and alliance building to strengthen their policy/political positions.

**Keywords**
climate change; environment agency; European Union; governance; learning; principal agent

**Issue**
This article is part of the special issue "The Role of Expert Knowledge in EU Executive Institutions", edited by Professor Åse Gornitzka (University of Oslo, Norway) and Dr. Cathrine Holst (University of Oslo, Norway).



## 1. Introduction

This contribution has a twofold analytical purpose. First, it studies environment agencies as prototypical public organisations wielding policy expertise and struggling with some of the most critical public policy questions affecting human well-being. Part of the governance challenge facing such agencies is the blurring of the line between the expertise needed to govern a policy problem and the political knowledge needed to govern most effectively. This governance difficulty is heightened by the multi-level nature of the political actors involved and the increasing presence of "wicked" problems (policy problems resisting resolution due to issue uncertainty and complexity). Problem-solving expertise is not the only knowledge that agencies must nurture: how agencies handle multiple masters matters. This contribution emphasises that a necessarily important part of this governance effort involves developing strategies that engage the agency's principals and constituencies.

Secondly, exploring these policy-making aspects suggests the need to conceptually broaden the principal-agent (PA) framework. The article examines the role that agent strategies can have in influencing the PA dynamic, and which strategic moves may succeed in providing the agency the policy scope to fulfil its core tasks. Hawkins and Jacoby (2006, p. 201) stress how PA theory has overlooked the importance of agent strategies in the policies that ensue. This raises the broader theoretical question largely absent from traditional PA approaches, namely assessing the importance of learning.

To achieve these objectives, we ask the following research question: are there particular strategic moves

that an agency can make to enhance its policy autonomy with respect to the principals? The article explores the ability of agencies to learn strategies for engaging with both the principals and the other constituencies (those elements of society that are regulated and/or benefit from agency efforts). This article makes a focused comparison of the multi-level dynamics within the European Union (EU) and the United States (US) in the area of environmental policy, focusing particularly on climate change (CC). It investigates the policy efforts of the EU agency, the European Environment Agency (EEA) and the United States Environmental Protection Agency (USEPA). However, given the importance of domestic agencies in implementing EU law and governance (part of a "double delegation" where regulatory powers have been delegated both to the EU institutions and national agencies) we need to understand the transposition of EU law at the domestic level and its own PA dynamics (Coen & Thatcher, 2008; Trondal, 2011, p. 58). The study adds the Environment Agency for England and Wales (EA) to the methodological approach discussed next.

### *1.1. Methods and Outline*

In 2007, the Leverhulme Foundation funded a one year qualitative study enabling this researcher to examine three environmental agencies and the challenges that they face in the new millennium. The USEPA and the EEA were selected on the most different principle with respect to the question of policy scope (i.e., the power and authority to implement environmental law) within a multi-level context. Although both agencies operate in a multi-level dynamic, the USEPA has a substantially greater budgetary and regulatory scope over the US state-level agencies; in contrast, the EEA is an information-focused agency that relies on networks of national institutions and agencies to perform its policy role and has limited policy/budgetary scope over them. If we saw these two agencies following a similar strategy towards their principals in order to enhance policy control, this suggests a broader phenomenon is being observed. However, given the importance of understanding how member state agencies operate in the multi-level EU context, I drilled down further, adding the EA as an illustration. Given the ability to only look at one member state country, the EA was selected as the largest member state agency with considerable policy and information gathering responsibilities, operating within a member state government that originally took a very limiting perspective towards the EEA.

The initial study revealed that changes in executive government and legislatures mattered in shaping agency policy autonomy; to understand this time dimension, the author has continued the study into 2014. The research has involved examining the engagement with other organisations within the system and the instruments (policy tools) selected to implement environmental legislation. This has involved looking at academic literature, primary documents, (including annual reports, external assessments, and policy proposals), and conversations with expert academics. To get a detailed sense of the motivations and the degree to which implicit/explicit strategies existed, this researcher has utilised open-ended questionnaires to interview 78 organisational actors experienced in environmental policy-making, both within the particular agency and outside it. The interviews include three senior and four mid-level EEA officers, three consultants involved in EEA activities, three EEA Management Board members representing EU supranational institutions, four senior EA officials, five mid-level EA officials, three policy officers in the Department of Energy and Climate Change (DECC) and the Department of Environment, Food and Rural Affairs (DEFRA), three senior EPA political appointees, ten senior EPA permanent administrators, 27 EPA Headquarters policy officers, 8 USEPA Region policy officers, 8 policy officers in other departments (e.g., Office of Management and Budget and the Small Business Administration), four policy officers representing regulated groups and two Environment Canada officials.

In terms of data gathering, the investigation has focused on the evolution of the three agencies' effort to shape policy broadly and to engage with their respective principals. However, to more closely understand the organisational level mechanics (of building policy efforts, strategies and instruments), this article drills down further by selecting a specific policy problem, climate change. This allows closer isolation of the micro differences in policy preferences, and in information, between the principal and agent. In terms of the analytical propositions the next section examines, climate change is a testing case for the theoretical argument because of (a) its high political salience, (b) the degree of policy uncertainty and complexity inherent in the problem and (c) a wide range of actors perceiving a stake and being willing to contest this policy area. Because climate change policy encompasses so many environmental and non-environmental policy dimensions that are pursued within and outside the respective environment agencies, the project has focused on water policy issues and the most salient CC dockets (in terms of political attention) for each agency.

The next section formulates a number of theoretical propositions based on PA theory as well as two literatures that suggest critical changes: namely historical institutionalism and learning. The following section explores each agency's development, focusing on how the agencies have evolved in their relationship with their principals to achieve policy objectives. The article then examines the degree of policy autonomy found in the individual agency's CC policy efforts.

## 2. Theoretical Overview

### *2.1. Principal-Agent Approaches*

The foundational PA literature focused on the core relationships between bureaucratic organisations (the agents) and the principals, the political authorities. PA theorists conceptualised politicians as principals who anticipate the potential for bureaucratic manipulation (given the bureaucracy's superior expertise) and assert their long-term control over the agent (McCubbins, Noll, & Weingast, 1987). The traditional PA approach assumes that bureaucrats have personal preferences that conflict with the principals' concerns, and the delegation of authority gives bureaucrats/agents information advantages—i.e., expertise (McCubbins et al., 1987, pp. 246-247). To avoid prohibitively costly monitoring and sanctioning costs, the principals build mechanisms that control the bureaucratic process, but do not require specifying or even knowing the detailed policy outcomes that bureaucrats pursue (Calvert, McCubbins, & Weingast, 1989, pp. 598-599). This can involve: selection or screening of the agent, embedding positive incentives, monitoring procedures and sanctioning (Reichert & Jungblut, 2007). This article's null hypothesis is the PA thesis: the policy actions that agencies pursue fall within the policy autonomy and discretion delegated by the principals (Conceição-Heldt, 2013; see Table 1 for the summary list). Policy autonomy is the actual (as opposed to the merely formal/legal) degree of policy-making competency an agency enjoys in relation to its "parent" ministry or government (Bach, Niklasson, & Painter, 2012, p. 185).

In the PA perspective, the tension arises as the asymmetric balance of information between the principal and the agent, involving incompletely specified mandate or weak oversight mechanisms, creates the potential for agency slack (the ability to act independently and to exceed the delegated authority granted by the principals) (Hawkins, Lake, Nielson, & Tierney, 2006). Thus, the traditional PA approach posits certain conditions where agencies may exert policy autonomy that is contrary to the principal's intentions. This agency slack occurs in conditions where the agency interests and consequent actions conflict with the principal (shirking) or where the structure of delegation gives incentives for the agency to take a different position (slippage) (Conceição-Heldt, 2013).

One of the most likely opportunities for agency slippage occurs when (a) the principle is a collective entity that must generate consensus to act and is divided; or (b) there are multiple principals (Thatcher & Stone-Sweet, 2002). Not only can the agent play off the multiple actors (when they are unable to agree a common interest or agree to sanction the agent), the agency will be alert to the principals' decisional process, i.e., whether the principals require unanimity versus some form of majority vote to alter agency behaviour. These multiple actors may also have authority over different aspects of the principal's relationship. Koop (2011) finds that an increased number of principals involved in setting the agency's terms leads to greater problems of achieving compromise, a higher tendency for less detailed legislation and more opportunities for discretion.

Part of this slippage dynamic reflects a wider range of public and societal actors involved in governing. Governance networks, in which a mixture of state actors (which may include both the principals and multiple agents working on the same policy problem) and societal actors, have an increasing role (Coen & Thatcher, 2008). Héritier and Lehmkuhl (2008, p. 15) push this argument further by stressing the possibility that actors can be both principals and agents simultaneously, creating more complex dynamics.

A second set of conditions that complicate the PA perspective are the characteristics inherent in the policy that the agency confronts. First, there is the question of how salient (the degree of importance given an issue by policy makers) the policy is that the agency is acting upon; the more politically salient the policy, the more likely principals will invest in monitoring and steering (Koop, 2011). Second, agency policy autonomy may depend on the stage that the policy is at: the acts of agenda setting, policy formulation, policy decision, policy implementation and policy monitoring may attract varying degrees of principal attention (Bach et al., 2012).

### *2.2. Institutional Strategies and Learning*

The elaborations offered above do not challenge the essential PA dynamics. Some critics argue for the importance of other dynamics that move beyond PA assumptions. Thatcher and Stone Sweet (2002) raise the historical institutionalist argument that PA assumptions become problematic over time as preferences of both the principals and agents can change and complex interactions feed back into this process. Coen and Thatcher (2008, pp. 53-54) argue that the PA approach too easily ignores how, over time, the post-delegation behaviour may alter the original delegation, "driven by endogenous factors such as learning or the development of expertise, or exogenous factors such as technological and economic developments or external coercion". Exogenous technological factors may involve the creation of information technology that enhances policy scope but cannot be anticipated by the principals in earlier legislation. While accepting the potential importance of exogenous factors in enhancing policy autonomy, this contribution focuses on the endogenous dynamics, explored next.

Hawkins and Jacoby (2006, p. 199) note that the PA focus on the principal's control mechanisms has led to

the consequent neglect of the strategies that agents pursue in between the act of delegation and the actual policy outcomes. They posit that agents are able to increase their autonomy by three strategies outlined below. First, agents can embrace strategies that involve a certain level of deception or mis-direction. One plausible way is "dualism", i.e., creating a covert buffer between the agent and the principal by differentiating between core tasks that the agency wishes to fulfil and the actual tasks that please the principals and other third party constituents (Hawkins & Jacoby, 2006, pp. 210-211). Particularly when facing multiple demands and a growing number of principals and other interested parties, agencies may have the ability to loosely couple sufficient activity to please certain principals whilst operating to achieve objectives not pleasing to these particular principals.

Less covert is the second strategy. Agents can choose to reinterpret the delegation rules by (a) gradually but visibly reinterpreting the rules in a way that gives the principal time to adapt and not be goaded into overturning the reinterpretation; (b) reinterpreting the rules in a way that splits the collective/multiple principles; (c) adhering to the principal's goals but modifying/innovating the implementation in a manner that establishes future precedents; and (d) developing informal practices that the agent asks to be formalised (Hawkins & Jacoby, 2006, pp. 206-207, 212).

These strategic possibilities of reinterpretation suggest a larger reality: agencies may find the scope to alter the substantive preferences of the principals and other important stakeholders over time. This does not constitute shirking as the agency acts to *transform* the policy dynamics and the principals' preferences. The difference is that shirking is the explicit effort to circumvent the will of the principal as expressed in the PA control mechanisms; this has democratic implications given the circumvention of democratic representatives. The preference transformation involves the persuasion of the principal on a voluntary basis to accept new understandings of policy. Tallberg (2002, pp. 37-39) argues that there is an inherent element of learning in any principal-agent relationship. PA relationships are not "one-shot affairs": both principals and agents seek to integrate previous experience with future behaviour. This article goes further by postulating that agencies can adjust and have the ability to make principals adjust over time through a learning process.

Hawkins and Jacoby suggest a third agency strategy involving third parties. PA theory acknowledges this possibility, with these groups acting as monitors for the principal that trigger alarms about agency shirking. However, the dynamic also works in reverse. As autonomous agents that are supposed to be open to policy stakeholders, it is difficult to stop agents from expanding the range of actors that they engage. Such monitoring stakeholders may share or be persuaded to adopt the agency outlook, building coalitions to support the agent's policy efforts (Hawkins & Jacoby, 2006, pp. 208-209). Agencies have incentives to ally themselves with principals and other interested parties who share their goals and policy outlook; sharing ideas and information/expertise becomes a means of cementing this linkage to supporting coalitions (Waterman, Rouse, & Wright, 2004, pp. 37-42).

Carpenter offers a historical institutionalist analysis of bureaucratic autonomy that reinforces Hawkins and Jacoby's strategies, particularly reinterpretation/innovation and building linkages/coalitions with third party actors. Bureaucratic autonomy involves agencies undertaking "sustained patterns of action" over time that accord with their own policy preferences. Carpenter suggests that bureaucracies need stable legitimacy in order to operate autonomously. Agencies attain this condition by developing a reputation and expertise in policy innovation (that becomes recognised by principals and wider society) and by establishing societal links more widely (Carpenter, 2001, pp. 14-18). Genuine policy autonomy exists when agencies can make the decisive first moves towards a new policy, establishing the most popular alternative (the policy innovation), which become too costly for politicians and organised interests to ignore or dismiss.

Agencies operating with policy autonomy may exert a process of bureaucratic entrepreneurship (Carpenter, 2001, pp. 30-31): the agency leadership, harnessing the agency's expertise, introduces innovations to existing programmes and/or new programmes while gradually convincing the diverse political actors and coalitions to value the new innovation and the agencies themselves (both are essential acts of policy entrepreneurship). Agency actors sustain this preference shift by using recognised policy legitimacy, by building superior ties to the public and/or media, or by establishing reputations for impartiality or the pursuit of public good. For example, if agencies can build in advance compromises on policy elements with the various important stakeholders affected by the policy, then they can reduce the incentives of these societal stakeholders to raise objections and galvanise principals (Lee, 2012).

Waterman, Rouse and Wright (2004, pp. 37-42) conclude that information, learning and coalition building are core dynamics that transform the bureaucracy-principal relationship: both sets of actors are learning over time about policy, politics and their own organisations. Bennett and Howlett (1992, pp. 278-288) suggest several relevant distinctions for different types of learning. "Government learning" focuses on understanding the administrative processes with the aim of organisational change; this maps onto agencies learning how to divide or persuade principals by building coalitions with certain principals and other societal actors. "Lesson drawing" focuses on how programmes

change via actors learning about new instruments and tools; such learning enables agencies to reinterpret their roles in a way that principals eventually learn to accept. "Social learning" encompasses the learning process where new world views are adopted, leading to radical policy paradigms shifts. This encompassed the rarer possibility that an agency will gain an understanding of public policy that transforms the policy role itself (Bennett & Howlett, 1992).

Table 1 summarises the propositions offered in this section. Evidence for the first proposition suggests that normal PA delegation operates. Propositions Two to Five suggest conditions that can be encompassed within the PA approach. Proposition Three allows for a range of possibilities, including: the principal cannot generate a consensus within its constituent elements; multiple principals cannot agree a course of action; and the principals' outlook and priorities alters over time, due to changes in the executive and legislature. Proposition Five expresses the possibility that the principal and any supporting actors may focus more, for example, on the agency actions during the policy formulation and decision-making but less so in the implementation and monitoring phases. Proposition Six includes exogenous forces such as economic crises and environmental disasters that raise certain aspects that agencies wish to prioritise beyond what is established in the initial PA delegation.

Propositions Seven to Nine articulate the three strategies agencies can utilise to transform the nature of the PA relationship. It is possible that such strategies would be more likely to succeed if they are interacting together. Agencies actively push innovation and seek a wider actor coalition to embrace this knowledge and embed it into their own routines and behavioural norms. All three forms of learning may occur in this situation, but agency learning about the policy problem and its engagement with both the principals and the wider policy context is more likely to involve limited lesson drawing (e.g., incrementally improved understandings of the policy problem and new perspectives on instruments) and government learning that does not modify radically the organisational strategy and worldview.

My overarching hypothesis is that we should see similar strategies being adopted by the three agencies to enhance their policy autonomy in a complex multi-level context and that the agencies will be attracted to transformational strategies that reduce the potential for conflict with the principals. It is expected that more than one of the conditions in Table 1 may have to be in operation for the agency to gain this autonomy in a situation that does not result in a strong principal reaction. If the agency's operations in general, and in climate change specifically, are limited to the autonomy as outlined by the principal, the PA proposition holds.

**Table 1**: Propositions.

| List of propositions | Expectations concerning the agency's policy autonomy |
|---|---|
| **Null hypothesis** | |
| (1) The default PA proposition | Policy autonomy is stable, reflecting normal PA delegation. |
| **Propositions where PA dynamics remain but are made more complicated** | |
| (2) Shirking | Policy autonomy increases for agency acting against principal's intentions. |
| (3) Slippage | Policy autonomy increases as agency exploits changes in the delegation or the lack of principal consensus due to:<br>(a) composite principals;<br>(b) multiple principals;<br>(c) external changes in the principals. |
| (4) Policy saliency | Policy autonomy increases to the degree that the policy issue garners *less* political attention. |
| (5) Policy stage | Policy autonomy increases at the policy stage that draws less attention from principals and stakeholders. |
| (6) Exogenous dynamics | Policy autonomy increases due to external circumstances. |
| **Propositions that transform PA dynamics** | |
| (7) Dualism | Policy autonomy increases due to agency deception and loose coupling of tasks. |
| (8) Reinterpretation and learning | Policy autonomy increases as agency engages in reinterpreting its mandate or transforming the understanding of its role. |
| (9) Coalition-building | Policy autonomy increases as agency learns to persuade principals and others to be sympathetic to agency's position. |

## 3. Comparative Analysis

Taking each agency in turn, this section first focuses on changes in the agency's policy autonomy, and provides an overview of the changes in the balance between the agency and the principals. Then each agency study drills down to investigate how agency policy autonomy has manifested itself in the CC case. Following the focused comparison approach, the USEPA is examined, followed by the EEA, with the illustration of a member state agency, the EA. Table 2 introduces some of the key agency differences (in terms of the range of principals, the scope of the tasks and the range of steering mechanisms that principals possess) that each agency overview discusses.

### *3.1. The USEPA*

#### 3.1.1. The Evolving PA Relationship

The 1970 order creating the USEPA enshrined a very important distinction from the other two agencies: the Presidential administration's selection of political appointees to head both the agency and its key offices. This is a clear PA control mechanism; these appointees are agents with a more direct link and association to the principal. However, the impact and control of these officials varied widely depending on the individual. Some of the more effective USEPA Administrators, particularly Ruckleshaus, developed their own independent political base and prestige in office, but the political appointees mostly bring whatever political leverage accumulated in their past political/policy lives—e.g., prominent state governors (Interviews, USEPA officials, 2007–2008).

Also present from the start was a separate principal: the US Congress. This body, particularly when its houses are controlled by the US party opposing the President, can exert quite different pressures on the USEPA. Not only must the US Senate approve the EPA appointees, the US Congress must create the environmental protection legislation, which the EPA implements, and decide the budgetary amount for the federal government, including the EPA and its programmes (Lazarus, 2004). Congress can also use appropriations bills to forbid agencies from spending the money to perform particular policy acts (MacDonald, 2013). Although Congressional Committees have the ability to investigate through hearings and other mechanisms, the general preference is to rely on interest groups and citizens to raise problems (Carrigan & Coglianese, 2011). After the USEPA's initial founding, the Democrat-controlled US Congress spent the 1970s distrusting the Republican White House administration and its agents, producing a wide range of statutes imposing stringent deadlines and limiting the EPA's discretion. Congress also inserted various judicial review provisions that allowed, and indeed encouraged, both the regulated and public interest organisations such as the environmental non-governmental organisations (ENGOs) to pursue litigation (Lazarus, 2004, pp. 79-81).

**Table 2**: Agency characteristics.

| Agency Name | USEPA | EEA | EA |
|---|---|---|---|
| Key Principals | Presidential Administration and Executive; US Congress. | EU Commission, with budget within DG Environment; European Parliament (EP); EU Council of Ministers; member states. | The UK executive with respect to England and Wales, with specific Ministerial oversight in DEFRA and DECC; House of Commons and Welsh Assembly; EU Commission. |
| Key Tasks | Implements US law by writing regulations and national standards; enforcing regulations; dispersal of US budget to states and other actors. | Gathering information to support policy implementation; coordinating member state networks. | Implement national and EU legislation, via issue of permits; acting as the competent authority responsible for implementing legislation. |
| Critical mechanisms to limit agency policy autonomy after the delegation | Political appointees leading key EPA segments; formulating rules under executive scrutiny and processes; Congressional approval of appointees, oversight and budget approval; consultation and engagement by societal stakeholders (may involve litigation). | Appointment of the chair by the Management Board; the Management Board interactions; special reviews of activities; reporting especially to the Commission and other EU institutions. | Agency reviews; government budgets; restructuring; reporting to UK and EU governing processes; engagement with societal actors who provide information to both the UK and EU governance structures. |

One of the key alterations in the PA dynamics occurred with the Reagan Administration's arrival. The administration sought to subordinate the agency to a number of administrative measures; it created a number of Cabinet Councils to consider policy questions, marginalising the USEPA (Landy, Roberts, & Thomas, 1994, pp. 248-250). The Reagan Administration also utilised an existing, centralising institution: the Office of Management and Budget (OMB). The White House issued an executive order requiring all proposed major rulemaking to be submitted to the OMB for review and enabling the OMB to examine all extant rules (Interviews, USEPA officials, 2007–2011; Carrigan & Coglianese, 2011). The third control mechanism involved budgetary limits: the USEPA had to implement numerous 1970s laws, but the White House, waging a substantial battle with the Democrat-controlled Congress, substantially contracted the EPA budget between 1980 and 1983 (Landy et al., 1994, pp. 248-250).

Subsequent presidential administrations used these mechanisms—although for varying objectives. For example, the Bush II Administration budget cuts (without directly challenging national law and the environmental coalitions) compelled the USEPA to re-prioritise what they saw as vital activities and abandon less essential items (Interviews, USEPA officials, 2007–2008).

### 3.1.2. Climate Policy

The USEPA CC policy starts with the 1989-1990 publication of two substantial climate documents arguing for stringent policy efforts (Landy et al., 1994, pp. 291-295). The Bush Sr. Administration was unwilling to follow through with a substantial mitigation agenda, either at the national or international level; the Clinton era saw a more favourable CC approach. Given space constraints, this case study focuses on the Bush II and Obama Presidencies where diverging preferences between principals (the Executive and Congress) and the USEPA can be strongly documented.

For most of the Bush II Presidency, the USEPA's CC focus was relatively limited. In 2002, President Bush announced the plan to reduce greenhouse gas intensity by 18% over a decade (USEPA Interviews, 23–24/11/2009). The USEPA was encouraged to pursue some lesson drawing about CC instruments; this exploration centred on developing voluntary climate efforts, and exploring technological solutions in areas such as transport (Interviews, USEPA official, 9/11/2012, USEPA officials, 23–24/11/2009). Accordingly, the USEPA joined the Department of Energy to implement the ENERGY STAR programme promoting energy-efficient products and processes (Interview former USEPA official, 19/11/13).

The PA constraint was reflected most significantly in the actions and outlook of the Headquarters Unit, based so near the White House. There was a clear recognition that a more interventionist USEPA program was not possible given the Bush Presidency's orientation. Numerous interviews suggest that a PA dynamic was at work where the preferences of the principal and agent differed: many lower level managers in the EPA Headquarters were simply "waiting" for a change of administration (Interviews, USEPA officials, 2007–2008, 2013). This early half of the Bush II era suggests that both the limited EPA efforts and the actual policy instrument innovation aligned with the general White House preferences (fitting with Proposition One).

However, this does not indicate all of the significant USEPA CC involvement. The lower (regional) USEPA layers have been involved with a number of state initiatives as well as carrying out their own limited activities. Here the states, as important policy stakeholders that receive USEPA rules and money, have provided strong governance leadership. This dynamic changed further as the state actors collided with the Bush Administration. In 2003, nine New England and Mid-Atlantic governors started negotiating a regional tradable permit scheme for emissions for power plants. This led to the 2005 memorandum of understanding (MOU) creating the Regional Greenhouse Gas Initiative (RGGI, 2009). Although a number of them had Republican governors, the state governments decided to tackle this issue in the perceived absence of Presidential leadership. This effort developed a transnational dimension as the same governors held discussions, again supported by the regional EPA officials, with the Canadian provincial premiers prioritising climate change.

This left the USEPA Region 1 (covering the New England States) and Region 3 (Mid-Atlantic States) Headquarters with a balancing act. The USEPA reality is that the more regional agency elements must work closely with the state governments and environmental protection agencies to ensure implementation of the national laws and regulatory targets as well as adhere to the federal principals' preferences (Interviews, state representatives, 2012). In this context, the Region 1 leadership consulted closely with the governors, giving policy advice. This effort maintained low visibility, without involving a specific budget; resources within the offices were shifted from the traditional handling of issues to this CC question. This Regional EPA effort constitutes coalition building (Proposition Nine) around the climate change objective, but with the states taking the active policy leadership. These two Regional offices were able to carve out their own small niches to tackle climate change even during the Bush II era. As the Bush II Administration had to be careful about issues of state's rights, particularly for states with Republican leadership this suggests some slippage for the principal (Proposition Three), which gave the USEPA more room to act in conjunction with these states.

Further policy autonomy is seen in each Region's implementation of the Safe Water Drinking Act (SWDA) (Interviews, USEPA officials, 2008). To implement this

legislation, the top managers of Region 1 actively incorporated CC issues, using the rationale that the potential CC impact on water systems raised questions for the drinking water objectives. This thinking chimed with the national media office, the Office of Water. As the SWDA did not have CC as a primary policy focus, the Regional officers engaged in some reinterpretation of laws they were required to implement. Therefore Regional Office 1 shifted some resources to address this CC problem. The office turned the available tools dealing with the water issue to the linked CC area, such as the monitoring of the waste water industry's energy efficiency. A similar shifting of effort and purpose occurred in energy conservation efforts. These findings suggest that both slippage and dualism occurred, as certain Water objectives set by Congress gave the EPA greater scope to work on CC contrary to the wishes of the Executive. It also helped the Regional office that they were seeking to implement a piece of US legislation (Proposition 5), but reinterpretation was also involved. This supports Opp's (2011) findings that USEPA regions can possess a varying degree of discretion; this in turn influences how states and localities implement national legislation.

It is important not to overstate the impact of this USEPA policy autonomy. Much of the USEPA effort was done under the policy radar screen at the national level and at the margins. For the USEPA, the greater policy changes happened elsewhere. Congress developed several bills to directly tackle CC and distance itself from the White House. Of more immediate importance to the USEPA was the 2007 US Supreme Court ruling against the USEPA. Here a number of petitioners, joined by the state of Massachusetts, sought to see greenhouse gas emissions as pollutants that can be regulated under the extant US law (the Clean Air Act—CAA); the Court decided for the petitioners (*Massachusetts et al. v. Environmental Protection Agency et al.*, 2007). The USEPA responded to this Supreme Court decision by empowering its Office of Air and Radiation to develop rules to tackle greenhouse gasses through the CAA (USEPA, 2008; Interview, USEPA official, 2007). The Court ruling and the use of current regulations suggest the slippage dynamic; here a key PA monitoring device, legal action, forced a readjustment by the executive and the EPA, rather than an USEPA-led reinterpretation.

It is telling that the Bush Administration and the EPA Administrator Johnson managed to tone down the critical finding about CC endangerment in the EPA draft response to the ruling, (McGarity, 2013). In these circumstances, the EPA continued to develop several rules (including one that the OMB refused to upload and thus finalise the review process) and research to support the policy efforts (Heinzerling, 2012). The amount of effort the EPA staff spent on this suggests shirking, with the anticipation of future principal slippage.

With the arrival of the Obama administration and new political appointees, notable changes can be seen. In response to the 2007 Supreme Court Decision, the USEPA Administrator Jackson signed an action that the current and projected concentrations of the six key greenhouse gases be considered a threat to the "public health and welfare of current and future generations" (USEPA, 2009). This action acknowledged the CC threat, triggering mandatory action under the CAA. Obama signed the American Recovery and Reinvestment Act in 2009; it provided the USEPA, among other things, with $6 billion to tackle energy efficiency and the ability of water systems to cope with CC (Recovery.gov, 2009).

In the wake of significant bipartisan opposition in Congress and the healthcare battle, the Obama Administration prioritised using the 2007 Court ruling to exploit extant regulations, particularly the CAA (Cappiello, 2009). Accordingly, the EPA proposed a Carbon Pollution Standard for New Power Plants that defines national limits on the carbon emissions for the first time (USEPA, 2012). The Rule continues to be developed in 2015; there are indications that it will incorporate the state-led tradable permit scheme to achieve its goals (Volcovici, 2014).

However, by 2012 the political tide had turned in the US Congress with a resurgence of the Republican right taking the US House of Representatives, symbolised by the House Committee on Oversight and Government Reform requiring the EPA Administrator Jackson to testify seven times in one month (McGarity, 2013). Although the USEPA pursues standards on cars and power plants (including work started during the Bush Administration), the EPA has delayed other tools given this principal and societal opposition (Heinzerling, 2012). The EPA Climate Change Division has sought to mitigate this opposition by pursuing the participation and views of various stakeholders while developing the Mandatory Reporting of Greenhouse Gases Rule. Cook and Rinfret (2013) find that this EPA (coalition-building) strategy is one the Agency is pursuing in other rule-making efforts.

The analysis above suggests that the EPA has not gained much policy autonomy concerning CC; much more significant has been the change in the principals' thinking, particularly the White House, and the clients, including state governments. The USEPA is more notable for its ability to maintain its expertise and general approach to the policy problem while waiting for the principal to change: the preferences of the executive under Obama and the agency converged more strongly (Interview, USEPA official, November 2013).

### *3.2. The EEA*

#### *3.2.1. The Evolving PA Relationship*

The EU Regulation 1210/90 creating the EEA established both the PA dynamics and the opportunities to form broader relationships. The Regulation also con-

tained notable ambiguities—particularly the EEA's relationship to the Commission and its role in formulating EU policy (Majone, 1997). The composition of the overseeing EEA Management Board included a range of principals (see Table 2), namely the EP, Commission and state representatives, who had haggled over the Agency's original role (Groenleer, 2009; Zito, 2009).

The compromise Regulation placed the EEA in a role of information and network co-ordination (Ladeur, 1996); it explicitly mandated the network system to utilise extant European structures and hence engage with national institutions (Commission, 1989). The EIONET network contained nine specialist European Topic Centres (ETC) and the National Focal Points—national institutions tasked with assisting the EEA work programme and the EIONET (EEA, n.d.). Regulation Article 14 specifically mandates EEA co-operation with other international organisations, giving the networking global scope (Council, 1990).

The EEA has harnessed its network agency mandate to engage both internal and external actors linked to the EU policy-making process. The EIONET system requires substantial networking with a range of state officials and civil society. The original Regulation offers possibilities for interpretation/re-interpretation to allow the EEA officials to expand its tasks, which involved certain policy implications (Interviews, two EEA officials, 2007; Groenleer, 2009). The Regulation's ambiguous language strongly suggests the importance of slippage, which was driven by a compromise between the key principals with differing priorities. Accordingly, the EEA officials used the Regulatory obligation to interact with non-EU countries and international bodies to showcase EEA expertise, experience and knowledge about networking and data collection (Interviews, two EEA officials, 2007).

Shifting to another PA dynamic, the original Regulation required that the Commission review the Agency's performance and make proposals concerning additional tasks to the Council (Council, 1999, p. 1). Several principals (e.g., the EP) viewed this provision as a mechanism for expanding EEA power (slippage). Simultaneously, the review could serve as the traditional PA monitoring tool to assess performance, potentially triggering constraints and sanctions. The review, started in 1997, could have produced widely varying results, depending on the principals' perceptions and actions.

The consequent revised Regulation 933/1999 offered nothing dramatic but included significant changes of nuance, allowing slippage. The Revised Article 2 reformulates the aims "to provide the Community and the Member States with the objective information necessary for framing and implementing sound and effective environmental policies" (Council, 1999, p. 2). This changed the interpretation of the EEA's role as moving from mere data collection to one involving an explicit policy function and expertise.

This revised Regulation pushed the Agency to engage in some governmental learning, via reforming its information systems and gaining a new focus on sectoral integration and prospective analysis (IEEP [Institute for European Environmental Policy] & EIPA [European Institute for Public Administration], 2003, p. 26). The revised Regulation enshrined a PA monitoring process, requiring a further review of the agency's performance by the principals (Council, 1999, p. 2).

This second major review assessed positively the 1994–2000 EEA performance, affirming the need for the Agency and EIONET (IEEP & EIPA, 2003, pp. 26-27). It argued that the Agency's work needed to fit more closely with the clients' (principal's) needs, but that it could not serve all users, nor all policy areas, given extremely limited resources. The review argued that the EEA's role needed to shift from providing stand alone products (such as reports) to providing services to the policy-making actors. This recommendation provided scope for agency task expansion in the area of policy (Ibid). The Review also triggered an explicit Council statement enshrining the EEA's independent role as serving the entire EU, granting some policy autonomy in conditions of slippage (Interview, Management Board, 2007; Council, 2003).

Another active PA mechanism is the EEA Management Board (MB). The MB must approve the EEA work programme and various organisational/staffing decisions; it acts as conduit of information and networking between the EEA and its principals. The PA dynamic has gradually evolved from 1990: e.g., the MB preferences becoming more diffuse after EU enlargement, allowing more opportunities for slippage.

The critical relationship with Commission DG for Environment (the DG has special control and is the location of the EEA budget) has significantly changed from 2000 and has added some dimensions of policy autonomy, compared to previous academic assessments (e.g., Hoornbeek, 2000). Before that, some Commission officials held that the EEA takes the DG's money and accordingly obligated to do its bidding (EEA actor interview, 2007; IEEP & EIPA, 2003, pp. 62-63). The policy role has been core in the EEA evolution away from merely writing informational reports and maintaining databases. This Agency policy activity generated tension with DG Environment's view of the Commission as the chief agent governing environmental policy and also the EEA's chief client; the 1998 and 2000 budget demonstrated the DG resistance and desire to downgrade lower EEA priority tasks (IEEP & EIPA, 2003, pp. 38-40, 61-62). Nevertheless, the EEA leadership grasped that the provision of environmental information is inherently ambiguous and not policy neutral: data gathering involves assessing how policy problems are perceived and how policies function (Interviews, 2 EEA officials 2007). This development suggests both policy slippage and reinterpretation/

governmental learning concerning the EEA's potential.

Although differences in opinion remain about the EEA role in policy implementation and effectiveness, the Commission and the EEA have developed a more collaborative relationship (IEEP & EIPA, 2003, pp. 42-43; Groenleer, 2009). The EEA fashioned a more sensitive approach to the DG and senior and middle management interactions (Interviews, 2 EEA officials, one MB official, 2007; IEEP & EIPA, 2003, pp. 60-62). The Commission has accepted the policy reinterpretation, explicitly acknowledging the importance of EEA's role and a potential extension of EEA support activities "along the entire range of stages of the policy cycle" (Commission, 2003, p. 10; Interview, MB official, 2007).

The role of competing principals and slippage has shaped this evolution as the EEA created deeper ties (Proposition Nine) to the EP, the Council and like-minded member states (Busuioc & Groenleer, 2012, p. 140; IEEP and EIPA, 2003, p. 42). The EEA has sought to be responsive to state wishes through the development of conferences and background notes (i.e., background policy expertise). Changes in EU policy processes and demands have boosted this expanding EEA policy role (IEEP & EIPA, 2003, pp. 28-29). The Cardiff process and the Sixth Action Programme generated particular policy requests (by the principals) for specific Agency information.

The EP Environment Committee boosted the EEA scope. The Committee requested *ad hoc* reports and background material on Commission legislative proposals and on related member state activity. This data requirement, focusing on general policy aspects, differed from the more detailed information that the Commission wanted the EEA to prioritise (Groenleer, 2009, p. 234). This request was partly a conscious EP effort to boost the EEA's scope to conduct a level of discrete, limited policy analysis and provide policy expertise; a MOU between the EEA and EP concretised this effort (Interview, MB official, 2007). Two initial policy contributions (assessing the effectiveness of packaging waste implementation and of the urban waste water treatment directives) concretised this effort (IEEP & EIPA, 2003, p. 32; Interview, consultant, 2007). The consequent relatively stable principal-agent linkages suggest the EEA's ability, albeit in a limited fashion, to reinterpret its role to include policy. This supports Trondal's (2010, p. 164) assessment about the trajectory of EU agencies.

#### *3.2.2. Climate Policy*

The EEA's role in CC policy indicates limitations in the policy autonomy that the EEA has gained. On this issue, the EEA has remained focused on activities set out by the principals. For example, the EEA has used its data expertise to assist the other institutions in developing the Greenhouse Gas Monitoring Mechanism. The main EEA emphasis has been to help monitor and assess the EU progress in achieving emissions targets (EEA, 2009, pp. 11, 19). The EEA issued a 2007 report, arguing for the need to adapt water resource policy and suggesting a range of tools to help (EEA, 2007).

The EEA also provides analysis for planning a European low-carbon economy and support information for the latest international climate negotiations. The low-carbon economy analyses include the study of integrated mitigation and adaptation outlooks, as well as analysing future scenarios. Special attention is devoted to improving and maintaining information and indicators of the climate change impacts, looking at current trends as well as hindcasting and forecasting Europe's climate (EEA, 2009, p. 19). The EEA has the annual responsibility of reporting the inventory of EU climate change emissions to UN Framework Convention on Climate Change process (EEA, 2015). The EEA's CC efforts reflect the standard PA dynamic: providing data and a limited amount of policy analysis at the behest of the Commission, member states and the EP.

### *3.3. The EA*

#### 3.3.1. The Evolving PA Relationship

The 1996 creation of the EA involved a merger of various organisations; this triggered a period (1996–1998) of considerable staff adjustment, low staff morale and a lack of management consensus about the agency's tasks and processes (Interview, 3 EA officials, 2007; McMahon, 2006, pp. 156-157). An additional challenge was pleasing the array of principals (see Table 2); these included the UK government (with particular oversight from DEFRA but also DECC concerning CC responsibilities), but also the House of Commons, the Welsh Assembly and the EU Treaty obligations monitored and enforced particularly by the Commission.

Perhaps the most notable UK government intervention and imposition of will from 2002 to 2014 has been the considerable and seemingly perpetual organisational restructuring and personnel changes, which partly explains continuing staff tensions (Interviews, 3 EA officials, 2007; 22 June 2010). A major 2002–2007 restructuring occurred to ensure that the EA produced a consistent set of instructions and uniform policy decisions at the sub-national level (Interview, EA official, 14 March 2007; House of Commons Environment Committee, 2006, pp. 16-17).

The 2010 UK Coalition Government forced further significant organisational changes, and has been conducting reviews with potentially drastic consequences for the EA, not least a review assessing the value of UK's EU membership. At the sector level, the government eliminated 53 of 85 of DEFRA advisory bodies (e.g., the Expert Panel on Air Quality Standards) in the "bonfire of the quangoes" (Interview, DEFRA official, 11 October

2011; ENDS Report, 2010). Although the EA survived the initial purge, the Government ordered a triennial review of UK ministries, and all associated "arm's length" agencies to examine the need for agencies to exist outside the ministries and/or as independent entities (DEFRA, 2012b). In June 2013 the review concluded that the EA should remain a separate body but also continue to enhance service delivery and efficiencies (DEFRA, 2013).

As of 2014, budget cuts have forced the largest organisational changes. The Coalition Government has particularly cut DEFRA (the ministry providing the major budget for the EA). By December 2012, the Agency had lost 20% of its budget and 2000 member of staff. The Government forced cuts in a key climate change-related issue area, flooding, but the 2012 floods forced a partial reversal (Carrington, 2012; Interview, EA Official, 2010). In 2014, during the winter floods crisis, the EA announced that the objective to cut the work force from 11250 to 9700 was still planned after a consultation period (BBC News, 2014).

Besides changing the budgetary cuts and reviews, the Coalition government gave a very clear steer that the EA should not challenge Government policy and should have a more internal organisational focus. From 1996 to this point, the EA, although enforcement remained its primary role, had increasingly viewed its general UK policy role as being an environment champion and had worked to shape policy (Interviews, 6 EA staff, 2007, 2008, 2010). DEFRA specifically told the EA to "stop policymaking and lobbying activities" (*ENDS Report*, October 2010). The EA leadership responded explicitly, dropping policy stances and altering job titles (Interview, EA Official, 2010).

One of the efforts to adjust the EA relationship with the UK and EU principals has involved learning (balanced more towards lesson drawing than social learning) about policy. The Agency had decided to make an effort to modernise environmental regulation, even before the 1997 New Labour government made it a priority (Interview, EA official, 1 December 2010). This reflects EA recognition that regulatory management must maximise efficiency, given ongoing resource constraints (DEFRA, 2003, pp. 12-16; House of Commons Environment Committee, 2006, pp. 13-15). The 2010 Coalition Government pushed DEFRA and the EA to streamline environmental regulation further (DEFRA, 2012a). This culminated in the development of new civil sanctions powers sourced in the 2008 Regulatory Enforcement and Sanctions Act. Interviews suggest that both high level and mid-level EA officials took particular interest in the USEPA's wide range of potential sanctioning tools (e.g., fines and voluntary agreements to undertake remedial action to supplement regulation) (Interviews, EA, USEPA officials, 2007–2008). This EA reinterpretation and learning about policy tools does not constitute shirking or transformation as it matches the preferences of the UK governments in the last two decades.

The EA leadership has endeavoured to enhance its impact, through such innovations, at both the international and EU levels. The EA became a prime mover of the Networks of the Heads of Environmental Protection Agencies (Interview EEA actor, 2007). The EA has been also active in the Implementation and Enforcement of Environmental Law (IMPEL) and EEA networks, pushing ideas such as the better regulation agenda (Interview, EA officials, 2007).

Because the EA is a competent authority for implementing EU regulations, the UK ministries had to include the EA in discussing new EU measures. Over time, the EU Commission has learned to respect the EA's input in its own right (Interviews, Consultant & EA officials, 2007).The Agency utilises an evidence-based approach to its argumentation that the Commission finds useful (Interview, EA officials, 2007). Important EU policy examples include: the general structure and provisions of the Water Framework Directive and the use of risk-based calculations in the Contaminated Land Directive (Interview, EA official, 2007).

Nevertheless, DEFRA, as a core principal that is the voice of the UK ministerial government in the EU process, carefully limits EA engagement with the Commission (Interview, EA official, 2007; House of Commons Environment Committee, 2006, p. 29). Thus at best only mild slippage (Proposition three) occurs. EA people only support EU Council negotiations and must adhere to the Ministerial/principal line (Interview, EA officials, 2007). The EA avoids letting its networking efforts compete with DEFRA's. The overall picture is the UK government maintaining a close rein on the EA's policy autonomy in both the domestic and EU context, in line with PA expectations.

### 3.3.2. Climate Change Policy

There has been some national debate about whether the EA had responsibility for UK climate change policy beyond flood control. The lack of a remit in the energy and transport sectors has always constrained EA CC scope. In the UK implementation of the EU's United Nations Framework obligations, the EA is responsible for implementing the EU Emissions Trading Scheme (ETS) and acts as a regulator for the sectoral climate change agreements and the voluntary Energy Efficiency Scheme.

Although not a leader in designing the ETS, the EA role as a regulatory and advisory body allowed it to influence UK government decisions, including a UK trading scheme that anticipated the EU's. The EA serves as the principal government advisor on such matters as climate capture and storage and as the regulator of key climate change emissions, including non-carbon dioxide emissions from plant installations and landfill sites (Interviews, EA officials, 2010).

There is less scope for the EA to model climate change given the presence of other UK institutes. The EA

does have the scope to assess how the changing climate will evolve. A key EA strength has been its advanced integrated catchment strategy, providing rainfall and temperature data. The EA focus is less to deal with mitigation issues than with the monitoring and adaptation roles; the mitigation policy fights occur at the EU and UK ministerial levels. Both these implementation and knowledge-building tasks fit within the normal bounds of the PA relationship as the agency activities mesh with the preferences of the national and EU principals.

It is arguable that some policy slippage and reinterpretation has occurred in the question of CC policy adaption and the overarching contraction of the national budget. The EA adaptation role is fundamental: a central, and relatively protected, part of the EA budget is flood control. The New Labour Government pondered whether a standalone flood agency was more suitable for handling the future flooding challenge, but its review discarded this idea (Interview, two EA officials, 2007). The EA was particularly influential in pushing for CC adaptation into the UK Climate Change Bill agreed in 2007. Originally the proposal had focused on mitigation. Here both the EA, as well as DEFRA, worked to change the government legislation and policy preferences through reinterpretation and arguably social learning (Keskitalo, 2010).

However, the winter 2013–2014 floods placed the Agency's flood expertise and strategy in a political firestorm as many political (and government) actors blamed the EA for the Somerset flooding, rather than, for instance, the strategic government choices about how to spend a finite flood defence budget (Smith, 2014). This questioning of the EA's effectiveness has coincided with a wholesale workforce reduction (BBC News, 2014). The UK government and the EA have refuted claims that these cuts affect front-line flood prevention with climate change policy prioritised, but the reality is that the cuts have significantly reduced the EA's policy and science wings, many of which produce activities linked to climate mitigation and adaptation policy (Interview, EA official, 2007). This limits some of the wider UK and EU CC policy objectives.

The EA continues to promote its CC expertise at the EU level: for example, the EA convinced the Commission to accept the UK approach to flood risk management. The EA representatives managed to explain what the UK was doing and persuade the Commission to reinterpret its flood risk proposal to allow the EA to keep its system in place (Interview, EA officials, 2007, 2010). This section suggests that, as the budget crisis has become the UK government's focus, there has been some slippage between this prioritisation and some of the longer-term goals set for UK CC policy at the national and EU levels, but no greater policy autonomy as a result.

## 4. Conclusions

This conclusion examines first how the propositions of Table 1 stand up to the evidence. Table 3 lays out the evidence uncovered in the case studies for each proposition. We then examine the wider analytical implications and pose questions for future research.

### *4.1. Agency Findings*

Focusing first upon the strategic efforts to build policy autonomy, the general evolution of the EEA stands out as demonstrating the clearest sustained strategic effort, although this has not extended to the area of CC directly. Arguably the wider policy implications for this information-orientated agency are much smaller than the other two agencies with tremendous regulatory responsibilities and resources. Nevertheless, we see the EEA officials using the Regulation's textual ambiguities, and the multiple principals' differing preferences, to build a limited policy autonomy that did not exist originally in the preferences of at least one principal, the Commission. The Commission wished to protect its own policy powers and avoid duplicated effort. Of the three agencies, it is the EEA that has most successfully transformed and "educated" the outlook of the principals.

The EEA transformation of the principals' preferences indicates that several PA dynamics were involved (see Table 3). It is significant that the agency, in terms of the policy cycle, was providing information across the cycle, rather than dominating and defining a particular policy stage. More important was the existence of the multiple principals and the slippage that they created. Slippage was necessary but not sufficient: the EEA officials had to be willing to push the possibility of expanding the policy scope through a conscious strategy. They did so by learning (government learning and lesson drawing) to interpret/reinterpret their mandate, and by using their networks and other tasks to build strong relations with principals besides the Commission. This strategy had a multi-level dimension as it involved engagement with member state actors, such as the EA, but also other international organisations and non-EU countries.

In contrast, the EU member state agency (EA) case, despite involving multiple principals, does not reveal much evidence of efforts to overturn the preferences of core principals in either the overview or the climate change case study. The EA had a moderate level of success in using expertise to persuade the UK government and the Commission to rethink certain pieces of legislation. This reinterpretation was important in terms of the policy choices made, but did not carve out policy autonomy for the agency. This suggests the power of the UK executive with the ability of the majority-backed government to radically alter the scope and shape of the agency in the face of the opinions of other principals. Other state agencies will need to be studied to generalise this conclusion. External events (the economic crisis) and the UK government's response have not extended but rather limited EA autonomy.

**Table 3**. Evidence of policy autonomy mapped against the propositions.

| List of propositions | USEPA | EEA | EA |
|---|---|---|---|
| **Null hypothesis** | | | |
| (1) The default PA proposition | In the climate change case study, most of the EPA policy outputs at HQ level conform to PA norms. | In the climate change case, the EEA outputs were focused on reports and information in line with PA norms. | In the climate change case, most of the EA policy outputs conform to PA norms. |
| **Propositions where PA dynamics remain but are made complicated** | | | |
| (2) Shirking | EPA regions shifted resources to CC under the SWDA. Certain offices within the EPA continued to develop CC policy plans while waiting for the end of the Bush II Administration. | No evidence presented. | No evidence presented. |
| (3) Slippage | The US Supreme Court ruling empowered the EPA to develop CC rules using the Clean Air Act against the Bush II White House wishes. | The EEA's general policy scope has been enhanced by the explicit effort of certain principals (e.g. EP, Council) and the reviews of the EEA activities. | Marginal slippage might be possible given EU requirements but largely in line with Ministerial (PA) direction. |
| (4) Policy saliency | EPA regions in Northeast US re-interpreted the SWDA and work with state governors in low key fashion. | No evidence presented. | No evidence presented. |
| (5) Policy stage | SWDA actions at regional level focused on implementation. | The focus on providing policy reports and providing information covers all stages. | No sense of a policy stage creating autonomy; policy implementation of flood control provoked high visibility control. |
| (6) Exogenous dynamics | No evidence of this variable affecting PA relationships. | No evidence of this variable affecting PA relationships. | No evidence of this creating more policy autonomy; economic crisis has led to budget cuts reducing autonomy. |
| **Propositions that transform PA dynamics** | | | |
| (7) Dualism | EPA regions shifting resources to CC under the SWDA. | No evidence provided. | No evidence provided. |
| (8) Reinterpretation and learning | EPA regions shifting resources to CC under the SWDA. | Substantial reinterpretation of role to move beyond mere information provision. | EA helped push government reinterpretation of 2007 CC Bill. EA succeeded in persuading Commission to accept UK flood risk approach. |
| (9) Coalition-building | EPA regions built alliances with state governments on CC. Coalition building during effort to develop Mandatory Reporting of Greenhouse Gases Rule. | Strong efforts made to reach out to the principals especially the EP and Council of Ministers, but also non-EU states, international organisations. | No evidence provided. |

This lack of effort to promote autonomy does not mean that the EA operated without a strategy for engaging with the wider national and EU processes. It has had to learn and relearn its roles in the face of sustained government restructuring; it worked to build expertise and innovation in particular areas (government learning and lesson drawing). It received national and EU credit for expertise, building vital aspects that fed into the EU Water Framework Directive and rethinking of regulations. It has worked hard to engage other actors and to build a reputation for expertise. The agency does face issues of slippage (i.e., not meeting preferences of principals on particular issues) as it seeks to fulfil its main tasks with a much reduced work force, but there seems to be no scope at present to boost policy autonomy in CC or other areas.

The USEPA overview suggests that the Presidential executive and the US Congress have elaborated and developed control mechanisms, while also harnessing a range of interest groups and societal actors to monitor (and challenge) EPA decisions. The climate change history of the two most recent presidential administrations largely supports the null hypothesis affirming PA theory (see Table 3). In the Bush White House, the EPA policy offices tended to have preferences quite contrary to the White House leadership, but they had to bide their time with some low visibility shirking. There was policy and information development, but not outputs (as they would have been blocked). The Obama Administration has (cautiously) allowed the USEPA to pursue these preferences, but both face open hostility from elements of US society and Congress.

However, focusing on the subnational level and even slightly at the transnational level, we see EPA Regional officers exploiting relations to build alliances and to support (often Republican state government) initiatives that conflict with the White House preferences. The existence of other regulations requiring implementation allowed the Regional officers to reinterpret (government learning and lesson drawing) these requirements to include CC goals, creating a dualist scenario.

### *4.2. Broader Themes*

Returning to the most different comparison, there does seem to be certain similar dynamics at work in the US and EU-level agency. Overall, the evidence for shirking, Proposition Two, is minimal for all three agencies, compared to cases of preference transformation and the continued assertion of the PA constraints. This broadly supports the null hypothesis and alerts us to the continuing importance of the PA dynamic.

Nevertheless, the multi-level governance and the multiple principals found in both systems indicate very strongly that there are important qualifications and conditions at work for the PA thesis. These conditions may not have dominated the three cases, but the episodes of policy autonomy were significant, particularly for the EEA, and do not conform to the PA null hypothesis. The existence of the US Congress and European Parliament, as well as individual states with differing preferences, created conditions of slippage which both agencies exploited, and this involved some learning particularly for the EEA.

In terms of the comparison, the EA contrasts substantially with the other two agencies. With the relatively strong central control over the local areas in England and Wales and the dominance of a majority-backed government executive, the scope for the EA to boost its policy autonomy against a highly centralised UK government was comparatively minimal.

The PA approach needs to delve more fully into the consequences of multiple actors and principals operating at different levels, creating political opportunities. Both the USEPA and the EEA were able to build alliances with sympathetic constituents to enhance policy autonomy. The possibilities of interactions beyond EU borders have also enhanced the EEA's position; the USEPA has been able to stretch its expertise and influence into relations with Canada and the EA. In acknowledging the importance of the PA dynamics, it remains important to embrace the critiques offered by the institutionalist and strategy arguments. Slippage did not simply result in policy autonomy. Both the USEPA and the EEA had to operate an active strategy of building coalitions of sympathetic allies (both principals and others) to underpin their efforts, including those efforts at reinterpretation. Indeed the cases suggest that (although this may not be necessary in cases of low visibility such as EPA regions implementing the SWDA) where there is potentially strong interest and resistance from one principal, it is vital to combine coalition-building with the strategies of dualism and reinterpretation.

At the same time, the institutionalist and strategy approaches, as articulated by Carpenter and Jacoby, need to pay closer attention to the PA dynamics. Transformation of the preferences of principals was possible, but it took on wider significance for both the USEPA and EEA when other principals and interested actors were active in the areas. Slippage of some kind has provided a vital condition for agency strategies to pursue policy autonomy. This also reinforces the understanding that lesson drawing and policy learning require favourable conditions for the ideas they generate to have a meaningful policy impact outside the agency's office.

This suggests a broader conclusion about the PA approaches and conditions: the instances where policy autonomy occurred tended to involve both PA situational conditions (propositions 2–6) and particular agency strategies (propositions 7–9). Agency reinterpretation happened where other favourable conditions occurred, such as slippage and low visibility policy im-

plementation as well as coalition building.

Choosing a politically highly salient case such as climate change seems to have been significant, especially given the ability of regional EPA offices to make use of the SWDA. The pressure that the EA has found itself under concerning the recent floods, and the organised opposition across the US political spectrum, both reveal a policy environment where the larger national executive has been extremely watchful and interventionist. The EEA's move to greater policy autonomy did not occur in the climate change area. It is likely that other, less visible technical policy areas see greater scope for policy autonomy.

The evidence presented in this contribution, particularly with respect to the climate change case, strongly suggests that political executives (such as the White House and the UK ministries) are able to exert a substantial political control over the agencies and environmental policy administration. It takes a significant combination of multiple principals and interested parties, and an agency strategy, to generate real policy autonomy. Nevertheless, the importance of multiple actors and levels is notable in a number of transnational environmental policy areas, suggesting that there will be possibilities for strategic actors willing to push new understandings of policy (lesson drawing and policy learning) and build alliances (government learning).

### *4.3. Future Research*

One interesting dynamic that needs further elaboration within the PA approach is the question of the impact of principals that also compete with the agent. The USEPA does not have a direct rival in governing environmental policy, but the case is very different for the two European agencies. Both DG Environment and DECC and DEFRA have been very reluctant concerning efforts of the respective agencies to expand policy autonomy. On one level, this has extended the control of the principal and limited policy autonomy; this supports the conclusion of Trondal (2011) who argues that duplication can increase principal's control. However, as Héritier and Lehmkuhl (2008) suggest, conditions of slippage may occur where other principals are willing to view the agency and the principal as rivals for policy advice; the EEA was able to exploit this to a degree.

In terms of the agencies being able to govern the climate change issue and other wicked problems, I offer three thoughts for further exploration. First, even compared to the USEPA, the EEA and EA have had relatively short histories; in that time, both agencies faced a continuing process of being reviewed with the potential for massive organisational restructuring. The USEPA has a more established and larger organisational approach that could wait for a new administration whilst still undertaking climate change policies. Second, political intervention seems to be inherent in such an issue as climate change, but this seems reasonable given the tremendous societal consequences of climate change; it cannot be left to technocracy. Finally, however, the necessity of dealing with such a complex issue suggests that an agency that can develop expertise on the problem and persuade the political masters to embrace this new understanding also is fundamental to successful governance.

**Acknowledgements**

The author thanks the Leverhulme Trust and the British Academy for their support of this research project, and thanks the 78 anonymized interview respondents for their input, and the editors and the four anonymous referees for their comments.

**Conflict of Interests**

The author declares no conflict of interests.

**References**

Bach, T., Niklasson, B., & Painter, M. (2012). The role of agencies in policy-making. *Policy and Sciences*, *31*(3), 183-193.

BBC News. (2014, February 14). UK floods: Environment Agency job cuts "on hold". Retrieved from http://www.bbc.co.uk/news/uk-politics-26187712

Bennett, C., & Howlett, M. (1992). The lessons of learning: Reconciling theories of policy learning and policy change. *Policy Sciences*, *25*(3), 275-294.

Busuioc, M., & Groenleer, M. (2012). Wielders of supranational power? The administrative behaviour of the heads of European Union agencies. In M. Busuioc, M. Groenleer, & J. Trondal (Eds.), *The agency phenomenon in the European Union: Emergence, institutionalisation and everyday decision-making* (pp. 128-151). Manchester: Manchester University Press.

Calvert, R., McCubbins, M., & Weingast, B. (1989). A theory of political control and agency discretion. *American Journal of Political Science*, *33*(3), 588-611.

Cappiello, D. (2009, February 17). AP interview: EPA near ruling on greenhouse gases. Retrieved from http://www.boston.com/news/nation/washington/articles/2009/02/17/ap_interview_epa_near_ruling_on_greenhouse_gases?mode=PF

Carpenter, D. (2001). *The forging of bureaucratic autonomy: Reputations, networks, and policy innovation in executive agencies, 1862–1928*. Princeton: Princeton University.

Carrigan, C., & Coglianese, C. (2011). The politics of regulation: From new institutionalism to new governance. *Political Science*, *14*(1), 107-129.

Carrington, D. (2012, November 30). David Cameron

forced into U-turn on flood defence spending cuts. *The Guardian*. Retrieved from http://www.theguardian.com/environment/2012/nov/30/flooding-120m-defence-spending

Coen, D., & Thatcher, M. (2008). Network governance and multi-level delegation: European networks of regulatory agencies. *Journal of Public Policy*, *28*(1), 49-71.

Commission of the EC. (1989). *Proposal for a Council Regulation (EECP) on the establishment of the European Environment Agency and the European Environment Monitoring Information Network* (COM (89 303 Final)).

Commission of the EC. (2003). *Report from the Commission to the Council: Review of the European Environment Agency* (COM (2003 800 Final, 22/12)).

Conceição-Heldt, E. da (2013). Do agents "run amok"? A comparison of agency slack in the EU and US trade policy in the Doha Round. *Journal of Comparative Policy Analysis: Research and Practice*, *15*(1), 21-36.

Cook, J., & Rinfret, S. (2013). A revised look: EPA rulemaking processes. *Journal of Environmental Studies and Science*, 3(3), 279-289.

Council of the EC. (1990). Council Regulation (EEC) No. 1210/90 of 7 May 1990 on the establishment of the European Environment Agency and the European Environment Information and Observation Network. *Official Journal of the European Communities L 120*, *11/05*, 1-6.

Council of the EC. (1999). Council Regulation (EEC) No. 933/1999 of 29 April 1999 Amending Regulation (EEC) No. 1210/90. *Official Journal of the European Communities L 117*, *05/05*, 1-4.

Council of the EC (2003). Council Regulation (EC) No. 1641/2003 of 22 July 2003 Amending Regulation (EEC) No. 1210/90. *Official Journal of the European Communities L 245*, *29/09*, 1-3.

DEFRA. (2003). *Review of legislation affecting integration within the Environment Agency: Final report*. London: DEFRA.

DEFRA. (2012a). Environment protected and business boosted by cutting unnecessary red tape. Retrieved from http://www.defra.gov.uk/news/2012/03/19/red-tape-challenge/

DEFRA. (2012b). *Triennial Review of the Environment Agency and Natural England*. Retrieved from www.defra.gov.uk

DEFRA. (2013). *Triennial Review of the Environment Agency and Natural England*. Retrieved from https://www.gov.uk/government/publications/triennial-review-of-the-environment-agency-ea-and-natural-england-ne

EEA. (n.d.). *EIONET fact sheet*. Copenhagen: EEA.

EEA. (2007). *Climate change and water adaptation issues* (Technical report 2/2007). Copenhagen, EEA.

EEA. (2009). *EEA strategy 2009–2013: Multi-annual Work Programme*. Copenhagen, EEA.

EEA. (2015). National emissions reported to the UNFCCC and to the EU Greenhouse Gas Monitoring Mechanism. *EEA Website.* Retrieved from http://www.eea.europa.eu/data-and-maps/data/national-emissions-reported-to-the-unfccc-and-to-the-eu-greenhouse-gas-monitoring-mechanism-7

ENDS Report. (2010, October). Change your culture, DEFRA tells agency. Retrieved from http://www.endsreport.com/25553

Groenleer, M. (2009). *The autonomy of European Union agencies: A comparative study of institutional development.* Delft: Eburon.

Hawkins, D., & Jacoby, W. (2006). How agents matter. In D. Hawkins, D. Lake, D. Nielson, & M. Tierney (Eds.), *Delegation and agency in international organizations* (pp. 199-228). Cambridge: Cambridge University Press.

Hawkins, D., Lake, D., Nielson, D., & Tierney, M. (2006). Delegation under anarchy: States, international organizations, and principal-agent theory. In D. Hawkins, D. Lake, D. Nielson, & M. Tierney (Eds.), *Delegation and agency in international organizations* (pp. 3-38). Cambridge: Cambridge University Press.

Heinzerling, L. (2012). Introduction: Climate change at EPA. *Florida Law Review*, *64*(1), 1-13.

Héritier, A., & Lehmkuhl, D. (2008). Introduction: The shadow of hierarchy and new modes of governance. *Journal of Public Policy*, *28*(1), 1-17.

Hoornbeek, J. (2000). Information and environmental policy: A tale of two agencies. *Journal of Comparative Policy Analysis: Research and Practice*, *2*(2), 145-187.

House of Commons Environment, Food and Rural Affairs Committee. (2006). *The Environment Agency* (Seventh report of the session 2005–2006, HC 780-1). London: Stationery Office.

IEEP, & EIPA. (2003). *Evaluation of the European Environment Agency: An IEEP/EIPA study. A Final report to DG environment*. Brussels and Maastricht: IEEP and EIPA.

Keskitalo, E. (2010). Climate change adaptation in the United Kingdom: England and South-East England. In E. Keskitalo (Ed.), *Developing adaptation policy and practice in Europe: Multi-level governance of climate change* (pp. 97-147). Dordrecht: Springer.

Koop, C. (2011). Explaining the accountability of independent agencies: The importance of political salience. *Journal of Public Policy*, *31*(2), 209-234.

Ladeur, K. (1996). *The new European agencies: The European Environment Agency and prospects for a European Network of Environmental Administrations* (EUI Working Paper RSC 96/50). Florence: EUI.

Landy, M., Roberts, M., & Thomas, S. (1994). *The Environmental Protection Agency: Asking the wrong questions from Nixon to Clinton*. Oxford: Oxford University Press.

Lazarus, R. (2004). *The making of environmental law*. Chicago: University of Chicago Press.

Lee, J. (2012). The administrative broker: Bureaucratic politics in the era of prevalent information. *The American Review of Public Administration*, *43*(6), 690-708.

MacDonald, J. (2013). Congressional power over executive branch policy making: Limitations on bureaucratic regulations, 1989–2009. *Presidential Studies Quarterly*, *43*(3), 523-537.

Majone, G. (1997, July 21-25). *The European Environmental Agency and the politics of structural choice*. Lecture given at the Summer Symposium on the Innovation of Environmental Policy, University of Bologna.

*Massachusetts et al. v. Environmental Protection Agency et al.* 2007 No. 05-1120 (USA).

McCubbins, M., Noll, R., & Weingast, B. (1987). Administrative procedures as instruments of political control. *Journal of Law, Economics, and Organization*, *3*(2), 243-277.

McGarity, T. (2013). EPA at Helm's Deep: Surviving the fourth attack on environmental law. *Fordham Environmental Law Review*, *24*, 205-241.

McMahon, R. (2006). *The Environmental Protection Agency: Structuring motivation in a green bureaucracy*. Brighton: Sussex Academic Press.

Opp, S. (2011). Bureaucratic discretion and political control of the Resource Conservation Recovery Act (RCRA). *International Journal of Public Administration*, *34*(12), 753-763.

Recovery.gov. (2009, May 15). Agency Recovery Plan: Environment Protection Agency. Retrieved from http://www.recovery.gov/?q=content%2Fagency-recovery-plan&agency_id-020

Reichert, M.S., & Jungblut, B. (2007). European Union external trade policy: Multilevel principal-agent relationships. *Policy Studies Journal*, *35*(3), 395-418.

RGGI (2009). Regional Greenhouse Gas Initiative: An initiative of the Northeast and Mid-Atlantic States of the US. *Website*. Retrieved from http://rggi.org/about/history

Smith, C. (2014, February 2). Difficult choices as flood waters rise. *The Telegraph*. Retrieved from http://www.telegraph.co.uk/earth/environment/10613627/Difficult-choices-as-the-flood-waters-rise.html

Tallberg, J. (2002). Delegation to supranational institutions: Why, how and with what consequences? *West European Politics*, *25*(1), 23-46.

Thatcher, M., & Stone Sweet, A. (2002). Theory and practice of delegation to non-majoritarian institutions. *West European Politics*, *25*(1), 1-22.

Trondal, J. (2010). *An emergent European executive order.* Oxford: Oxford University Press

Trondal, J. (2011). Domestic agencies in an emergent European executive order. *Journal of European Integration*, *33*(1), 55-74.

USEPA. (2003). *2003–2008 EPA strategic plan: Direction for the future*. Washington DC: USEPA.

USEPA. (2008). Advance Notice of Proposed Rulemaking: Regulating Greenhouse Gas Emissions under the Clean Air Act. *EPA*. Retrieved from http//www.epa.gov/climatechange/anpr.html

USEPA. (2009). Proposed endangerment and cause or contribute findings for greenhouse gases under the Clean Air Act. *EPA*. Retrieved from http//www.epa.gov/climatechange/endangerment.html

USEPA. (2012). Climate change regulatory initiatives. *EPA*. Retrieved from http://www.epa.gov/climatechange/EPAactivities/regulatory-initiatives.html

Volcovici, V. (2014, May 20). EPA carbon curbs to reach beyond power plant "fence", aiding cap-and-trade. *Reuters*. Retrieved from http://www.reuters.com/assets/print?aid=USL1N0O50CD20140520

Waterman, R., Rouse, A., & Wright, R. (2004). *Bureaucrats, politics, and the environment.* Pittsburgh: University of Pittsburgh.

Zito, A. (2009). European agencies as agents of governance and EU learning. *Journal of European Public Policy*, *16*(8), 1224-1243.

**About the Author**

**Dr. Anthony R. Zito**

Professor Anthony R. Zito is Professor of European Public Policy at Newcastle University. Dr. Zito is currently Co-Director of the Jean Monnet Centre at Newcastle University and Co-Editor of the journal *Environmental Politics*. He has authored *Creating environmental policy in the European Union* and numerous journal articles on the European Union policy process and environmental actors and policy-making; he has recently co-authored *Environmental Governance in Europe* (2013).

**Politics and Governance (ISSN: 2183-2463)**
**2015, Volume 3, Issue 1, Pages 90-100**
**Doi: 10.17645/pag.v3i1.78**

Article

# The Limits of Epistemic Communities: EU Security Agencies

Mai'a K. Davis Cross [1,2]

[1] Department of Political Science, Northeastern University, Boston, MA 02115, USA
[2] ARENA—Centre for European Studies, University of Oslo, 0318 Oslo, Norway; E-Mail: maia.cross@arena.uio.no

Submitted: 30 May 2014 | In Revised Form: 13 September 2014 | Accepted: 29 September 2014 | Published: 31 March 2015

**Abstract**
This article examines the cases of the European Defence Agency (EDA) and EU Intelligence Analysis Centre (IntCen) to argue that although they are comprised of high-level security experts, they do not constitute epistemic communities. Research on other groups of security experts based in Brussels has shown that epistemic communities of diplomats, military experts, security researchers, and civilian crisis management experts, among others, have been able to influence the trajectory of security integration by virtue of their shared knowledge. Importantly, these security epistemic communities have been shown to significantly impact outcomes of EU security policy beyond what would be expected by looking only at member-states' initial preferences. In exploring two examples of "non-cases" that are at the same time very similar to the other examples, the author seeks to shed light on why some expert groups do not form epistemic communities, and how this changes the nature of their influence. In so doing, the goal is to sharpen the parameters of what constitutes epistemic communities, and to add to our understanding of why they emerge. The argument advanced in this article is that institutional context and the nature of the profession matter as preconditions for epistemic community emergence.

**Keywords**
epistemic communities; European Union; security

**Issue**
This article is part of the special issue "The Role of Expert Knowledge in EU Executive Institutions", edited by Professor Åse Gornitzka (University of Oslo, Norway) and Dr. Cathrine Holst (University of Oslo, Norway).



## 1. Introduction

Over the past two decades, scholarly research has revealed the existence of numerous highly influential epistemic communities—basically defined as knowledge-based networks—that have swayed the trajectory of international cooperation by virtue of their shared professional expertise (Adler, 1992; Cross 2013a; Drake & Nicolaïdis, 1992; Gough & Shackley, 2001; Haas, 1989, 1992b; Ikenberry, 1992; Kapstein, 1992; Peterson, 1992; Sandal, 2011; Youde, 2005). In particular, this research has shown that the European region—with its ongoing processes of integration, shared democratic values, supranational institutions, and transnational interactions—is highly conducive to the formation of epistemic communities (Cross, 2011; Howorth, 2004; Peterson & Bomberg, 1999; Radaelli, 1999b; Verdun, 1999; Zito, 2001). In previous work, I have examined nine separate case studies of epistemic communities in the European context, both historical and contemporary (Cross, 2007, 2011). This has enabled me to compare the ways in which epistemic communities work, determining whether they are nascent, emerging, weak, or strong. This previous research also demonstrates how epistemic communities can be located both inside and outside of formal institutions, and can be comprised both of scientists and of other kinds of experts.

My aim here is to compliment this existing research—without repeating the analysis in the introduc-

tion to this special issue—through considering "non-cases", that is, examples that bring to light the *limits* of the epistemic community concept.[1] Thus, this article is inherently restricted in scope, and seeks to shed light on a specific dimension of the concept, rather than providing a comprehensive survey of the literature and theoretical debates that have come before. Under what conditions might we expect expert groups *not* to constitute epistemic communities? Does this have bearing on the expert group's future potential as an epistemic community? By necessity, these questions are actually *prior* to most research on epistemic communities. Rather than focusing on identifying epistemic communities, and investigating the nature of their influence, I explore some of the conditions that are conducive for an epistemic community to emerge in the first place, and the conditions that make their existence *less* likely. At a certain point on the strong-weak spectrum of epistemic community influence, the idea that an expert group could constitute an epistemic community drops away entirely.

This article examines the cases of the European Defence Agency (EDA) and EU Intelligence Analysis Centre (IntCen) to argue that although they are comprised of high-level security experts, they do not constitute (or contain) epistemic communities. I argue that the experts that populate both the EDA and IntCen lack the qualities that make them more than the sum of their parts, and as a result, they do not thus possess the political will to exercise collective agency beyond their formal mandate. In considering why this is the case, I seek to sharpen the parameters of what constitutes epistemic communities, and to add to our understanding of why they emerge.

Specifically, I hypothesize that if a group of experts work together within a highly formal institutional setting that is characterized by hierarchy and a limited mandate, epistemic community emergence is less likely. Second, I hypothesize that if the expertise of a group stems from professional backgrounds that value secrecy—such as in the fields of intelligence, certain corporate sectors, computer technology, journalism, and so on—epistemic community emergence is also more likely restricted because these professions are less open to informal interaction, information-sharing, deliberation, and networked communications. Thus, in some cases, institutional context and the nature of the profession make epistemic community emergence more challenging.

The article is organized as follows. The next section briefly reviews some of the literature on epistemic communities, and situates my argument about the limits of epistemic communities within this. Subsequently, I examine the case studies of the EDA and IntCen, and explain why they do not constitute or contain epistemic communities, despite being comprised of experts. Finally, I conclude that expert groups that do not constitute epistemic communities are not merely weak or nascent cases. Rather, they are fundamentally different kinds of actors, and are unlikely to emerge as epistemic communities without fundamental change to either the bureaucracies or professions to which they belong.

## 2. The Concept of Epistemic Communities and Its Limits

In a nutshell, epistemic communities have been defined as networks of experts who persuade others of their shared norms and policy goals by virtue of their professional knowledge. An epistemic community is rarely so broad as to include an entire discipline. Rather, all of its members must have the expertise necessary to understand the issues at stake, to interpret the information similarly, and then to form the same goals about what should be done. The group's policy aims have to reflect their expert knowledge—and not some other motivation—otherwise they lose authority with their target audience, which in the area of security policy is usually elite decision-makers. A strong epistemic community seeks to go beyond their formal professional role as a group, and is often able to persuade decision-makers to fundamentally change the nature of their policy aims. A weak or nascent epistemic community may be able to achieve incremental change over time, but only on occasion or without a high level of ambition.

Haas defines the concept 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 or issue area" (Haas, 1992a, p. 3). In other words, epistemic communities must have an authoritative claim on knowledge to impact policy outcomes. Naturally, knowledge itself may be socially constructed, but epistemic communities must nonetheless have a means of objectively recognizing the validity of their knowledge. As Haas describes, epistemic communities (1) share professional judgment on a policy issue, (2) weigh the validity of their policy goals in their area of expertise, (3) engage in a common set of practices with respect to the problem area with the goal of improving human welfare, and (4) share principled beliefs (Haas, 2001, pp. 11578-11579). Thus, there is an ideational core that brings together these components of professional expertise.

Peter Haas, Amy Verdun, Claudio Radaelli, and others have applied the concept of epistemic community to empirical case studies of environmentalists, economists, and scientists. All agree that epistemic commu-

[1] Richard Ned Lebow (2010) writes extensively about the importance of contingency in explaining events in international relations, and the value of considering counterfactuals to show this. While I will not try to construct a story of what might have been, I will examine why potential cases of epistemic communities failed to materialize.

nities exercise agency only when there is a kind of contextual gap—uncertainty—that allows them to do so (Haas, 1992a; Radaelli, 1999a; Verdun, 1999). To determine when epistemic communities will likely have the most influence, Radaelli argues that it is important to find these "conditions of radical uncertainty and political visibility" (Radaelli, 1999a, p. 763). Usually this comes in the wake of some kind of crisis or triggering event. Epistemic communities may exist prior to being "called" to action, but according to these scholars their impact is contingent upon this new source of uncertainty.

Adding to this literature, I have highlighted a number of key points that enable us to more clearly recognize epistemic communities when we look for them (Cross, 2013a). First, it should be understood that the process of professionalization and professionalism itself are at the heart of epistemic community cohesion. This is often where common points of reference and behavioral rules arise and are internalized. Second, I argue that epistemic communities do not simply exist or not exist, but can be characterized as strong or weak. Once an epistemic community comes together, it can exercise varying degrees of agency. Third, it should be acknowledged that non-scientific knowledge can be just as influential as scientific knowledge. Diplomats, judges, defence experts, high-ranking military officials, bankers, and international lawyers, among others, all have just as much of a claim to authoritative knowledge as scientists. And finally, I contend that epistemic communities are often *always* at work, and thus it is not necessary to look for a triggering crisis or episodes of uncertainty to observe their influence, as Haas and other contributors to the 1992 special issue have argued. While it is true that a crisis of uncertainty may provide an opportune time for epistemic communities to gain a voice, they are often quite influential even in the *absence* of such a triggering event. After all, uncertainty is a built-in feature of the international system, especially in the EU, which by its nature is a work-in-progress with no agreed-upon end-goal.

In addition, there are at least three indications (see Table 1) that a group of experts *might* constitute an epistemic community or not. A first indication of the presence of an epistemic community is whether an institutional group or committee seems to act as more than the sum of its parts. Is it producing outcomes that go beyond the expectations of its formal functions? A second indication is whether its members know each other or have worked with each other in previous settings. If so, they might meet often outside of work and in informal settings. Such interaction, going beyond the call of duty, would suggest that they have opportunities to really deliberate on issues important to them. For this to have significance, such interactions naturally benefit from smaller numbers of individuals involved. A third indication is whether or not the group shares a particular culture and professional norms that are independent of their formal function. Together these three criteria are helpful in distinguishing not only the difference between a strong or weak epistemic community, but also between a weak epistemic community, and an ordinary bureaucratic committee or other type of actor.

**Table 1.** Three indications of the presence of an epistemic community.

| Indications of an Epistemic Community | Evidence | Implications |
|---|---|---|
| Its members act as more than the sum of their parts | Going beyond formal expectations as a group | Persuading others of policy initiatives that were not previously on the table |
| Its members have had previous professional encounters with each other | Working together in past jobs, holding the same position at various times, interacting informally outside of work, etc. | Developing an *esprit de corps* more readily, sharing professional goals, etc. |
| Its members share a distinctive culture & shared professional norms beyond the bureaucracy they inhabit | Meeting quality is high and effective, i.e. more time is spent on the substance of issues, interactions are relatively frequent | Agreements and common positions are found more readily than in similar bureaucracies, and these are not simply lowest common denominator outcomes |

Much work has been done in explaining what to look for in recognizing an epistemic community, as well as anticipating how persuasive it is. But what preconditions contribute to or detract from the existence of an epistemic community in the first place? Looking at the qualities that do *not* define epistemic communities is useful in ensuring that the framework is not overdetermined. I argue that institutional and professional context, in particular, have a direct bearing on the presence or absence of the three indicators outlined above. First, if a group of experts is housed within a highly formal institutional setting, with strict hierarchy and goals that explicitly limit its mandate from the outset, this is a difficult environment to foster the existence of epistemic communities. However, a limited mandate on its own is not enough to preclude epistemic community emergence. The example of the Committee of Permanent Representatives (Coreper) within the Council of the EU illustrates this well. Coreper was cre-

ated with the limited mandate to prepare meetings for the Council of Ministers, but over time Coreper quickly became "a *de facto* decision making body" (Heinisch & Mesner, 2005, p. 1) as it emerged as a powerful epistemic community in its own right (Cross, 2007, 2011). When a limited mandate is *combined* with a highly formal and hierarchical institutional setting, this restricts the existence of epistemic communities quite significantly, as discussed in the EDA case study. Even though Coreper is formally an intergovernmental institution, with each member representing each of the member states, it nonetheless has benefitted from being a horizontal body with a sense of equality across the diplomatic experts who comprise it. No such truly transnational space exists *within* the EDA, despite the fact that it is a supranational bureaucracy; although, as I will discuss, it does emanate outward from it.

Second, if a group of experts comes from a profession in which the qualities of expertise explicitly work against information-sharing, informality, deliberation, persuasion, and transparency among people in the same profession, this also creates limitations for epistemic community emergence. Such professions can be wide-ranging. Intelligence professionals or spies—as in the case of IntCen—value secrecy as an integral part of their expertise. Defence industry experts have traditionally guarded their technological advancements so that they can be at the cutting edge of their own fields and distinguish themselves from those in other countries or corporations. Indeed, in many corporate environments, intellectual capital is valued specifically *because* you are the only one to possess it. Similarly, experts in the computer and information technology fields typically keep their breakthroughs secret—either because they use this knowledge for nefarious activities like hacking or spying, or to effectively counteract those engaged in such activities. Inventors, as well, will keep their discoveries under wraps until they can protect their discoveries with patents. And of course journalists, both in their relationship with sources and competition with peers, must learn the value of secrecy as a central part of their professional expertise. While there are always exceptions, for the most part, a built-in quality of these professions and others is the ability to safeguard against the kind of information-sharing, deliberation, persuasion, and informality that can lead to networked interactions, and to the formation of epistemic communities.

At the same time, it is important to note that just because an expert group does not constitute an epistemic community does not mean that it is somehow ineffective or falling below its potential. It may simply be a different sort of actor. There are many kinds of transnational actors or networks—often comprised of professionals—that scholars have identified and researched in depth. Beyond epistemic communities, these include communities of practice (Adler & Pouliot, 2011), business networks, advocacy networks (Keck & Sikkink, 1998), interpretive communities (Johnstone, 2005), and argumentative communities (Collins, 1998), among others. Many of these groups are held together by shared values and a common motivation to achieve specific goals in the international arena, whether to improve environmental regulation, protect human rights, or promote EU integration in new policy areas.

Moreover, it is still possible that a committee or expert group could achieve the outcomes we might expect of an epistemic community, but without actually being one. After all, groups of individuals can exercise independent agency for a variety of reasons and with many kinds of motivations. Transgovernmental networks, communities of practice, and advocacy networks, may not push for policies based on their expert knowledge, but may still achieve outcomes that go beyond expectations if we were to only consider member-state preferences alone.

## 3. Two "Non-Cases"

EU security policy is an area in which there are at least several Brussels-based epistemic communities. EU security epistemic communities are comprised of diplomats, military experts, security researchers, and civilian crisis management experts, among others, with a recognizable claim to expertise in both internal and external security policy (Cross, 2011). They have been shown to significantly impact outcomes of EU security policy beyond what would be expected by looking only at member-states' initial preferences. But just because there are many examples of security epistemic communities in the EU, does not mean that *all* groups of security experts comprise epistemic communities. Indeed, they may not even constitute weak or nascent epistemic communities, despite working together on a daily basis and making decisions that influence policy in some way. By focusing on an issue area that is heavily populated with experts, and within which epistemic communities are numerous, it is easier to see what differentiates certain groups of experts from those that form epistemic communities.

Both the European Defence Agency (EDA) and the Intelligence Analysis Centre (IntCen) are EU agencies, based in Brussels, and populated with security experts. Although there are two possibilities—the agency as a whole could function as an epistemic community, or the agency may contain one or more epistemic communities within it—I will argue that the professional and institutional contexts in both cases are not conducive to the existence of epistemic communities. As such, there is little evidence of the three indications discussed in the previous section, i.e. outcomes that go beyond formal agency functions, frequent informal deliberation, and culture and professional norms that are independent of the agency. It should be noted that

these cases are not intended to be exhaustive analyses of the EDA and IntCen, but rather test cases for my hypotheses that professional and institutional context matter in fostering the growth of epistemic communities. Table 2 below summarizes these findings.

### *3.1. The European Defence Agency*

The EDA was founded in 2004 with the aim of improving the EU's defence capabilities through promoting collaboration, common initiatives, and innovative solutions to the EU's security needs. As an intergovernmental agency, the EDA is designed to bring member states and their priorities together in the area of armaments and defence research, including investment and procurement, with the overarching objective of improving member states' collective military capability over the longer term. Rather than seeking a particular goal in a particular form, it searches for synergies across priorities, member-states, and projects. EDA policy aims mainly include pooling and sharing of resources, achieving interoperability, diminishing duplication of spending, emphasizing civil-military strategies, and agreeing on best practices.

The EDA's steering board, comprised of the Defence ministers of the member states, has the responsibility to make decisions about the overall guidelines for EDA operations. Defence ministers meet twice per year, but specific national representatives meet more frequently. In terms of the permanent staff, there are around 130 professionals working in the EDA. Each staff member possesses a high level of expertise, with extensive previous background in the defence field or in the military. The EDA's professional staff is selected based on merit, not a quota system or an effort to represent each member state equally (Giergerich, 2009). This is in contrast to other previously identified epistemic communities in the security area, such as the EU Military Committee or Civilian Crisis Management Committee (Cross, 2011). These committees, while housed within the formal Council hierarchy, are still horizontal in and of themselves. Each member state has a representative who sits in the committee, and they operate on the principle of one member state, one voice. Thus, the sense of equality among these military or civilian crisis professionals is strong, enabling more deliberation, informality, and information-sharing. Within the EDA, however, department sizes tend to be small, and the space for transnationalism within the EDA is not as strong as in an institution like the Council of Ministers, which is comprised of committees and working groups with a representative from each member state, all of whom have equal standing.

Beyond the institutional structure within the EDA, these professionals interact with around 4,000 defence specialists from across the participating member states (EDA, n.d.). EDA experts coordinate the formation of so-called Integrated Development Teams tasked with the work of determining defence capability needs in a wide range of areas. They also form around 20 Project Teams with national experts, focusing on specific defence initiatives that member states wish to pursue together, such as the helicopter initiative. Finally, they form Capability Technology Groups (CapTech) that work on collaborative research and technology projects with experts from participating member states. Sometimes the experts in these groups are also drawn from academia, industry, or other research groups. With the proliferation of so many expert groups in the field of defence, and all with connections to the EDA, it may be surprising that the EDA itself does not house epistemic communities of some kind.

The key distinction is that EDA experts are fulfilling a *coordinating* role, rather than becoming agents for change in their own right. The EDA serves as a kind of hub for these larger, defence-expert networks. This is actually quite similar to the ways in which European think tanks devoted to EU issues work as well. EU think tanks host numerous meetings, seminars, and conferences on the topic of EU security, bringing hundreds of people together to discuss important security topics. However, these think tanks do not have close ties with one another, tend not to advance shared policy goals, and generally serve more as forums for other professionals to meet rather than acting as policy leaders in their own right. Similarly, EDA experts also serve in this function vis-à-vis the numerous networks of defence experts that are connected to their activities. While some of these networks may very well constitute epistemic communities, EDA experts serve to coordinate and manage the network of national defence experts, as well as to get a better sense of what member states want through these interactions. EDA experts themselves do not comprise epistemic communities in their own right. In the words of the agency itself, these networks of experts "are crucial for EDA's work as they ensure coherence with national priorities" (EDA, n.d.).

The EDA's activities have mushroomed in recent years, but not because of any specific push from EDA staff. Rather, the EDA's "way of working" is to face outwards instead of inwards. That is, it is a *facilitator*, *information supplier*, and *momentum generator,* bringing member states together on goals they have agreed to, but may not be able to achieve without the help of the EDA. The agency exerts light pressure on member-states to achieve follow-through, without any specific effort to persuade them to do something that they are not already comfortable with (Arnould, 2011). The reason for this is that the EDA as whole takes a more pragmatic and piece meal approach, rather than pushing for an overarching goal, like achieving more integration among member states. The agency may ultimately encourage more integration, but this is more indirect, rather than purposeful. As an information

supplier, it serves as a clearinghouse for information that member-states would not otherwise have about each other (Giergerich, 2009). On its own, this information can "name & shame" member states while keeping the EDA neutral. But EDA staff also have a norm of being flexible in creating a framework for armaments integration so they can adjust the level and nature of ambition based on member-state needs (Trybus, 2006) and desires to participate (EDA, n.d.).

Ultimately, it is clear that the overarching impetus behind EDA initiatives comes mainly from the member states, and not from epistemic community activity stemming from the EDA. Indeed, even in recent years, member states' representatives have spoken strongly about the need to create a common European Defence, characterizing integration as a "non-choice". Wolfgang Ischinger, former state secretary of the German foreign office, writes, "starting to Europeanize our defence is the only reasonable way forward" (Ischinger, 2012). Belgian Defence minister Pieter de Crem said, "it is better to have collective capabilities rather than non-existent national ones" (de Crem, 2012, p. 5). The Franco-German Declaration of February 6, 2012 states, "In times of strategic uncertainty and limited resources, strengthened defence requires common procurement" (Franco-German Declaration, 2012, p. 2). An Italian document proposing goals for the December 2013 European Council on Defence states, "If EU member states do not pool their efforts, where appropriate on certain common requirements or capabilities, none of them, nor Europe as a whole, will be able to guarantee its own security" (Italian Ministry of Foreign Affairs & Italian Ministry of Defence, 2013). Through an analysis of EDA public statements, André Barrinha writes that the EDA:

> has expanded the "existential condition" justification, and included all the other arguments within this one. The EDA has, in that matter, become the organising core within the European Union regarding a European discourse on defence industries. More than the ESDP, more than the potential positive or negative relations with the United States, and more than the mere economic rationale, Europe must unite for its own survival—this is no longer an option (Barrinha, 2010, p. 481).

The image of the EDA as an "organizing core" is telling. Indeed, as the above quotations indicate, member states' statements about the importance of the work of the EDA are typically stronger than what EDA officials themselves say.

I argue that a significant reason why the EDA lacks epistemic community activity, and as such, does not seem to go beyond its formal mandate as an EU agency, is that it is an example of a bureaucracy that houses experts in a highly formalized and hierarchical institutional structure. From the outset, the EDA was designed to *serve* the member states rather than to direct them. The fact that the internal workings of the EDA do not rely on the principle of one representative from each of the member states in each of the various directorates, also adds to the sense of hierarchy, instead of allowing for horizontal and transnational spaces within the agency. Moreover, defence integration is voluntary on the part of the member states, and the professionals within the EDA do not aspire to change this. Rather, they allow the member states to take the lead in crafting the direction and degree of defence integration (Arnould, 2011). To be sure, in its young history, the work of the EDA has grown in scope and scale, adding dozens of projects and goals. There is nothing in its record thus far that would indicate any serious failings. Yet, it has adhered closely to its original mandate, and has stuck to its role of generating momentum behind the expressed political will of the member states. This contrasts with similar expert groups housed within more horizontal institutional structures—like the EUMC and Civcom—that do act as epistemic communities.

### *3.2. The EU Intelligence Analysis Centre*

IntCen's chief mandate is to provide intelligence analysis and strategic assessments to EU decision-makers, especially in the area of counter-terrorism. The agency operates twenty-four hours a day and seven days a week to ensure that it is able to provide rapid updates, especially to the High Representative. IntCen intelligence experts work closely with the EU Military Staff, External Action Service, and to some extent, the European Defence Agency (Cross, 2013b). They routinely provide "flash reports" on international crises as they develop, and may issue early warnings in particularly urgent cases. They also constantly monitor potential terrorist threats, the proliferation of weapons of mass destruction, and conflict-prone locations around the globe, so that they are prepared to respond immediately in the event of a crisis (Cross, 2013b). On a medium-term basis, they provide several services involving the Common Security and Defence Policy (CSDP), such as recommending procedures for crisis management, risk and situation assessments, and crisis response facilities. This kind of readily accessible intelligence at the EU level is a crucial component of the EU's ability to speak with one voice in terms of common foreign policy, and to respond quickly to events. If analysts are on-location they may serve as the operational contact for the high representative. On a longer-term basis, IntCen experts focus on strategic assessments that can build stronger resistance to terrorist attacks over time. For example, analysts deal with aviation security, cybersecurity, and problems of radicalization and recruitment (Hertzberger, 2007, p. 68). Their priority is to gain a better understanding of the internal dynamics, fi-

nancing, ideology, and potential targets of terrorist networks (Duke, 2006, p. 607).

The internal structure of IntCen is not excessively hierarchical, but the professional environment is highly formal and restrictive, as it is in the nature of the intelligence profession to avoid transparency and information sharing. Even as far as intelligence goes, IntCen itself is very secretive and closed off from public scrutiny, making it difficult even to pinpoint basic elements of its structure, responsibilities, and evolving role. We do know that IntCen is comprised of both decision-making bodies and implementation bodies. The decision-making bodies consist of the Intelligence Steering Board, chaired by the High Representative and Vice-President of the Commission, and the Intelligence Working Group, chaired by the directors of IntCen and the EU Military Staff's Intelligence division. The implementation bodies consist of IntCen's expert staff itself, and the intelligence directorate of the EU military staff. Unlike Europol, IntCen prepares intelligence analyses for EU decision-makers, rather than authorities in the member states. Its target audience includes High Representative Federica Mogherini, Counter-Terrorism Coordinator Gilles de Kerchove, Coreper II, PSC, the Working Party on Terrorism, the Article 36 Committee, the Policy Unit, and decision-makers in the area of police and judicial cooperation (Müller-Wille, 2008, p. 59).

IntCen is comprised of experts who have autonomy, and a mandate to improve the EU's intelligence-sharing sphere. It has a staff of around 80 experts,[2] which includes analysts of both civilian and military backgrounds, as well as other support staff. The analysts are typically seconded from national intelligence services, and are double-hatted to both (Hertzberger, 2007, p. 69). After the Lisbon Treaty, the number of analysts within IntCen increased (Council of the EU, 2011). Each year, IntCen intelligence experts produce some 100 intelligence reports, 40% of which deal with terrorism assessments (Hertzberger, 2007, p. 66).

IntCen professionals have no formal mandate to engage in intelligence *gathering*, as traditionally understood, and rely to a significant extent on intelligence provided by member states on a voluntary basis. For example, they receive information from the French, German, and Italian spy satellites for imagery, as well as from member states' diplomatic reports. Between seventeen and twenty EU member states provide national intelligence to IntCen, so not all member states participate, but all twenty-seven do receive IntCen's reports. Each member state can even stipulate who is allowed to see information they provide to IntCen, beyond those who regularly consume the reports, under the so-called "originator principle" (Rettman, 2010, November 18). To the extent that IntCen experts do originate intelligence themselves, it usually comes from open-source information, or on-the-ground observations in crises. For example, IntCen professionals can use US commercial satellite imagery, Internet chatroom intelligence, media reports, and information gathered from within the European External Action Service. In addition, these intelligence experts routinely travel to crisis zones and CSDP operation locations to gain a better sense of real conditions on the ground.

As with the case of the EDA, there is little evidence that the intelligence experts within IntCen have exercised agency as an epistemic community. Intrinsic to the intelligence profession is the ability to maintain a high degree of secrecy, especially when it comes to transnational interactions. Moreover, for IntCen professionals, the primary goal is to do their work better rather than redefine their work to change the direction of policy in the intelligence area (Cross, 2013b). However, rather than comprising epistemic communities, I argue that the professional staff within IntCen is actually part of a larger *transgovernmental network* of intelligence experts across Europe.

Transgovernmental cooperation more generally is the process by which sub-units of governments engage in direct and autonomous interaction separate from nation states (Keohane & Nye, 1974). Transgovernmental networks can be quite informal, and do not necessarily have a specific agenda or policy goal in mind (Grevi, 2008; Thurner & Binder, 2009). Rather, they are more focused on *processes* of governance. Anne-Marie Slaughter (2004) has documented how transgovernmental networks across the globe—judges, legislators, regulators, and so on—are increasingly coming together in this way to share best practices and knowhow. This is also increasingly true of intelligence experts across Europe, of which IntCen professionals are a central part. A key example of this sharing of best practices is in the area of open-source intelligence, which is of growing importance in the intelligence profession with the widespread use of the internet and social media (Pallaris, 2009). As a result, increasing numbers of intelligence professionals participate in informal networks that enhance their ability to do their job well.

For example, Eurosint Forum, founded in 2006, is a non-governmental, non-profit organization based in Brussels that holds around five workshops a year and comprises a network of around 400 intelligence professionals, at all ranks, from member states' intelligence agencies, private-sector organizations, and EU institutions such as the EU Military Staff, SitCen, and Europol.

[2] It was reduced from a staff of around 110–120 when it was still SitCen (Rettman, February 2010), and had a somewhat broader remit, such as the Crisis Room for keeping track of media reports, and services involving consular support, among others. IntCen is more focused specifically on gathering and analyzing intelligence; some of the more secondary functions that existed under SitCen, are no longer part of IntCen.

Each workshop usually consists of around 35 participants, but Eurosint also holds one or two larger conferences each year with more than 100 participants. According to Eurosint General Manager, Axel Dyèvre, these workshops and conferences have many opportunities for informal interactions that clearly create an atmosphere of trust, emphasize an exchange of ideas, and allow for brainstorming (Dyèvre, 2011). Rather than discussing topical and potentially confidential issues, the focus is on getting to know each other, finding areas of potential collaboration, and discussing practices. Several shared projects have emerged from these Eurosint gatherings (Dyèvre, 2011). Besides the Eurosint Forum, EU intelligence experts have long met in more informal settings to foster transgovernmental cooperation, such as in the so-called Berne Group or Budapest Club. This kind of interaction is leading to the creation of a kind of European intelligence space (Cross, 2013b), but one that still carefully protects information from crossing borders.

**Table 2.** Summary of findings in the cases of the EDA and IntCen.

| **Indications of epistemic communities** | **EDA—a highly formal & hierarchical bureaucracy** | **IntCen—a secretive profession** |
|---|---|---|
| Its members act as more than the sum of their parts | Strong adherence to original mandate—coordinating role, information supplier, etc. | Highly formal and restrictive professional environment, closed off, member-states provide information & are protective of it |
| Its members have had previous professional encounters with each other | EDA staff have interacted with professionals in the wider defence industry, and others from a large number of diverse expert groups | Seconded from national intelligence services, and thus have not worked together previously |
| Its members share a distinctive culture & shared professional norms beyond the bureaucracy they inhabit | Culture & norms reflect the *institution's* goals—flexible targets, member-states preferences, coordination, pragmatism, etc. | Emerging institutional culture, but focused on process (i.e. best practices) rather than substance |

Thus, IntCen is an example of an agency that is comprised of security experts whose profession is highly limited in terms of fostering epistemic community emergence. Since the need to keep information secret is wrapped into the very expertise of spies, in many ways deliberation, transparency, and information-sharing is highly restricted. Nonetheless, IntCen experts have found ways of networking despite this. They focus more on professionalism and best practices rather than the real substance of their knowledge. In her study, Hertzberger (2007) finds that personal contacts among IntCen experts have actually led to better intelligence cooperation in Europe over time, and towards an emerging institutional culture. Thus, like in the case of the EDA, these experts comprise a different kind of actor, and one that is larger than the Intelligence Agency itself. But the nature of their profession prevents the emergence of an epistemic community because sharing their knowledge goes against the nature of their expertise. Table 2 summarizes the suggested findings from these two illustrative cases.

## 4. Conclusion

These two "non-cases" show that it is not really the policy area itself that determines the emergence of epistemic communities. After all, numerous epistemic communities exist in the same policy area as the experts that work in the EDA and IntCen. For example, the EU Military Committee, Civilian Crisis Management Committee, and Political and Security Committee constitute epistemic communities of varying degrees of influence in the area of external security policy.

Rather, these case studies suggest that bureaucratic structure and the nature of the profession of those involved can serve to limit epistemic community formation. Much of the empirical research on epistemic communities focuses on single case studies of epistemic communities and traces their role in influencing policy choices. As such, the literature tends to take for granted that epistemic communities either exist or they do not. My aim in this article is to take this reasoning a step back to explore the conditions that might limit epistemic community emergence in the first place. I argue that institutions whose internal structure is hierarchical and formal, like in the case of the EDA, typically do not enable enough of a critical mass at any single horizontal level to encourage epistemic community formation. They also tend to advance a strict mandate from the start. Thus, they operate as a traditional bureaucracy, only carrying out the autonomy granted to them, rather than trying to go beyond this.

Secondly, professions that require secrecy and non-transparency with others in the same profession, or as an integral quality of their professional expertise, are also likely to limit epistemic community formation. This is certainly true in the case of the intelligence profession. By way of contrast, the diplomatic profession does tend to foster the existence of epistemic communities (Cross, 2007). Even though diplomats must main-

tain a degree of secrecy, deliberation is a fundamental part of their profession and the ability to share knowledge about possible areas of agreement is crucial. The "art of compromise" is cultivated within diplomatic corps, and networks of professional diplomats understand that they can enhance trust by knowing when and how to share secret information with each other. Diplomatic deliberation often occurs without public scrutiny, but part of what enables fruitful, informal discussion, especially in the European context, is the ability for diplomats to speak frankly about where they can find common ground.

Many kinds of networks, groups, institutions, and bureaucracies have influence on policies and outcomes in international relations. However, it is important to recognize that they also have different kinds of influence. Thus, I am not arguing that the EDA and IntCen are weak or ineffective agencies, but rather that they seek influence in ways that conform closely to their mandate, and do not stretch the boundaries of this. By contrast, epistemic community influence often involves changing the very basis of the way states operate in the international system, as well as the rules they follow in their interactions. This requires high levels of status and persuasion in the eyes of state leaders. Thus, in the cases of IntCen and the EDA, as long as professional and institutional context remain unchanged, it is unlikely that epistemic communities would form in the future.

These arguments are based on just two illustrative cases, but future research could further explore the limits of epistemic community emergence with a specific focus on which kinds of professions and bureaucratic structures might be more or less conducive to this. For example, the cases of the EU Military Staff and the Civilian Planning and Conduct Capability are similar cases of supranational bureaucracies that are also hierarchical. In particular, it would be valuable to explore the preconditions for epistemic community emergence in other countries and regions of the world with varying types of regimes. In authoritarian states, for example, bureaucracies are typically extremely hierarchical and formal, and a greater number of professions may be prevented from engaging in deliberation and networking. Epistemic community emergence may be virtually impossible in these more extreme cases. And in other democracies, certain professions may have different norms and practices than in the European region. Such comparative work is useful in mapping out the various conditions that limit or encourage the existence and influence of epistemic communities.

**Acknowledgements**

I wish to thank the anonymous reviewers and guest editors for their helpful comments.

**Conflict of Interests**

The author declares no conflict of interests.

**References**

Adler, E, (1992). The emergence of cooperation: National epistemic communities and the international evolution of the idea of nuclear arms control. *International Organization*, *46*(1), 101-145.

Adler, E., & Pouliot, V. (2011). International practices. *International Theory*, *3*(1), 1-36.

Arnould, C.-F. (2011). Interview of Claude-France Arnould, Chief Executive of the European Defence Agency. Brussels, July 22, 2011.

Barrinha, A. (2010). Moving towards a European defence industry? The political discourse on a changing reality and its implications for the future of the European Union. *Global Society*, *24*(4), 476-478.

Collins, R. (1998). *The Sociology of Philosophies: A Global Theory of Intellectual Change*. Cambridge, MA: Harvard University Press.

Council of the EU. (2001). *Document 5626/11* (24 January 2011, still classified). Brussels, Belgium: Council of the EU.

Cross, M. K. D. (2007). *The European Diplomatic Corps: Diplomats and International Cooperation from Westphalia to Maastricht*. Basingstoke: Palgrave.

Cross, M. K. D. (2011). *Security Integration in Europe: How Knowledge-Based Networks Are Transforming the European Union*. Ann Arbor: University of Michigan Press.

Cross, M. K. D. (2013a). Rethinking epistemic communities twenty years later. *Review of International Studies*, *39*(1), 137-160.

Cross, M. K. D. (2013b). A European transgovernmental intelligence network and the role of IntCen. *Perspectives on European Politics and Society*, *14*(3), 388-402.

de Crem, P. (2012). Chief Executive's Forward. In *Refocusing Defence: The 2012 EDA Annual Conference Report*. January 31, 2012. Brussels, Belgium: European Defence Agency.

Drake, W., & Nicolaïdis, K. (1992). Ideas, interests, and institutionalization: "Trade in services" and the Uruguay Round. *International Organization*, *46*(1), 37-100.

Duke, S. (2006). Intelligence, security, and information flows in CFSP. *Intelligence and National Security*, *21*(4), 604-630.

Dyèvre, A. (2011). Interview of Axel Dyèvre, Eurosint General Manager, Brussels, 27 June 2011.

EDA. (n.d.). *EDA Website*. Retrieved from http://www.eda.europa.eu

Franco-German Declaration. (2012). Towards strengthened European Security and Defence. Paris, February 6, 2012.

Giergerich, B. (2009). Interview of Dr. Bastian Giergerich, Research Fellow for European Security, International Institute for Strategic Studies, London, May 14, 2009.

Gough, C., & Shackley, S. (2001). The respectable politics of climate change: The epistemic communities and NGOs. *International Affairs*, 77(2), 329-345.

Grevi, G. (2008). Transgovernmental Cooperation under CFSP: Institutional and Normative Profiles. In: M. Dony & L. S. Rossi (Eds.), *Démocratie, Cohérence, et Transparence: Principes Constitutionelles de l'Union Européenne?* Brussels: University of Brussels.

Haas, P. (1989). Do regimes matter? Epistemic communities and Mediterranean pollution control. *International Organization*, *43*(3), 377-403.

Haas, P. (1992a). Introduction: Epistemic communities and international policy coordination. *International Organization*, *46*(1), 1-35.

Haas, P. (1992b). Banning chlorofluorocarbons: Epistemic community efforts to protect stratospheric ozone. *International Organization*, *46*(1), 187-224.

Haas, P. (2001). Policy knowledge: Epistemic communities. In *International encyclopedia of social and behavioral sciences* (pp. 11578-11586). Oxford, UK: Elsevier.

Heinisch, R., & Mesner, S. (2005). COREPER: Stealthy Power Brokers or Loyal Servants to their Government Masters? The Role of the Committee of Permanent Representatives in a Changing Union. Paper prepared for the European Union Studies Association Conference, Austin, Texas, April 2, 2005, p. 1.

Hertzberger, E. (2007) Counter-Terrorism Intelligence Cooperation in the EU. In *European Foreign and Security Studies Policy Program UNICRI.* Turin, Italy: UNICRI.

Howorth, J. (2004). Discourse, ideas, and epistemic communities in European security and defence policy. *West European Politics*, *27*, 211-234.

Ikenberry, J. (1992). A world economy restored: Consensus and the Anglo-American postwar settlement. *International Organization*, *46*(1), 289-321.

Ischinger, W. (2012, December 31). Munich Security Conference: A make or break moment for European Security and Defence Policy. *Monthly Mind*.

Italian Ministry of Foreign Affairs, & Italian Ministry of Defence. (2013). More Europe: An Italian proposal for further common work with like-minded European partners, in view of the expected 2013 European Council's session on defence matters. Retrieved from http://www.difesa.it/Primo_Piano/Documents/2013/More%20Europe%20final.pdf

Johnstone, I. (2005). The Power of Interpretive Communities. In M. Barnett & R. Duvall (Eds.), *Power in Global Governance* (pp. 185-204). Cambridge: Cambridge University Press.

Kapstein, E. B. (1992). Between power and purpose: Central bankers and the politics of regulatory convergence. *International Organization*, *46*(1), 265-287.

Keck, M., & Sikkink, K. (1998). *Activists beyond Borders: Advocacy Networks in International Politics*. Ithaca, NY: Cornell University Press.

Keohane, R. O., & Nye, J. S. (1974). Transgovernmental relations and international organizations. *World Politics*, *27*(1), 39-62.

Kuhn, T. (1962). *The Structure of Scientific Revolutions*. Chicago and London: University of Chicago Press.

Lebow, R. N. (2010). *Forbidden Fruit: Counterfactuals and International Relations*. Princeton: Princeton University Press.

Müller-Wille, B. (2008). The effect of international terrorism on EU intelligence cooperation. *Journal of Common Market Studies*, *46*(1), 49-73.

Pallaris, C. (2009). *OSINT as Knowledge, Activity and Organization: Trends, Challenges and Recommendations*. Zurich, Switzerland: Swiss Federal Institute of Technology Zurich.

Peterson, J., & Bomberg, E. (1999). *Decision-Making in the European Union*. Basingstoke: Macmillan.

Peterson, M. J. (1992). Whalers, cetologists, environmentalists, and the international management of whaling. *International Organization*, *46*(1), 147-186.

Radaelli, C. (1999a). The public policy of the European Union: Whither politics of expertise? *Journal of European Public Policy*, *6*(1), 757-774.

Radaelli, C. (1999b). *Technocracy in the European Union*. London, UK: Longman Group.

Rettman, A. (2010). Secret documents group was like 'bad Le Carre novel', MEP says. *EUObserver.com*. 18 November.

Sandal, N. A. (2011). Religious actors as epistemic communities in conflict transformation: The cases of South Africa and Northern Ireland. *Review of International Studies*, *27*(3), 929-949.

Slaughter, A. (2004). *A New World Order*. Princeton, NJ: Princeton University Press.

Thurner, P. W., & Binder, M. (2009). European Union transgovernmental networks: The emergence of a new political space beyond the nation state? *European Journal of Political Research*, *48*(1), 80-106.

Trybus, M. (2006). The new European Defence Agency: A contribution to a common European security and defence policy and a challenge to the community acquis? *Common Market Law Review*, *43*(3), 667.

Verdun, A. (1999). The role of the Delors Committee in the creation of EMU: An epistemic community? *Journal of European Public Policy*, *6*(2), 308-328.

Jeremy Y. (2005). The development of a counter-epistemic community: AIDS, South Africa, and international regimes. *International Relations*, *19*(4), 421-439.

Zito, A. (2001). Epistemic communities, collective entrepreneurship and European integration. *Journal of European Public Policy*, *8*(4), 585-603.

**About the Author**

**Dr. Mai'a K. Davis Cross**

Mai'a Cross is the author of two books on epistemic communities: *Security integration in Europe: How knowledge-based networks are transforming the European Union* (University of Michigan Press, 2011), which is the 2012 winner of the Best Book Prize in Contemporary European Studies, and *The European diplomatic corps: Diplomats and international cooperation from Westphalia to Maastricht* (Palgrave Macmillan, 2007). She is also co-editor (with Jan Melissen) of *European public diplomacy: Soft power at work* (Palgrave, 2013). Dr. Cross holds a PhD in Politics from Princeton University, and a bachelor's degree in Government from Harvard University.

COGITATIO

**Politics and Governance (ISSN: 2183-2463)**
**2015, Volume 3, Issue 1, Pages 101-113**
**Doi: 10.17645/pag.v3i1.75**

Article

# Driven by Expertise and Insulation? The Autonomy of European Regulatory Agencies

Christoph Ossege [1,2]

[1] SSM Policy & Coordination Unit, Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht), 53117 Bonn, Germany
[2] Bremen International Graduate School of Social Sciences (BIGSSS), Bremen University, 28334 Bremen, Germany; E-Mail: cossege@bigsss-bremen.de

Submitted: 26 May 2015 | In Revised Form: 9 February 2015 | Accepted: 19 February 2015 | Published: 31 March 2015

**Abstract**
Expertise and autonomy are cornerstones to the effective operation and legitimacy of European Regulatory Agencies (ERAs). Yet, we know little about ERAs' actual autonomy, nor about factors shaping it. This article studies ERAs' *actual* autonomy from public and private actors, emphasising two crucial explanatory factors: expertise and rulemaking competences. The lack of insights on expertise is particularly striking, as expertise—the "raison d'être" and main resource of expert bodies—provides ERAs with a potentially powerful means to increase autonomy. Relying on a rational institutionalist framework within which ERAs enjoy substantive discretion to pursue their goals, the study empirically compares three powerful ERAs—the European Medicines Agency, the European Chemicals Agency, and the European Food Safety Authority. Based on the analysis of 39 semi-structured expert interviews, findings show that expertise is a crucial explanation for ERAs' substantive autonomy from the Commission. Towards research intensive private stakeholders, the role of expertise becomes less pronounced. Instead, ERAs are more successful in protecting their autonomy by engaging in the risk-averse interpretation of the regulatory framework and by adapting rules over time to adapt their needs: they engage in "procedural insulation". Political salience provides a scope condition for ERAs to use expert knowledge and rulemaking competences more strategically—potentially undermining scientific quality.

**Keywords**
autonomy; delegation; EU agencies; EU governance; expert advice; expertise; insulation; regulation; rulemaking

**Issue**
This article is part of the special issue "The Role of Expert Knowledge in EU Executive Institutions", edited by Professor Åse Gornitzka (University of Oslo, Norway) and Dr. Cathrine Holst (University of Oslo, Norway).



## 1. Introduction

European Regulatory Agencies (ERAs) have become increasingly important features in the European polity, regulating many areas of daily life. Forming part of a global rise of expert bodies, ERAs are expected to cope more effectively with complex socio-economic challenges and to overcome political short-sightedness. Their scientific expertise and their autonomy from external influence form the two building blocks for the high-quality decision-making of ERAs—and hence their effective operation and legitimacy (Majone, 2009). Expertise means accurate information that can be put to adequate use by "experts". Autonomy refers to the degree to which an agency can *actually* take decisions irrespective of external actors' preferences.

Although expertise and autonomy are deemed central to the operation of ERAs, their specific contribution to the functioning of ERAs remains unclear in many respects. In fact, many facets of ERAs' day-to-day operation remain in the dark (Groenleer, 2014). When explaining the autonomy of ERAs, two—so far neglected—

factors seem particularly worthwhile to study: an agency's expertise and its rulemaking competences. Expertise "substitutes power in certain policy areas" (Quaglia, 2009, p. 13), potentially forming a "key prerequisite for bureaucratic autonomy" (Carpenter, 2001, p. 17). As expert organisations, ERAs are particularly likely to capitalise on their expert resources. In addition, ERAs' extensive soft-law rulemaking competences enable them to modify existing—and introduce new—regulatory rules. Therewith, ERAs could insulate themselves by actively raising procedural standards. Although Moe (1995) regards these expertise- and rule-based explanations pivotal to the autonomy of ERAs, they lack systematic scholarly attention. Accordingly, the research question is:

> How (and under what conditions) can ERAs capitalise on their expertise and rulemaking competences to "forge" their autonomy?

Analytically, the project builds on an institutionalist framework within which ERAs are equipped with the necessary room of manoeuvre to pursue their goals and interests. Reflecting recent insights on "knowledge utilisation", the ability (and necessity) of ERAs to shape their autonomy depends on an important scope condition: the political salience of the regulatory issue at stake (Boswell, 2008). Providing concise expectations on agency autonomy to guide the empirical analysis, the framework explicitly distinguishes between the political principals—centrally the European Commission—and private stakeholders of ERAs. The different nature of their relationships with ERAs is expected to shape agency autonomy in different ways.

Empirically drawing on original expert interviews with agency staff and external actors, the study provides unique comparative insights on the autonomy and day-to-day operation of three powerful ERAs: the European Medicines Agency (EMA), the European Food Safety Authority (EFSA), and the European Chemicals Agency (ECHA). Given their technical mandates, these ERAs are particularly well suited to study the postulated relationships between expertise and autonomy ("most-likely-cases").

After introducing the general debate on ERAs, the analytical framework develops the expectations concerning the effects of expertise and rulemaking competences on the autonomy. Following a short methodological note, introducing the selected ERAs, the empirical analysis first shows whether expertise holds its promise to protect agency autonomy. In a second step, the study assesses whether ERAs are able to capitalize on (the interpretation and modification of) the regulatory framework, therewith engaging in procedural insulation. The study concludes by linking findings to recent debates on agency operation and their role in EU governance.

### *1.1. Regulation by Information: Autonomy and Expertise of ERAs*

Reflecting a global "rise of the unelected", the EU can be depicted as a fore-runner of expert governance (Curtin, 2014; Vibert, 2007). Next to comitology committees and other forms of network governance for expert advice (Sabel & Zeitlin, 2008), the European decision makers rely on the expert advice of so-called European Regulatory Agencies (ERAs). Forming part of a greater population of EU agencies, eleven such ERAs exist and are primarily concerned—as their name suggests—with *regulation*. Functionally disaggregated from political decision-making processes, ERAs form the most consistent institutional example of autonomous expert advice in the EU (Busuioc & Groenleer, 2014). Accordingly, expertise and autonomy form the two operational cornerstones of ERAs.

Since ERAs ought to provide policy makers with sound expert advice, the expertise to inform this advice constitutes their main organisational resource. The (scientific) expertise[1] provided by ERAs does not only have to concord to abstract scientific standards. Commonly referred to as "regulatory science", ERAs' expertise has to turn into serviceable "truth" by being timely and useful (Lentsch & Weingart, 2011, p. 9).[2] Directly feeding into policy-making, it is particularly "susceptible to divergent, socially conditioned interpretations…since quality standards tend to be more fluid, controversial, and subject to political considerations" (Jasanoff, 1995, p. 282). In this vein, the expertise of ERAs is neither "neutral, objective, [nor] technically virtuous" (Shapiro & Guston, 2007, p. 543). A central reason for divergent expert interpretations lies in the recognition that expertise is always linked to (groups of) "experts" or professionals (Radaelli, 1995). They form part of professional communities (Noordegraaf, 2007, p. 767), often referred to as "epistemic communities", sharing sets of "causal beliefs and common notions of validity" (Haas, 1992, p. 2; Davis Cross, 2012). Within and across these expert communities, scientific controversies "can arise out of 'honest philosophical differences' linked to disciplinary training, institutional affiliation, or professional status" (Jasanoff, 1995, p. 281; see also Joerges, Ladeur, & Vos, 1997).[3] Nonetheless, expert knowledge can be put to scrutiny regarding its reasoned arguments based on substantive and methodological standards (Brown, 2009, p. 202).

[1] The terms "expertise", "scientific expertise" or "expert knowledge" are used interchangeably—if not explicitly stated otherwise.

[2] Other authors speak of "trans-science" or "mode-2 science" (for an overview, see Lentsch & Weingart (2011)).

[3] Prospect theory provides empirical evidence that experts rely on different "heuristics" to interpret the same information (Tversky & Kahnemann, 1992).

Autonomy refers to the degree of freedom that ERAs experience when they take decisions "relatively unbound by the preferences and interests" of external actors (Groenleer, 2014, p. 258). At the same time, an autonomous agency is not required to operate in isolation, as external expert advice might often contribute to ERA's prescribed goals. One should distinguish between formal and de-facto autonomy. Formal autonomy describes an agency's discretion to act or make decisions as defined in its founding regulation (Carpenter, 2001). Four dimensions are often identified: legal, financial, personnel, and policy autonomy.

This article is interested in the policy autonomy of ERAs. Whereas all EU agencies are independent legal entities—and thus legally autonomous—, their formal autonomy to take policy decisions is often said to be limited (Groenleer 2009, 2014): in fact, all EU agencies—including the ERAs studied in this article—are deprived of formal policy-making competences. Although their scientific opinions form the basis for risk regulation in the EU, the binding regulatory decisions reside with the Commission and the respective Standing Committees; often jointly referred to as the "risk managers" (Busuioc, 2013). Since Carpenter (2001, p. 5) argues that autonomy is quintessentially about "independent policymaking power", this lack of formal decision-making powers led scholars to argue that ERAs' policy autonomy is considerably circumscribed. This study, however, draws an explicit distinction between policy autonomy and policy influence (Maggetti, 2009): if ERAs take a decision unbound by external interests, they will experience high degrees of autonomy. Whether this decision is then adopted by the risk managers does not affect the autonomy of ERAs but rather concerns the agency's policy influence—lying outside of the scope of this article.

In any case, an agency's formal (policy) autonomy does not automatically translate into *actual* or *de facto* autonomy (Carpenter, 2001; Olsen, 2009). Once an agency is created, its actual autonomy might change over time: Reflecting neo-institutional thought, the autonomy of expert bodies is shaped by—but not limited to the effects of—legal and organisational factors (Rittberger & Wonka, 2011). Despite the illustrated importance of reputation-building and institutionalisation (Carpenter, 2001; Groenleer, 2009), however, we lack systematic insights on the actual policy autonomy of ERAs (Egeberg & Trondal, 2011). Therefore, this article studies the de facto autonomy of ERAs in developing their main policy output: their risk assessments.

Expertise and rulemaking competences provide two—so far neglected—explanations for this autonomy. With the recent exception of a "knowledge utilisation" study (Boswell, 2008), general claims of the importance of expertise in policy-making have not been complemented by systematic empirical analyses (Quaglia, 2009; Radaelli, 1995). We also lack information on the ability of ERAs to capitalise on their rulemaking competences to protect their autonomy (Kaufman, 2001). ERAs are particularly well-suited to study the above-question, as they closely interact with scientific and advocacy actors within so-called regulatory networks. The network interactions with regulators and expert bodies contribute to agency expertise and thus regulatory quality. This study assumes that the expert bodies of these networks pose no harm to the autonomy of ERAs, since they operate in line with the "logic of science" (Davis Cross, 2012).

The regulatory networks, however, also provide so-called advocacy actors with direct access to decision makers (Braun, 2012). The public actors (the European Commission, the Member States, the European Council and the European Parliament) can be considered "principals" of ERAs. Private advocacy actors include industry companies (and federations) as well as non-governmental organisations (NGOs). Existing research shows that advocacy actors strive to impose their own preferences onto ERAs, potentially threatening their autonomous decision-making (Groenleer, 2009). The network involvement of ERAs therefore serves as a potential catalyst both to the generation of expert knowledge and to threats on autonomy.

Due to the observed limited role of the European Parliament, the European Council and Member States for ERA decision-making (Groenleer, 2009), this study focuses on the autonomy of ERAs from the Commission as well as private stakeholders.[4]

## 2. Analytical Framework

The project sets out a rational institutional framework to study the behaviour of ERAs. Rational institutionalist theory argues that "EU institutions matter, shaping both the policy process and policy outcomes in predictable ways" (Pollack, 2015, p. 20). Despite the importance of institutions—including formal rules and procedures—, this theoretical approach leaves agents with ample room of manoeuvre to pursue their goals and interests (Olsen, 2007, p. 13).

Within this framework, the article draws on insights from delegation theory and "knowledge utilization": This article identifies the areas of discretion for ERAs to *forge* their own autonomy; it then develops expectations on how they can use their discretion by capitalizing on (2.1.) their expertise, and (2.2.) their rulemaking competences. Insights on "knowledge utiliza-

[4] Member States in particular might nonetheless wield substantive influence on regulatory policy-making in the EU given their membership in Standing Committees. This policy influence, however, does not undermine the autonomy of ERAs. Instead, it is deemed to affect (and potentially undermines) the importance of the agencies' risk assessments in the overall policy-making process.

tion" suggest that (2.3.) the necessity and ability of ERAs to actively "forge" their autonomy—a main goal of any bureaucratic actor—depends on the scope condition of political salience (Boswell, 2008).

### *2.1. The Power of Expertise—Asymmetries & Counter-Expertise*

Established to provide public decision-makers with scientific advice, ERAs are assumed to host high levels of scientific expertise. Delegation literature suggests that the distribution of information is essential to understand the relationship between a principal and an agent (Majone, 2002). Monopolising relevant information provides agents with a powerful means to guard, and even to increase, their discretionary space to take autonomous decisions (Gailmard, 2002; Lavertu & Weimer, 2009). Since the Commission—arguably the agencies' main principal—delegated risk assessments and transferred a significant share of its experts to ERAs, the Commission itself is expected to hold limited degrees of scientific expertise. The lack of expert capacity among Commission DGs might even threaten their ability to adequately control the quality of agency opinions (Busuioc, 2013). ERAs are therefore expected to benefit from a classical information asymmetry that is *sufficient* to prevent the Commission from influencing the decision-making of ERAs.

Towards private stakeholders—particularly towards industry—delegation theory provides less explanatory potential, since the relationship between ERAs and stakeholders does not reflect a principal-agent relationship. Rather, industry acts as a client to ERAs. Moreover, one cannot speak of typical information asymmetries benefiting ERAs. In fact, industry might even hold more expertise than ERAs: industrial companies develop the products and substances submitted to ERAs for authorisation and perform the required tests. Regulators rarely engage in empirical experiments themselves but instead rely on data provided by private applicants.

Nonetheless, the resource-based reasoning adequately describes the relationship between ERAs and private stakeholders. Holding high-quality expert resources themselves, ERAs might be in a position to (a) question scientific arguments put forward by industry and potentially develop counter-expertise. ERAs can also (b) identify and dismiss non-scientific arguments that go beyond the decision-making criteria specified in the agency regulations and guidelines. Even though information asymmetries are unlikely to materialise, ERAs are therefore expected to hold sufficient expert resources to fence off external influence by industry and NGOs. Although to varying degrees, the scientific expertise of ERAs might therefore protect them effectively from external influence from the Commission and private actors.

> Expectation 1a: Information asymmetries towards the Commission provide ERAs with high degrees of autonomy.
>
> Expectation 1b: ERAs hold sufficient scientific expertise to counter scientific claims by private stakeholders, therewith protecting their autonomy.

One should bear in mind that the relationship between expertise and autonomy is not unidirectional. Both concepts might be linked in an interdependence model: While expertise is expected to increase autonomy, autonomy might also contribute to expertise (by increasing the reputation, attracting high-level scientists). This study restricts itself to the ways in which expertise contributes to autonomy.

### *2.2. The Regulatory Framework & Procedural Insulation*

The effects of expertise are complemented by a process of procedural insulation that potentially increases agency autonomy from private stakeholders. Since the Commission has established the regulatory framework governing the operation of ERAs and acts as "guardian of the treaties", it casts a legal "shadow of hierarchy" onto agency rulemaking. Accordingly, procedural insulation serves ERAs to protect their autonomy towards private stakeholders. While extensive regulatory provisions (guidelines and procedures, test methods, time frames for the assessment process) restrict the behaviour of ERAs, they simultaneously limit the access points of external actors, protecting ERAs' autonomy (Gehring & Krapohl, 2007). Kaufman (2001, p. 34) observes that "red tape to one person may be a treasured procedural protection to another".

At the same time, however, the regulatory framework is far from static. Regulatory rules require interpretations and many ask for modifications once an ERA has gained more experience in implementing the regulatory framework. Within the larger legal framework set by the European institutions, ERAs moreover hold substantive "soft-law" rulemaking competences (Chiti, 2013). By (re-)interpreting and modifying existing rules and introducing new ones, ERAs can effectively raise regulatory standards, for instance by altering the scientific information required for a product authorisation. These regulatory changes might significantly improve the quality of the regulatory output. At the same time, however, the changes could limit the ability of external actors to influence the decision-making of ERAs (Moe, 1995).

> E2: By engaging in "procedural insulation", ERAs can increase their level of autonomy from private stakeholders.

### *2.3. Political Salience as a Scope Condition*

The effectiveness of ERAs' means to protect their au-

tonomy hinges on the scope condition of political salience. Salient issues are those with a broad scope and intensity of conflicts, either for economic or political reasons (Gormley, 1986, p. 598). Since highly salient issues involve high stakes, external actors are believed to increase their efforts to influence agency decision-making. This increased external pressure might (partly) undermine the ability of ERAs to guard their autonomy via the means specified above.

E3: High political salience alters the means of ERAs to guard their autonomy.

Concerning the autonomy of ERAs, two scenarios are viable:

a. If the conditioning effect of political salience were applicable, one could expect ERAs to experience lower degrees of autonomy in areas of high political salience (E3a).
b. In face of highly salient issues, however, ERAs might also strategically adapt their behaviour to the changed circumstances. Rather than engaging in "instrumental problem solving, ERAs could make strategic use of their expertise and/or rulemaking competences with the primary goal of protecting their autonomy (Boswell, 2008; Schrefler, 2010). This change in behaviour could guard ERAs" high degrees of autonomy—even in areas of high political salience (E3b).

To assess the relevance of political salience as a scope condition, this project studies regulatory issues of both high and low salience. This approach sheds light on the reach of the study's main expectations. Presumably, salience does not systematically vary across ERAs, but rather across issue areas.

## 3. A Methodological Note—Comparing EMA, EFSA, and ECHA

Guided by theoretically informed expectations, the study remains exploratory. Comparing three ERAs provides an adequate balance between the necessary analytical leverage to assess general expectations, and a desirable level of detail.

Although EMA, EFSA, and ECHA differ in certain regards, their extensive similarities recommend them for a comparative study on agency autonomy. Created for different reasons at different points in time, they nonetheless share important organisational and functional traits (Groenleer, 2014): all three ERAs hold similar mandates, as they serve as gatekeepers for products to enter the respective markets and evaluate products and substances already available—potentially withdrawing the marketing permits (Vos, 2014, p. 20). Given their scientific tasks, the selected ERAs are most likely to capitalise on available expertise to protect their autonomy. Despite minor variations, all three ERAs experience high degrees of formal autonomy, setting them apart from other ERAs—often equipped with less formal autonomy. Although deprived of formal decision-making competences, all three ERAs are moreover perceived of as "de-facto" decision-makers in the EU (Busuioc, 2013, p. 211). Findings on these—arguably most powerful—ERAs therefore provide most instructive insights on EU policy-making. Moreover, all three ERAs operate in a similar environment (industry structure, stakeholder activities). As Groenleer (2014, p. 265) argues, the (limited) observable differences across regulatory domains do not "explain a difference in agency autonomy". Finally, alternative explanatory factors linked to the agencies' organisational structure are controlled for: all three ERAs come in similar sizes and shapes, being composed of an agency secretariat, scientific committees, and a management board. At the same time, the cases provide the necessary internal and cross-case variation concerning their de facto autonomy, as pointed out by Groenleer concerning EMA and EFSA (2009, 2014). Their (use of) expertise is also expected to differ.

The analysis rests on 39 semi-structured expert interviews with agency members and external actors (ERA Secretariats, Scientific Committees, Management Boards; EU Commission, EU Parliament, NGOs, industry federations), providing detailed insights on day-to-day processes related to agency decision-making and autonomy.[5] The (perceptional) interview statements on the main concepts were coded according to a pre-established coding scheme (i.e., "high/medium/low autonomy"). Coding was based on general perceptions of interviewees on agency operation, and references to specific instances of (non-)influence, refering to e.g. authorisation procedures where stakeholders (are perceived to) have successfully altered an agency's opinion. This approach is complemented by extensive narrative quotes. Potential biases inherent to interview data, i.e., overestimation of expertise or autonomy, are accounted for by (a) the systematic selection of interviewees, and (b) the triangulation of interview data with documents, more specifically annual agency reports and external evaluations conducted on all three ERAs.

## 4. Analysis

Despite the frequent interactions between all three ERAs and external actors, the interview data suggests that all three ERAs under study experience high degrees of autonomy from external actors:

[5] Ossege (forthcoming) provides more details on the selection of interviewees.

> Scientifically, yes. I would say that the scientific outputs are not at any level influenced by DG SANCO views or by the EP views or by stakeholder views. I think, scientifically, it is really independent. But of course, economically and at the management level it has boundaries and it has a lot of links with others. But that doesn't affect the scientific outputs. (EFSA3)

38 out of 39 interviewees share this perception, while one interviewee observes industry influence in EFSA's regulation of genetically modified organisms (EFSA-GMO). At the same time, two interviewees dealing with ECHA raise tangible criticism on the chemicals agency, claiming that the agency's proximity to industry threatens to affect its decision-making:

> If you look at what experts they are getting from particular disciplines, etc. and how many from industry or from academia, how many are coming from Germany with a huge chemical industry, and you can foresee a certain amount of industry cosiness. I don't have any figures, but I have the impression that many industry friendly people are working for ECHA—I can't prove it. (ECHA-NGO; similar: ECHA-COM)

Assuming the validity of interview statements, these challenges—although pointing at a potential threat—do not undermine the observed high levels of autonomy of all three ERAs.

### *4.1. The Role of Scientific Expertise—Asymmetries and Counter Expertise*

ERAs' extensive expertise—generated inter alia through the involvement of experts (from NCAs and other expert bodies) into their decision-making bodies—provides a strong explanation for autonomy. The effects of this high quality expertise on autonomy play out differently towards the European Commission and private stakeholders.

#### 4.1.1. Asymmetries towards the Principal

The Directorate Generals (DGs) in the Commission extensively interact with the ERAs at the scientific and the management level, both formally and informally (ECHA-COM). Nevertheless, the DGs are perceived to have little influence on the agencies' decisions. While the Commission has an observer status in the committees of each agency, its representatives do not take active part in the discussions. As one interviewee involved in an ECHA committee recalls her experience (ECHA8): "The Commission is sitting in the committee as an observer, they can contribute to the discussion, if they want to. But I do not recall that they said anything". This perception is shared by the other interviewees involved in the committee work, across agencies.[6]

The limited scientific expertise of Commission representatives provides a main explanation for their low influence on ERA decision-making:

> It can happen that the people in the Commission do not understand the opinion and then they follow up with questions. But the Commission completely lacks the potential and scientific foundation…. (EMA1)

> I do not think they have a lot of scientific expertise. They never had. They are policy makers. Of course they have scientists working there, and they have lawyers working there, but the lawyers do not deal with individual decisions and the scientists are not supposed to be…I mean the Commission has outsourced this sort of questions to the agencies, that is why they established agencies….They only need to keep the level of expertise that they can understand what is coming and to be properly informed so that they can make the decision. (ECHA1)

While the Commission lacks the expertise to influence ERA decision-making, it nonetheless holds enough knowledge to follow the latter's argumentation:

> And so [the Commission representatives] have of course their expertise, but now of course with the more defined roles of different actors we are the body that is supposed to be the technical and scientific body, really having the in-depth scientific expertise; and they are more deeply into the policy and regulatory level so that there is not too much overlap. But of course, also we have to understand each other and therefore they have relevant expertise for us, and we are consulting with them on issues. (ECHA7)

If DGs get involved into specific risk assessments, they want to be aware of potentially conflicting scientific arguments put forward in the debate before they have to deal with them (and potentially defend them) in later phases of the policy process and in the court room (EMA7; ECHA-COM). Particularly due to this fear of litigation shared by (all three) ERAs and the Commission, some interviewees attribute a slightly more influential role to the Commission (ECHA1, ECHA-COM, EMA-Federation). Overall, however, the Commission's sphere of influence is limited to making sure that the decision-making is in line with legal requirements. This high degree of autonomy from the Commission even holds true for EMA, although it has experienced a substantive

[6] Similar statements are advanced by EMA6, EMA7; EFSA1, EFSA2, EFSA3 EFSA8; ECHA1, ECHA7, ECHA8, ECHA-RAC.

surge in oversight since 2010, when DG SANCO replaced DG INDUSTRY as the agency's partner-DG. While the greater organisational duplication between the DG SANCO and EMA triggered closer scientific involvement of the DG (EMA-Federation), the increased influence appears limited to legal concerns (Vestlund, 2014).

With their regulatory oversight role, the DGs primarily contribute to the regulatory consistency of the agencies' output. In line with expectation *E1a*, they lack the scientific expert knowledge to intervene on the decision-making. If they engage in expertise-based discussions, it rather appears like a knowledge transfer from ERAs to the Commission. Accordingly, the lack of expertise among Commission DGs appears to be sufficient to prevent them from directly influencing ERAs in their assessment work (asserting *E1a*).

#### 4.1.2. Counter-Expertise towards Private Stakeholders

Private stakeholders provide a different picture. As argued above, ERAs remain rather autonomous in their decision-making despite the intensity of interactions between ERAs and private stakeholders. Contrary to the relationship to the Commission, however, this autonomy from private stakeholders, industry in particular, does not stem from a traditional information asymmetry. Industry companies heavily invest in research and development, attract highly skilled experts, accumulating top-level expertise (ECHA-NGO, EFSA-NGO).

Nonetheless, all three ERAs hold sufficient expertise to counter external claims, for instance by uncovering rather frequent flaws in application dossiers submitted by industry. While flawed dossiers are submitted to all three agencies, the respective evaluation reports suggest that the recently established ECHA is most affected (PricewaterhouseCoopers (PwC), 2012). One reason for these flaws lies in stakeholders' lack of experience with (and expertise on) the rather new regulatory procedures governing the regulation of chemicals (ECHA4). But interviewees of all three ERAs also report on deliberate intents to hide "certain things" in application documents (ECHA4), and on companies submitting flawed data (EFSA-GMO). In this vein, EMA regularly request additional information from the applicant, "either to solve the problem in a positive way or to say 'it is better to withdraw the product'" (EMA1). As a consequence, applicants in all three ERAs regularly withdraw their applications before receiving a final (potentially negative) verdict on their application (EMA1, EMA-CHMP, EFSA-GMO, ECHA-MSC1). While EMA and EFSA do not publish the relevant statistics, EMA's annual report (2013) indicates that approximately 14.5% of the initial market authorisation applications submitted to the Committee for Human Medicinal Products (CHMP) between 2009 and 2011 have been withdrawn prior to a final agency opinion (an additional 5.5% has received a negative opinion).

Although the interview statements and application data retrieved from EMA do not provide a conclusive picture, they clearly suggest that ERAs hold the necessary expertise to detect flawed arguments advanced by stakeholders (*E1b*). Whereas high quality expertise seems to provide a *sufficient* explanation for ERAs' autonomy towards the Commission, it provides ERAs with less leverage to protect their autonomy towards private stakeholders.

### *4.2. Protection towards Stakeholders—The Static Framework and Procedural Insulation*

The analytical framework suggested that ERAs benefit from a second factor that contributes to the observed high degrees of autonomy from private stakeholders. Specifically, ERAs might capitalise on (a) the extensive regulatory provisions governing their relationship with stakeholders, and (b) the process of procedural insulation.

#### 4.2.1. The Static Regulatory Framework—Rules as Procedural Protection

The analysis shows that the extensive regulatory provisions provide ERAs with a legally robust guiding post for action: interviewees depict all three ERAs as highly rule-oriented, "strictly respecting legislation" (ECHA-Federation). This risk averse behaviour of following rules "to the letter"—at least partly—aims at avoiding litigation (EMA-Federation; EFSA5, ECHA-COM). While all three ERAs act very rule-oriented, ECHA is characterised as particularly risk-averse:

> [ECHA staff] are extremely obsessed with procedures. Sometimes it really drives me mad. I can see partly why they do it, but it gums up the works to some extent. In fact, PwC did a report, they did a workshop here and invited some of us there to discuss. Industry and NGOs agreed that ECHA is very bureaucratic, so that is something we share views on. (ECHA–NGO)

Given ECHA's young history and the subsequent lack of established regulatory practices, ECHA faces considerably more legal uncertainty associated with the regulatory framework than EMA and EFSA (ECHA8; ECHA-COM). Gaining experience, however, ECHA appears to act more confidently lately (ECHA1; ECHA-COM; ECHA-Federation). Overall, all three ERAs remain highly rule-driven.

Whereas this rule-orientation contributes to autonomous expert advice, EFSA's handling of the nutrition and health claims regulation[7] suggests that it might al-

[7] The regulation establishes rules aimed at harmonising nutrition and health claims across Europe. Since the inception of the regulation in 2006, this "claim on food labelling, presentation

so bring about unintended consequences. Overall—and supported by a rejection rate of 80%—EFSA's evaluation of health claims is widely regarded as highly demanding and scientific (ANH Europe, 2011). At least some rejections, however, go back to a formalistic interpretation of Council Regulation 1924/2006. In one example, EFSA rejected a health claim that "water prevents dehydration", since the provided information on "water loss in tissues" did not qualify as the required "risk factor", but rather as a measure of the disease itself. While legally consistent, this decision might raise substantive concerns. Natural and botanical food ingredients, which have nearly been rejected in their entirety, serve as another illustration (ANH Europe, 2011). While EFSA adheres to the standards prescribed in the regulation in both examples, the agency runs the danger of operating in a vacuum—neglecting potentially redistributive effects of its decisions on entire industries.

The analysis brings another observation to the fore: Many stakeholders lack experience with (and expertise on) the complex regulatory requirements. NGOs even lack the (financial and human) resources to overcome this challenge (ECHA-NGO; EMA-NGO). Among industry, especially small and medium-sized enterprises (SMEs) struggle with the magnitude of formal regulatory requirements. As an industry representative points out, companies working with EMA even have difficulties to understand the role of the individual committees (EMA-Federation). While most industrial companies know certain regulatory aspects, many lack a coherent understanding of the broader regulatory framework and the functioning of the agencies. This reported lack of regulatory understanding among stakeholders circumscribes their ability to influence agency decision-making. Consequently, the complexity of the regulatory framework (without the complementary expertise among stakeholders) contributes to the autonomy of ERAs.

At the same time, the complex framework and the lack of regulatory understanding potentially undermines regulatory quality, as indicated by the substantive amount of flawed applications submitted to the recently established ECHA. All three ERAs have introduced various initiatives to overcome these negative implications through a variety of initiatives, including stakeholder fora to exchange experiences and the establishment of advice-units: EMA created an SME Office in 2005, EFSA and ECHA introduced similar application helpdesks to support applicants. For ERAs, these initiatives provide a double-edged sword: while the improved regulatory understanding of stakeholders contributes to a smooth regulatory process, the increasing number of court cases suggests that it also provides stakeholders with the means to contest agency decision-making and potentially undermine autonomy (Busuioc, 2013).

4.2.2. Adapting the Rules

Even if stakeholders improve their understanding of existing regulatory rules, however, ERAs can engage in procedural insulation: "Any actor implementing law needs to interpret law…" (ECHA-MSC2). All three ERAs do not only interpret the current regulatory framework, but they have also modified existing rules and introduced new ones concerning the internal operation of ERAs and their relationship with external stakeholders. Most of these regulatory changes seem to reflect 'instrumental' problem solving to improve the overall regulatory process: detecting deficiencies in the current procedures, ERAs alter these rules to prevent future regulatory failures. As a side-effect, however, external stakeholders face new regulatory challenges that undermine their ability to influence agency decision-making, contributing the autonomy of ERAs (*E2*).

*4.3. High Political Salience: Insulation Turning Strategic*

This observed process of procedural insulation becomes particularly pronounced in areas of high political salience. In salient issues, stakeholders increase their pressure on ERAs (ECHA-RAC). At the same time, ERAs adapt their behaviour accordingly: Aware of the increased external scrutiny, committee members invest additional effort in their deliberations (EFSFA6; ECHA-RAC). Moreover, all three ERAs engage in procedural insulation more systematically:

> [In areas of high salience] we have more leeway. There we have a number of documents which are guidelines, which are supposed to be followed but they are not legally enforceable. So you are not breaking the law if you don't follow them. Many of these guidelines are being drawn up by us. [...we normally] do a good job, but for particular sensitive dossiers we would take extra care, for example in how conclusions of an assessment report are worded, or in making sure that the procedure is followed to the letter. (EMA4)

> One gets more careful in formulating opinions, to makes them really clear. But influence on [the panels'] evaluation behaviour rather not, since the criticism is not valid. Where you also become more careful is with public appearances. (EFSA6)

In the following, two examples of procedural insulation serve to exemplify the agencies' awareness of their discretionary space to interpret and modify regulatory rules, and to use this discretion in their favour.

and advertising must be clear, concise and based on evidence accepted by the whole scientific community" (Council Regulation 1924/2006; Summary).

a) Conflicts of Interest Policies

Reforms of the policies governing conflicts of interest (CoI) provide a prominent example of procedural insulation in all three ERAs. Dealing with a main threat to agency autonomy and applicable beyond individual regulatory procedures, policies governing CoI are of high political salience. As a response to major public criticism on their existing CoI-regimes, EMA and EFSA have repeatedly introduced more restrictive revisions over the years. Even ECHA, only created in 2006, reformed its initial policy shortly after its creation, mimicking recent changes by EMA and EFSA. All three ERAs intensified the screening of secretariat staff and committee members and raised the applied standards (ECHA, 2011; EFSA, 2011a; EMA, 2012). Observers acknowledge the progress towards protecting the decision-making of ERAs (European Court of Auditors, 2012). At the same time, reforms appear to provide a strategic response ("symbolic action", see Boswell, 2008) to considerable political pressure exerted by the European Parliament, the European Court of Auditors (2012), the European Ombudsman (2013), and NGOs. In addition, reforms show different degrees of success: EFSA in particular still experiences major CoI, threatening its autonomy (Horel & Corporate Europe Observatory, 2013). Interview data suggests that, despite these threats, the autonomy of ERAs remains intact.

Moreover, more restrictive CoI policies trigger unintended side-effects, creating difficulties to recruit high-level experts:

> Suddenly all agencies get problems of recruiting experts. You will not find a professor of distinction in pharmaceuticals, who has not in some way, via third party funding, collaborated with industry. Why should he, in the first place? Not everyone, who has collaborated with industry is a criminal….Everyone who exchanges views with industry seems to be a Trojan horse for the detriment of people or public health…. With the result that we have difficulties to recruit experts. (EMA1)

Colleagues from EFSA agree, saying that "every expert naturally has somehow contacts [to industry], otherwise he would not be an expert" (EFSA6). Another interviewee puts it more cautiously: "Still, there is a degree of a problem, also with the internal experts because they have different levels of confidentiality and conflicts of interests. It is an issue, always" (EMA3). The more recently established ECHA does not experience these recruitment challenges, yet.

The analysis shows that CoI-policies ought to delineate a fine line: increasingly successful, they ought to protect agency decision-making from external interests. At the same time, however, they should not pose obstacles to the recruitment of high-quality expertise crucial for regulatory work: "one has to manage this tension: you want qualified people, and these sometimes do come from industry" (ECHA–MB).

b) Gallium Arsenide

Although ECHA's handling of gallium arsenide (GA) provides an extreme case, it forms an illustrative example of how an ERA can protect its decision-making from external pressures by meticulously adhering to procedural standards that might otherwise be applied more flexibly. Used in the micro-electronics industry, GA was classified "category 2" (harmless) by ECHA's Risk Assessment Committee (RAC). Due to novel scientific information provided during the public consultation procedure, however, the RAC revised its assessment and classified GA as highly carcinogenic ("category 1a"). Given the regulatory (and thus economic) implications of this opinion, industry raised major criticism towards ECHA directly, and towards the Commission. Given the acknowledged expert authority of ECHA, industry focused its complaints on procedural concerns: if they had known about the potentially restrictive regulatory action (which was not apparent given the initial proposition "category 2"), they would have contributed differently to the public consultation.

Wary of potential litigation, the Commission requested ECHA to re-evaluate the substance. Flooded with external comments and aware of the close public scrutiny, ECHA became more cautious and invested extra effort to deliver a legally and scientifically sound opinion. Classifying GA as "category 1b", a committee member acknowledges that this "sounds like a rotten compromise" (ECHA-RAC). He remains confident, however, that the committee worked autonomously from non-scientific influence. Also, category 1b leads to similarly burdensome authorisation procedures for industry. Since a final decision on GA is still pending (due to new scientific information provided by industry), the autonomy of this particular decision is difficult to assess. Since the rule-orientation of ECHA and the apparent expertise of committee members kept the scientific essence of the opinion intact during the former revision, the autonomy is assumed to remain high.

As the authorisation of GA illustrates, however, this autonomy might come at a price. Unable to influence the decision-making of ECHA, industry successfully delays potentially restrictive regulatory action: with an eye to other authorisation processes, an ECHA committee member observes that although there is "no direct influence of lobbying pressures [on science], the strategy is clear: re-opening decision-making or keeping it open and therewith eroding the problem" (ECHA-RAC). The obligation of ECHA and other ERAs to respond to each external comment provided during application processes, aimed at assuring the responsiveness of ERAs to novel scientific information, potentially con-

tributes to these delays as it drains on the organisational resources (EMA6).

Interview statements suggest that similar observations can be made on other processes within ECHA (ECHA-RAC), but also in other ERAs (e.g., EMA6). The continuous reforms of CoI policies by all three ERAs in face of major external pressures provide a further example for ERAs' awareness of their discretionary space—and their willingness to make use of it in order to protect their autonomy. The analysis suggests that all three ERAs can use their operational discretion in a similar way: they can interpret and modify existing regulatory rules (at least partly) strategically in order to reduce the chances of legal litigation, effectively guarding their autonomy.

The interview material does not allow to assess whether all three ERAs make always use of this discretion—most likely they do not. In this vein, the authorisation of GA remains an extreme case with limited generalizability. Yet, it illustrates the substantive behavioural discretion that ERAs enjoy—and could make use of—in areas of high political salience. Moreover, interview statements suggest that the observed strategic behaviour is rather common among the three ERAs under study.

## 5. Discussion

The study enhances our limited understanding on the autonomy and operation of ERAs. Despite considerable pressures, the decision-making of all three ERAs appears well protected from both public and private external influence. Whereas other studies have argued that EFSA experiences lower degrees of autonomy than EMA and—more recently—ECHA (Groenleer, 2014), this study observes similarly high degrees of autonomy among all three ERAs. A main explanation for this discrepancy can be found in the more narrow definition of autonomy applied here. Whereas I argue that EFSA enjoys substantive autonomy, its opinions might nonetheless be disregarded by regulatory policy makers. While EFSA therefore experiences high degrees of autonomy, its policy influence is reported elsewhere to be limited (Groenleer, 2014; Ossege, forthcoming). Whereas the distinction between policy autonomy and influence introduced here increases the analytical leverage of the analysis, the nature of their relationship asks for systematic scholarly attention. An agency's inability to shape regulatory outcomes (low influence) might even increase its autonomy: if an ERA's risk assessment opinion had limited impact on a final policy decision, external actors would face strong incentives to shop other venues to pursue their interests, leaving the agency autonomy intact (Chalmers, 2005).

Explaining autonomy, the study illustrates that a narrow focus on the usual legal and institutional suspects risks overlooking the crucial role of (a) ERAs' expertise and (b) their ability to engage in procedural insulation. While these two factors aim to complement—rather than replace—existing explanations, they provide substantive explanatory leverage. Within the existing regulatory framework, the substantive expertise of ERAs seems sufficient to explain the high autonomy from the Commission. Despite the close procedural oversight by the Commission, the substantive information asymmetries guard the decision-making of ERAs from their political principal. In line with delegation theory (asserting E1a), the Commission thus lacks the expert resources to influence the decision-making of ERAs (Majone, 2002). Towards private stakeholders, the asymmetry loses its explanatory leverage. While the expertise of ERAs remains necessary to counter stakeholder arguments (E1b), the strong autonomy of ERAs more centrally relies on the process of procedural insulation (asserting E2): All three ERAs—ECHA due to its young age more than the other two—apply the extensive regulatory framework in a risk-averse manner, and moreover adapt the rules over time to suit their needs. Paraphrasing Kaufman (2001, p. 34), rules ("red tape") indeed serve as a procedural protection.

Political salience affects the way in which ERAs engage in procedural insulation (supporting E3): in areas of low political salience, procedural insulation tends to reflect a process of instrumental problem solving (Boswell, 2008; Rissi & Sager, 2013). As an externality, raising the procedural hurdle guards the autonomy of ERAs. In areas of high political salience, ERAs act more strategically (Radaelli, 2009). Adding to insights on the utilisation of knowledge, this strategic behaviour also applies to the rulemaking of ERAs (Schrefler, 2010). Even in highly salient areas, ERAs thus remain autonomous from (increasing) external pressures (asserting *E3b*). Findings emphasise that ERAs are not limited to an observer's role; they actively "forge" their autonomy (Carpenter, 2001). Future research could explore in more detail whether this strategic behaviour is also used to pursue organisational goals that potentially undermine the decision-making of ERAs. Findings allow to assess the technocratic claims of ERAs and the legitimacy of expert bodies more generally.

Despite their high degrees of autonomy, all three ERAs face conflicts of interest. Although EFSA was created with a special eye on guarding its autonomy from external influence, it is paradoxically most affected by CoI. EFSA's reliance on university researchers, often conducting research funded by industry, provides a potential explanation (Groenleer, 2009). The given findings emphasize the continuous struggle of ERAs to balance the need for external expert knowledge with threat on their autonomy. In any case, the study suggests that CoI—although they exist—do not systematically affect decision-making.

The study also locates ERAs in the wider context of EU decision-making. The central role of expertise and the rule-orientation of ERAs form preconditions for effective regulation and give credence to their expertise-

based legitimacy (Majone, 2009). The highly autonomous ERAs therewith contribute to a "scientisation" of EU decision-making (Flinders, 2004). At the same time, the study emphasises the danger of taking autonomy as an absolute standard to assess agencies: ECHA's evaluation of gallium arsenide shows that industry can effectively delay regulatory action and thus wield major influence on regulatory performance in the EU. EFSA's handling of health claims moreover suggests that ERAs might run the risk of "hitting the [legal] target but missing the [regulatory] point" (Bevan & Hood, 2006, p. 521). In the end, autonomy proves necessary for high quality expert advice. Yet, it is far from sufficient.

Although the empirical strategy has allowed for a systematic comparison of three major ERAs, the study faces several shortcomings: while the focus on highly "technical" agencies ("extreme cases") forms a precondition for a sensible analysis of the research questions at hand, it also limits the generalization of the findings. The effects of expertise on autonomy might be less pronounced among less "technical" regulatory agencies. Accordingly, conclusions concerning the contribution of ERAs towards the "scientisation" of public decision-making have to be taken with care. Providing valuable insights, this study clearly indicates the necessity of future research on the role of expertise in ERAs and other European (and national) expert bodies: being the central organisational resource, future research should address the role of expertise in non-majoritarian institutions more systematically, addressing its effects on organisational behaviour more generally, and evaluating its importance vis-à-vis other relevant factors.

**Acknowledgements**

Since this article materialised from my PhD research at Bremen International Graduate School of Social Sciences (BIGSSS), I am very grateful for the many insightful remarks on this article by my PhD supervisors Beate Kohler, Arndt Wonka and Claudio Radaelli. In the same breath, I would like to thank my interviewees for sharing their experiences in EU decision-making with me. I am particularly grateful to the institutional support granted by EMA, EFSA, and ECHA, providing me with ample access to their senior staff and scientific experts. I am also indebted to the participants of the EPISTO conference, Cathrine Holst and Ase Gornitzka, as well as the three anonymous reviewers for their critical but constructive remarks on this article.

**Conflict of Interests**

The author declares no conflict of interests.

**References**

ANH Europe. (2011). EFSA carries on regardless. Retrieved from http://anh-europe.org/news/efsa-carries-on-regardless

Bevan, G., & Hood, C. (2006). What's measured is what matters: Targets and gaming in the english public health care system. *Public Administration*, *84*(3), 517-538.

Boswell, C. (2008). The political functions of expert knowledge: Knowledge and legitimation in european union immigration policy. *Journal of European Public Policy*, *15*(4), 471-488.

Braun, C. (2012). The captive or the broker? Explaining public agency? Interest group interactions. *Governance*, *25*(2), 291-314.

Brown, M. B. (2009). *Science in democracy: Expertise, institutions, and representation*. Cambridge and London: MIT Press.

Busuioc, M., & Groenleer, M. L. P. (2014). The theory and practice of EU agency autonomy and accountability: Early day expectations, today's realities and future perspectives. In M. Everson, C. Monda, & E. Vos (Eds.), *European agencies in between institutions and member states* (pp. 175-200). Alphen aan den Rijn: Kluwer Law & Business.

Busuioc, M. (2013). *European agencies: Law and practices of accountability*. Oxford: Oxford University Press.

Carpenter, D. P. (2001). *The forging of bureaucratic autonomy—Reputation, networks, and policy innovation in executive agencies, 1862–1928.* Princeton, Oxford: Princeton University Press.

Carpenter, D. P. (2010). *Reputation and power: Organizational image and pharmaceutical regulation at the FDA*. Princeton, Oxford: Princeton University Press.

Chalmers, D. (2005). Risk, anxiety and the European mediation of the politics of life. European Law Review, *30*(5), 649-674.

Chiti, E. (2013). European agencies' rulemaking: Powers, procedures and assessment. *European Law Journal*, *19*(1), 93-110.

Curtin, D. (2014). Challenging executive dominance in european democracy. *The Modern Law Review*, *77*(1), 1-32.

Davis Cross, M. K. (2012). Rethinking epistemic communities twenty years later. *Review of International Studies*, *39*(1), 137-160.

ECHA. (2011). *Policy for managing potential conflicts of interests* (No. POL-00XX.01). Helsinki, Finland: Corporate Publication.

EFSA. (2011). *Policy on independence and scientific decision-making processes of the European food safety authority.* Parma, Italy: EFSA.

Egeberg, M., & Trondal, J. (2011). EU-level agencies: New executive centre formation or vehicles for national control? *Journal of European Public Policy*, *18*(6), 868-887.

EMA. (2012). *European medicines agency policy on the*

*handling of conflicts of interests of scientific committee members and experts* (No. EMA/513078/2010). London, UK: Corporate Publication.

EMA. (2013). *Annual report 2012*. London, UK: Corporate Publication.

European Court of Auditors. (2012). *Management of conflict of interest in selected EU agencies* (Special Report 15). Luxemburg: European Court of Auditors.

European Ombudsman. (2013). *Handling of a potential conflict of interest arising from a staff member's move to the private sector* (Decision No. 0775/2010/ANA). Strasbourg: European Ombudsman.

Flinders, M. (2004). Distributed public governance in the European Union. *Journal of European Public Policy*, *11*(3), 520-544.

Gailmard, S. (2002). Expertise, subversion, and bureaucratic discretion. *Journal of Law Economics & Organization*, *18*(2), 536-555.

Gehring, T., & Krapohl, S. (2007). Supranational regulatory agencies between independence and control: The EMEA and the authorization of pharmaceuticals in the European single market. *Journal of European Public Policy*, *14*(2), 208-226.

Gormley, W. T. J. (1986). Regulatory issue networks in a federal system. *Polity*, *18*(4), 595-620.

Groenleer, M. L. P. (2009). *The autonomy of European Union agencies—A comparative study of institutional development*. Delft: Eburon.

Groenleer, M. L. P. (2014). Agency autonomy actually: Managerial strategies, legitimacy, and the early development of the European Union's agencies for drug and food safety regulation. *International Public Management Journal*, *17*(2), 255-292.

Haas, P. M. (1992). Introduction: Epistemic communities and international policy coordination. *International Organization*, *46*(1), 1-35.

Horel, S., & Corporate Europe Observatory. (2013). *Unhappy meal. The European food safety authority's independence problem*. Brussels, Belgium: Corporate Europe Observatory.

Jasanoff, S. (1995). Procedural choices in regulatory science. *Technology in Society*, *17*(3), 279-293.

Joerges, C., Ladeur, K., & Vos, E. (1997). Integration scientific expertise into regulatory decision-making: National traditions and European innovations. Baden-Baden: Nomos Verlagsgesellschaft.

Kaufman, H. (2001). Major players: Bureaucracies in american government. *Public Administration Review*, *61*(1), 18-42.

Lavertu, S., & Weimer, D. L. (2009). Integrating delegation into the policy theory literature. *Policy Studies Journal*, *37*(1), 93-102.

Lentsch, J., & Weingart, P. (2011). *The politics of scientific advice: Institutional design for quality assurance*. Cambridge and New York: Cambridge University Press.

Maggetti, M. (2009). The role of independent regulatory agencies in policy-making: A comparative analysis. *Journal of European Public Policy*, *16*(3), 450-470.

Majone, G. (2002). Delegation of regulatory powers in a mixed polity. *European Law Journal*, *8*(3), 319-339.

Majone, G. (2009). *Europe as the would-be world power*. Cambridge and New York: Cambridge University Press.

Moe, T. M. (1995). The politics of structural choice: Toward a theory of public bureaucracy. In O. E. Williamson (Ed.), *Organization theory from Chester Barnard to the present and beyond* (pp. 116-153). New York: Oxford University Press.

Noordegraaf, M. (2007). From "pure" to "hybrid" professionalism: Present-day professionalism in ambiguous public domains. *Administration & Society*, *39*(6), 761-785.

Olsen, J. P. (2007). Understanding Institutions and Logics of Appropriateness: Introductory Essay. Centre for European Studies (ARENA Working Paper 13 (07)). Oslo, Norway: ARENA.

Olsen, J. P. (2009). Democratic government, institutional autonomy and the dynamics of change. *West European Politics*, *32*(3), 439-465.

Ossege, C. (forthcoming). *European regulatory agencies and EU decision-making. Between expertise and influence*. Basingstoke: Palgrave McMillan.

Pollack, M. A. (2015). Theorizing EU policy-making. In H. Wallace, M. A. Pollack, & A. Young (Eds.), *Policy-Making in the European Union* (pp. 13-45). Oxford: Oxford University Press.

PricewaterhouseCoopers (PwC). (2012). *Final report on the review of the European chemicals agency.* Brussels, Belgium: PricewaterhouseCoopers.

Quaglia, L. (2009). *How does expertise influence negotiations in the EU?* (UCD Dublin European Institute Working Paper, 09(09)). Dublin: UCD Dublin.

Radaelli, C. M. (1995). The role of knowledge in the policy process. *Journal of European Public Policy*, *2*(2), 159-183.

Radaelli, C. M. (2009). Measuring policy learning: Regulatory impact assessment in europe. *Journal of European Public Policy*, *16*(8), 1145-1164.

Rissi, C., & Sager, F. (2013). Types of knowledge utilization of regulatory impact assessments: Evidence from Swiss policymaking. *Regulation & Governance*, *7*(3), 348-364.

Rittberger, B., & Wonka, A. (2011). Introduction: Agency governance in the European Union. *Journal of European Public Policy*, *18*(6), 780-789.

Sabel, C. F., & Zeitlin, J. (2008). Learning from difference: The new architecture of experimentalist governance in the EU. *European Law Journal*, *14*(3), 271-327.

Schrefler, L. (2010). The usage of scientific knowledge

by independent regulatory agencies. *Governance*, *23*(2), 309-330.

Shapiro, S., & Guston, D. (2007). Procedural control of the bureaucracy, peer review, and episternic drift. *Journal of Public Administration Research and Theory*, *17*(4), 535-551.

Tversky, A., & Kahneman, D. (1992). Advances in prospect theory: Cumulative representation of uncertainty. *Journal of Risk and Uncertainty*, *5*(4), 297-323.

Vestlund, N. M. (2014). Exploring EU commission-agency relationship: Partnership or parenthood? In M. Bauer & J. Trondal (Eds.), *The palgrave handbook of the european administrative system*. Basingstoke: Palgrave Mcmillan.

Vibert, F. (2007). *The rise of the unelected: Democracy and the new separation of powers*. Cambridge: Cambridge University Press.

Vos, E. (2014). European agencies and the composite EU executive. In M. Everson, C. Monda, & E. Vos (Eds.), *EU agencies in between institutions and member states* (European Monographs, No. 85 ed., pp. 11-47). Alphen aan den Rijn: Kluwer Law International.

**About the Author**

**Dr. Christoph Ossege**

Christoph Ossege works as a Senior Policy Officer in the "SSM Policy and Coordination Unit" at the German Federal Financial Supervisory Authority. He obtained a PhD at Bremen International Graduate School of Social Sciences (BIGSSS), studying the importance of expert knowledge and autonomy for the decision-making quality and legitimacy of European Regulatory Agencies (ERAs). Christoph also held positions as honorary university fellow at the Centre for European Governance, Exeter University, and as a visiting researcher at ARENA—Centre for European Studies at Oslo University.

**Politics and Governance (ISSN: 2183-2463)**
**2015, Volume 3, Issue 1, Pages 114-127**
**Doi: 10.17645/pag.v3i1.82**

Article

# Explaining Differences in Scientific Expertise Use: The Politics of Pesticides

Dovilė Rimkutė

Geschwister-Scholl-Institut of Political Science (GSI), Ludwig-Maximilians-Universität München, 80538 Munich, Germany; E-Mail: dovile.rimkute@gsi.uni-muenchen.de; Tel.: +49-89-2180-9055

Submitted: 1 June 2014 | In Revised Form: 19 September 2014 | Accepted: 7 October 2014 | Published: 31 March 2015

**Abstract**
Despite the growing importance of EU regulatory agencies in European decision-making, academic literature is missing a systematic explanation of how regulatory agencies actually contend with their core tasks of providing scientific advice to EU institutions. The article contributes to the theoretical explanation of when and under what conditions different uses of scientific expertise prevail. In particular, it focuses on theoretical explanations leading to strategic substantiating use of expertise followed by an empirical analysis of single case research. Substantiating expertise use refers to those practices in which an organisation seeks to promote and justify its predetermined preferences, which are based on certain values, political or economic interests. Empirical findings are discussed in the light of the theoretical expectations derived by streamlining and combining the main arguments of classical organisational and institutional theories and recent academic research. Process-tracing techniques are applied to investigate the process by which an EU regulation restricting the use of neonicotinoid pesticides (European Commission, 2013) was developed. The empirical analysis combines a variety of data sources including official documents, press releases, scientific outputs, and semi-structured interviews with the academic and industry experts involved in the process. The study finds that the interaction between high external pressure *and* high internal capacity leads to the strategic substantiating use of expertise, in which scientific evidence is used to promote the inclinations of actors upon which the agency depends most.

**Keywords**
bee health; EU Regulation; European Commission; European Food Safety Authority; neonicotinoid pesticides; risk assessment; scientific expertise

**Issue**
This article is part of the special issue "The Role of Expert Knowledge in EU Executive Institutions", edited by Professor Åse Gornitzka (University of Oslo, Norway) and Dr. Cathrine Holst (University of Oslo, Norway).



## 1. Introduction

Political scientists have observed that European Union agencies have increasingly novel and far-reaching powers (Busuioc, Groenleer, & Trondal, 2012). In addition, they argue that agencies develop over time and under certain circumstances can even gain more functions and autonomy (Coen & Thatcher, 2005; Groenleer, 2009). Coen and Thatcher (2005) note that the role, activities and functions of these non-majoritarian regulators tend to expand, especially in less visible ways, that is, informal roles. An indicator of the rising significance of functional agencies is their central role in dealing with issues that emerge onto the EU regulatory agenda and are highly complex, ill-defined, moving in an unanticipated direction and requiring high levels of scientific expertise (Groenleer, 2009; Thatcher, 2002). However, despite academic work focusing on the growing importance of EU agencies in regulatory areas, the literature is missing a systematic explanation of how EU agencies actually function in their day-to-day activities once they have formally been created (Groenleer,

2009). Tallberg has indicated that "the operation of the agencies, including questions of autonomy and influence have received more limited attention" (2006, p. 207) if compared to the literature on the creation and design of EU agencies (Dehousse, 2008; Kelemen, 2002; Wonka & Rittberger, 2010).

Research looking at how agencies actually contend with their core task of providing scientific advice to EU institutions is particularly scarce. To fill this research gap the article focuses on the EU regulatory agencies acting as functional problem-solvers contributing to the regulatory decision-making process. It contributes to theoretical explanations of when and under what conditions the different uses of scientific expertise prevail. Although this question is essential to the study of epistemic politics, our knowledge on the factors explaining scientific expertise use is fragmented and lacks a systematic theoretical basis (Boswell, 2008; Schrefler, 2010, 2013). Understanding regulatory science practices—success/failure to rely on sound scientific evidence in risk governance—is of particular importance as bodies offering independent expertise play an increasingly relevant role in EU politics and beyond (Busuioc et al., 2012; Coen & Thatcher, 2005; Groenleer, 2009). To this end, one EU regulatory agency—the European Food Safety Authority (EFSA)—has been selected as a starting point to investigate in-depth the phenomenon of expertise use. The article contributes to the academic discussion by deepening our understanding of the causal mechanisms leading to different behaviour patterns in expertise use by focusing on one case within EFSA: the process by which an EU regulation restricting the use of neonicotinoid pesticides (European Commission, 2013) was developed.

In April 2012, the European Commission decided not to follow recommendations coming from the Member States, e.g. France, but to give a mandate to one of EU's regulatory agencies—*the European Food Safety Authority (EFSA)*—to conduct an independent assessment of the neonicotinoid pesticides'[1] risks for bees. Based on the risk assessment the Commission drafted a proposal suggesting that the use of three relatively new and very commonly used pesticides belonging to the neonicotinoid family has to be limited. As a qualified majority was not reached (15 Member States supported the proposal, 4 abstained and 8 voted against), the Commission made a final call to approve the proposal, reasoning that EFSA's scientific conclusions (2013a, 2013b, 2013c) clearly identified that neonicotinoids constitute an acute danger for bees. In 2013, the Commission adopted the proposal. The Commission made an official declaration and stressed that it had chosen to rely on the science-based arguments coming from the independent EU agency rather than the divided positions of Member States and the influence of the pesticide industry. This suggests that EFSA's scientific opinions had a central role and led to a major policy change, i.e. restricting the use of the most commonly used insecticides.

A puzzle arises when one looks at regulatory approaches to neonicotinoids outside the EU. That is, the situation regarding the neonicotinoid family of pesticides in the EU and the US as well as Canada is notably different: while Europe was banning the neonicotinoids for two years, the US and Canada were renewing the provisional registration of neonicotinoids for an additional two years. Yet, many of the same studies EFSA has used to fill information gaps on the side-effects of these pesticides on bees are applicable in the US. At this point, the question is: why different regulatory agencies provide different recommendations on the basis of the same evidence?

To approach this puzzle theoretically, this article explores the literature on expertise use. The role of scientific expertise in regulatory activities has been widely discussed within the political science field of studies (Boswell, 2008, 2009a; Hertin et al., 2007; Radaelli, 1995, 2009; Rimkutė & Haverland, 2014; Schrefler, 2010, 2013; Weiss, 1979). Political scientists are in agreement that expertise can have many functions in the policy/decision-making process. On the contrary, when it comes to explaining when and under what conditions the use of expertise varies, the existing literature leaves several gaps which this article aims to fill.

Firstly, political scientists argue that the task of providing scientific outputs, which are based on expertise rather than interests or values, becomes challenging if uncertainty is high (Boswell, 2008), the heterogeneity of external actors' interests is great (Blom, Radulova, & Arnold, 2008), a deep ideological division is present (Skogstad, 2003) *or* increasing political saliency of an issue at stake can be observed (Schrefler, 2010, 2013). However, a problem occurs when one attempts to grasp which of these explanatory factors (uncertainty, interest heterogeneity, ideological division, level of conflict, political saliency, etc.) are defining, what the theoretical foundations of these explanatory variables are and how they can be combined into a theoretically coherent causal explanation. That is, we lack a detailed theoretical understanding of the mechanisms that induce different behavioural patterns in expertise use. As a result, the article aims to address this fragmentation by approaching the separate explanatory factors as a totality of causal mechanisms leading to the outcome and by systematically theorising how the causal process unfolds. In so doing, the ar-

[1] Neonicotinoids are a new class of insecticides that dominate the market place as they are considered to be effective. They cause paralysis and death of insects damaging plants. However, there are major concerns that neonicotinoid pesticides have untargeted effects as they may play a role in recent pollinator declines. For more information see: http://www.beyondpesticides.org/pollinators/chemicals.php

ticle relies on the literature of sociological institutionalism and argues that an increase in conflict, saliency, etc. is not a sufficient condition to lead to the specific use of expertise. The external environment and demands affect the use of expertise only if they translate into the actual formal and informal pressures towards the expertise organisation, e.g., agency.

Secondly, the above-mentioned stream of literature extensively focuses on the external environment affecting the behaviour of agencies (Skogstad, 2003) and to a significantly smaller extent on the internal environment and capacities of agencies (see Boswell, 2008, 2009b; Schrefler, 2010). That is, the literature aiming to explain the use of expertise has a one-sided focus as it only addresses the internal environment of expertise bodies to a limited degree. On the contrary, the recent academic work focusing on EU agencies' autonomy and functions argues that agencies are multifaceted social bodies that given the circumstances may apply diverse strategies to carry out the tasks they receive from the European Commission in order to reach their goals, survive, or increase influence (Busuioc et al., 2012; Groenleer, 2009). This suggests that both external and internal dimensions have an explanatory power in defining when the different behavioural patterns in expertise use by the agency occur.

Consequently, the article suggests a theoretical explanation derived by streamlining and combining the main arguments of classical organisational and institutional theories and recent academic research. It argues that whether the regulatory policy process can yield efficient and credible problem-solving solutions is contingent upon both (1) the external environment in which a certain scientific output production process takes place, i.e. the level of formal and informal pressure (DiMaggio & Powell, 1983) and (2) the internal agency's capacity to produce science-based outputs (Scott, 1998). By taking this theoretical approach, the article contributes to the discussion by systematically theorising which external and internal circumstances (and how) generate diverse expertise uses. Nonetheless, even though the article introduces all possible theoretical expectations of how the interaction between two causal factors, i.e., formal and informal pressure *and* scientific capacity, lead to the hypothetical outcomes—problem-solving, strategic political, strategic substantiating and symbolic uses of expertise—in the empirical part, the study focuses only on one causal configuration—high formal and informal pressure *and* high internal capacity—which is a combination of conditions expected to lead to the strategic substantiating use of expertise. In so doing, it lays a theoretical basis to study the causal mechanisms leading to expertise use practise in which scientific knowledge is used to rationalise the preferences and interests of the most influential actors in a particular policy arena.

To test this theoretical expectation, the aforementioned case of the neonicotinoid pesticides risk assessment for bees has been selected. The features of the internal and external environment within which EFSA had to develop a scientific conclusion make the neonicotinoid case suitable, i.e., a crucial case (see Rohlfing, 2012), for testing how the environment of EFSA affects its behaviour regarding scientific expertise use. Specifically, the case has been selected as it possesses a high capacity to produce scientific expertise because it successfully mobilised internal human resources: the largest EFSA's unit—the Pesticides Unit—was in charge of drafting scientific outputs. In addition, EFSA had much sound external research evidence at its disposal when drafting scientific conclusions: extensive sources of expertise, data, knowledge, and understanding of honeybees and the neonicotinoid pesticides.

Regarding formal and informal external pressure, the environmental field in which EFSA had to deliver its scientific conclusions consisted of defined opposing positions (laboratory research vs. field research) and the conflicting configurations of inter-organisational structures competing with each other (industry vs. beekeeping associations and NGOs). The biggest chemical manufacturers in Europe, Bayer CropScience, Syngenta AG, have been actively involved in the process and in due course have filed legal actions challenging the Commission's restrictions and accused the Commission of not relying on the entire scientific evidence available and, in so doing, they challenged the EU pesticide regulation. Furthermore, independent academic experts seem to be divided regarding the issue. Besides the divergence between scientific experts, the issue of bee health has received much public attention. The topic was widely discussed in media at national, international and European levels. EU citizens could follow the decision-making process and read about the positions of key actors and the state of scientific evidence. As a result, civil society became actively involved. The activist group Avaaz initiated an online petition to immediately ban the use of neonicotinoid pesticides: 2.6 million people have signed the petition. Civil society expressed its strong feelings and a clear position on where it stands on this issue by organising protests against "mega-corporations" and funding opinion polls showing public sensitivity towards the issue.

This article is organised as follows: In section two, the theoretical approach is introduced, four hypotheses explaining when and under what conditions different behavioural patterns in expertise use occur are presented. Yet, the theoretical discussion focuses on the factors leading to the substantiating use of expertise. In section three, the research design and empirical basis are introduced. Then, section four, the article proceeds with an in-depth analysis of the process in which EFSA contributed to the EU decision-making. Finally, section five presents the key findings, concluding remarks and develops starting points for further research.

## 2. Theoretical Framework: The Use of Expertise

### *2.1. Types of Expertise Use*

Regulation in such policy areas as medicines, food safety, disease prevention or environmental protection contains high uncertainty and necessitates technical expertise, scientific knowledge, sound evidence or risk analysis (Versluis, van Keulen, & Stephenson, 2011). The inclusion of non-majoritarian risk assessors and regulators in the EU regulatory processes offers different policy-making options; that is, policy outputs based on technical expertise and scientific knowledge coming from so called independent expertise bodies rather than from the unevenly distributed preferences of political actors (Héritier & Rhodes, 2011). The main idea behind this line of argument is the separation of two main elements present in the policy-making process: "[…] functional, expert policy-making from broad democratic decision-making processes […]" (Héritier & Rhodes, 2011, p. 163), which, in turn, is supposed to ensure credible decisions.

In the discussion on how expertise is used by non-majoritarian institutions, a functionalist approach brings us to the effective problem-solving dimension by treating non-majoritarian regulators as functional problem solvers possessing expertise and providing policy-makers with the sound information and evidence needed for well-informed decisions (Majone, 1996). The functionalist approach explains the delegation of certain tasks to independent bodies as the need for collective action, the necessity to resolve commitment problems as well as to overcome information asymmetries at the EU level (Thatcher & Stone Sweet, 2002). This approach brings us to the first category, i.e. *problem-solving use of expertise*.

It seems that the EU's institutional architecture in risk governance is built accordingly. The duties of risk assessment and risk management are divided between two different bodies, which are also independent of each other: EU agencies and the European Commission. EU agencies have the task of assessing risk by producing independent and transparent scientific outputs and providing EU institutions, in particular the Commission, with scientific recommendations. This institutional structure is claimed to assure independent and scientifically-based risk assessments which later result in risk management activities assigned to the Commission.

EFSA, for instance, describes itself as the keystone of European risk assessment providing independent scientific advice and communication on various risks related to food and animal feed. The duties of EFSA as specified in its establishing regulation, Regulation (EC) No 178/2002 (European Parliament & Council of the European Union, 2002), entails providing scientific and technical support for the Community's legislation and policies in all fields related to food and animal feed safety-related issues. That is, EFSA receives requests for scientific opinions: "the request outlines what is being asked of EFSA: the issue, the terms of reference, the timeframe, etc." (EFSA, n.d.). Provided that EFSA agrees to accept a request, they and the Commission settle a mandate that specifies the final terms of reference and an agreed deadline. A request results in the provision of a scientific opinion by one of EFSA's Scientific Panels. Besides this, EFSA is entitled to engage in so-called "self-tasking" activities. "Self-tasking" occurs when EFSA detects a particular issue that requires further analysis and research. This institutional architecture assures a separation of scientific and political tasks, which, according to the functional approach, creates an environment in which a problem-solving logic is likely to prevail.

However, the view that agencies provide impartial information seems to be in conflict if one looks at the regulatory bodies not simply as functional problem solvers, but also as self-interested players who may pursue their policy goals and strive to protect their independence and the legitimacy of their institution, which is commonly embedded in an unsettled organisational environment (Coen & Thatcher, 2005; Groenleer, 2009; Majone, 1996). Although agencies clearly use information to solve regulatory policy problems, they may also use expertise strategically to advance their individual or organisational interests, or those of the most influential actors.

In the literature discussing the problems of technocratic legitimacy, so called independent expertise bodies are argued to follow policy preferences imposed by political actors (Shapiro, 1997), which, in turn, results in decisions promoting the distribution of values, rather than credible, apolitical and value-free decisions. Here, expertise is a source of power and legitimacy to non-majoritarian regulators and they may use it in the ways which are advantageous to the agency and its survival, rather than to produce efficient problem-solving outputs (Boswell, 2008, 2009a; Schrefler, 2013). This means that the day-to-day functioning and the actual behaviour of agencies do not necessarily coincide with their image, i.e. providers of "neutral" information which is communicated to the wider public (Groenleer, 2009). This approach brings us to strategic political, strategic substantiating and symbolic expertise use strategies.

The strategic use of expertise is divided in two subcategories in the literature on this topic: (1) *political*—the motivation behind this type of expertise use is related to the goal of increasing political powers, influence, resources or/and to strengthen prestige, status or reputation, and (2) *substantiating*—the agent seeks to support or justify pre-set inclinations (Herbst, 2003; Schrefler, 2010). Furthermore, expertise can also be used to imitate what the most important actors/institutions do and require in general. In so doing, agencies can demonstrate their competences in what they are doing without actually engaging in substantial

activities—*symbolic use of expertise*. In this case, the use of expertise is "triggered by the explicit intention to emulate what has been done by the 'leaders'" (Radaelli, 2009, p. 1150) and similar institutions in the field.

### *2.2. Explaining Differences in the Use of Expertise*

The remainder of this section proceeds in two steps: the general theoretical argument and hypotheses are introduced, followed by a specification of the causal mechanisms leading to the substantiating use of expertise.

DiMaggio and Powell (1983) aim to explain homogeneity of organisational forms, practices, and structures, i.e. incremental change using institutional isomorphism theory. This theory also focuses on the political struggle of organisations to gain power and survive. They argue that one of the reasons for incremental change is formal and informal pressure coming from other organisational bodies upon which an organisation depends. "Coercive isomorphism stems from political influence and the problem of legitimacy" (DiMaggio & Powell, 1983, p. 150). Instead of focusing on one particular actor, the principal, as is emphasised by the P-A model, the sociological institutionalist approach focuses on the analysis of the organisational field. In so doing, the attention is paid to a variety of actors and their relative influence.

This article argues that the level of pressure coming from external actors, both political and non-political, makes a difference because the legitimate right of EU agencies to contribute to EU decision-making plays the key role in the debates on EU agencies' legal powers (Chiti, 2013; Hofmann & Morini, 2012) and *de facto* independence (Maggetti, 2012). That is, EU agencies are supposed to be an engine of expertise-based decisions within the EU and to derive their legitimacy by delivering unbiased and well-informed outputs (Borràs, Koutalakis, & Wendler, 2007). However, to survive and adapt, organisations reflect the formal and informal rules that are institutionalised and considered to be legitimate in a certain environment. For this reason, organisations are structured "around rituals of conformity to wider institutions" rather than concerned with their technical activities and production of outputs, which are technically valid (DiMaggio & Powell, 1983, p. 150). That is, organisational survival and success are defined by other factors than productive activities (Meyer & Rowan, 1991). Despite the fact that organisations are supposed to rely on expertise and evidence that are available, they have to produce outputs and develop behavioural patterns which lead to the increased legitimacy and resources needed to survive and gain credibility. To some extent this depends on an organisation's capacity and strategies to imitate and adapt to the environment in which they are based (DiMaggio & Powell, 1983).

Even though these theoretical approaches stress the importance of external influences on organisations' behavioural strategies, this should not go too far and assume that the causal relationship is one-sided (Scott, 1998). Organisational literature argues that organisations not only have to be seen as a part of the context surrounding them, but also as individual actors in their own right with the power to take action and use resources. The behaviour of an organisation is not only defined by its level of formal and informal pressure and attempts to satisfy key actors by taking a "common interest" on board. The capacity of organisation to produce expertise and manage internal issues is equally relevant (Borràs et al., 2007; Brunsson, 1989; DiMaggio & Powell, 1983; Schrefler, 2010; Skogstad, 2003). At this point, the operational level of the organisation becomes important in defining how epistemic authority is exploited.

The two dimensions are closely related: taken together they are expected to influence the behaviour of organisations. The explanations referring to the diverse strategies for using expertise cannot be seen as a straightforward relationship between simple independent factors, rather they need to be studied in terms of combinations of various conditions which are necessary for the occurrence of a certain outcome. In this article, two interacting conditions—external pressure (high/low) and internal capacity (high/low)—are argued to make a difference to the outcome in the absence of all other conditions related to the outcome (Rohlfing, 2012) (see Table 1).

**Table 1.** Theoretical expectations.

| External dimension / Internal dimension | | Formal and informal external pressure | |
|---|---|---|---|
| | | *Low* | *High* |
| Internal capacity to produce scientific outputs | *High* | Problem-solving | *Strategic substantiating** |
| | *Low* | Strategic political | Symbolic |

Note: *Empirically tested in this article. Strategic substantiating expertise use hypothesis: expertise is used for strategic substantiating purposes (as opposed to problem-solving, political or symbolic purposes) when the level of pressure coming from the external environment is high (as opposed to low) and an organisation has a high scientific capacity (as opposed to low).

In the remainder of this article, a brief introduction to all theoretical expectations is followed by the specification of observable implications. However, the main theoretical and empirical focus remains on the substantiating use of expertise.

*Problem-solving*: Provided that the organisation has a high capacity to produce scientific outputs (i.e. human resources, sound scientific evidence), the absence of interference with an agency's activities enables the agency to direct its activities to the problem-solving use of its available scientific expertise. If the problem-solving use of expertise is employed, one should empirically observe strict adherence to scientific standards: a comprehensive description of the data included in the scientific outputs; a clear description of the inclusion/exclusion criteria of evidence; acknowledgement, identification and description of any uncertainties; and independent and balanced scientific conclusions.

*Strategic political*: An inability to produce outputs based on sound evidence is likely to be concealed in order not to lose status, reputation and power. Organisations that use epistemic authority rather than admit that a task exceeds their capabilities can maximise their legitimacy and increase their resources and survival chances (Scott, 1998). In this case, one should empirically observe the attempts of organisation to enhance prestige/reputation and expand powers/influence (Boswell, 2008; Weiss, 1979). The organisation attempts to establish or maintain its stance in the field. Consequently, expertise is used to gain legitimacy in respect to other actors/institutions, rather than to find a solution to a specific problem (Boswell, 2008).

*Symbolic:* Here, the organisation has to respond to external pressures. However, as the scientific capacity is missing, the organisation follows similar structures and responds to expectations or external pressures by simply accepting what has been done by relevant actors in the field (Schrefler, 2010; Radaelli, 2009). In this case, one should empirically observe the replication and repetition of what has already been concluded by other bodies, e.g., other EU agencies/institutions, international organisations or influential bodies outside the EU, e.g. US authorities.

*Strategic substantiating*: The combination of high capacity and high external demands results in the substantiating use of evidence as the organisation is able to actively respond to the pressures and demands by suggesting convincing outputs in line with the preferences of the most influential actors (DiMaggio & Powell, 1983; Skogstad, 2003). That is, "[t]he greater the dependence of an organisation on another organisation, the more similar it will become to that organisation in structure, climate, and behavioural focus" (DiMaggio & Powell, 1983, p. 154). The organisation has to be prepared to respond to demand by using evidence in the way required of it. Diverse environmental circumstances call for different organisational actions and frame a specific context providing organisations with both constraints and opportunities (Scott, 1998). If the organisation's internal capacity to deal with external pressure matches with the external demands, organisations are likely to adapt and grow in terms of power and influence. For instance, organisations that receive negative/positive responses or requests to revise outputs may seek to revise their goals and outputs so that they meet the external expectations of key actors, both political (i.e., the Commission) and non-political (e.g. organised interest groups).

As the article focuses on uncovering the causal mechanisms leading to substantiation use of expertise, the following paragraphs introduce the expected causal process. The task of providing scientific outputs based on sound expertise becomes challenging if "an increase in the extent of interaction among organisations in the field; the emergence of sharply defined inter-organisational structures of domination and patterns of coalition; an increase in the information load which organisation in a field must contend; and the development of a mutual awareness among participants in a set of organisations that they are involved in a common enterprise" (DiMaggio & Powell, 1983, p. 148) can be empirically observed. To explain, organisations are engaged in interdependent activities, they are dependent on the exchange of information, and have a role in linking (competing) coalitions (Scott, 1998). The task of delivering scientific advice on a specific issue opens room for debate and interaction with external actors; that is, organisations have to collect and review existing evidence, and consult various experts and information sources. As EU agencies are dependent on information provided by external actors, they are open to various sources of evidence in order to be able to make well-informed recommendations. In so doing, a wider variety of actors becomes directly and indirectly involved in the process. This, in turn, might increase the intensity of interaction and interdependence (Brunsson, 1989; Schrefler, 2010, 2013). The intensity of interaction increases with the amount of information coming from various sources that point to different decision options (DiMaggio & Powell, 1983). An increase in the extent of interaction between organisations in the field and interdependence results in the formation of sharply defined inter-organisational structures and coalitions as the participants in a set of organisations become mutually aware of each other's existence and positions regarding an issue at stake (DiMaggio & Powell, 1983). That is, external groups with a common interest form coalitions that have sharply defined positions. The attention of the media intensifies as a result of competing positions and contradictions coming from different sources of information, which, in turn, results in the intensification of saliency of the issue (see Schrefler, 2010). Civil society becomes actively involved because it is able to observe how the process evolves

and what the rival positions of key actors are.

The key players in the environmental field will try to influence those actors who are responsible for drafting scientific outputs and have a great influence on the final outcomes, e.g. agencies (Skogstad, 2003). External actors may use various (formal and informal) instruments to influence the functional organisations. These include: constraints by political actors, e.g. stringent mandates for a specific task, tight monitoring and supervision, or attempts to capture the agency by external organised groups, e.g. by providing expertise (DiMaggio & Powell, 1983). The pressure comes in the form of force, persuasion, or an invitation to join the mainstream position of relevant actors in the environmental field, i.e. the totality of relevant actors (DiMaggio & Powell, 1983).

In order to test the strategic substantiating expertise use hypothesis, one should focus on the inclusion/exclusion criteria of scientific evidence that is considered by the agency: are the exclusion/inclusion criteria clear and transparent; do they follow the established practices of evaluating evidence (instead of introducing new practices)? In the case of substantiating use of expertise, one should empirically observe clear patterns of the one-sided use of scientific evidence that supports the interests of key actors in the environmental field, i.e. the actor on which organisation's survival and legitimacy depend most. If the agency deliberately collects evidence that supports a specific position and aims to confront opponents, rather than relying on a full range of scientific evidence, this implies a substantiating application of expertise (Boswell, 2008; Hertin et al., 2007). Evidence that coincides with preferred positions, which are made based on political or economic interests, is employed to take decisions and to gain superiority over alternative positions (Hertin et al., 2007). According to Boswell (2009b), the substantiating use of knowledge enables the agent to gain support and approval for the choices they make when taking important decisions.

## 3. Research Design

This article proceeds with the within-case level analysis to understand the theory-based explanations that specify the linkage between causal factors and outcomes (Blatter & Haverland, 2012; Rohlfing, 2012). The empirical analysis is centred on a single case, as such an approach facilitates the theoretical goals of the article, i.e. to provide sufficient proof of a causal relationship and to trace whether the causal process unfolded as expected. An in-depth analysis of one particular case allows explaining the phenomenon as fully as possible, which is needed when tracing how causal mechanisms unfold. In so doing, the article fills a research gap left by political scholars investigating the phenomenon of expertise use. However, the single case research strategy selected for this research entails some weaknesses, i.e. it does not allow generalisation covering a wider range of cases (Rohlfing, 2012). Therefore, further research is needed to test if the same patterns unfold in other EU/national agencies or international/national/regional independent expertise bodies providing scientific advice.

Cases that meet the theoretical requirements, i.e. high capacity and high pressure, are suitable for testing the hypothesis (Rohlfing, 2012). The case selection strategy applied in this article—typical cases[2]—allows for generalisation regarding other cases which are close to the selected case in terms of distribution, i.e. meet the same causal conditions. That is to say, the empirical conclusions regarding neonicotinoid pesticides can arguably be used as a basis for generalisation for cases within EFSA that have been developed under the same internal and external conditions: high capacity and high external pressure. Such cases could be GMOs, nutrition, bisphenol A, flavourings, food additives, etc. However, one must note that the conditions under which the agency has to provide expertise can vary over time. For instance, EFSA has conducted risk assessments on bisphenol A several times, each time under different conditional combinations. Therefore, only the risk assessment on bisphenol A in relation to baby feeding bottles has undergone similar processes to the neonicotinoids case. In short, generalisation is not issue-specific. On the contrary, generalisation is plausible in terms of the combinations of various conditions that are necessary for the occurrence of a certain outcome.

To increase the validity of empirical data this study relies on data triangulation. Several sources of independent evidence are employed: publicly available information, e.g. scientific outputs, press releases and ten semi-structured interviews; direct observations, e.g. public speeches at the events attended.[3] The interviewees were selected based on their activities regarding the health of bees and scientific expertise (only scientific experts were interviewed to keep the discussion at the scientific level). The selected interviewees are the key scientific experts, both academic (5 interviewees) and industry (5 interviewees) and have directly or indirectly contributed to the development of the neonicotinoid regulation. The interviews were conducted between the 18th of November 2013 and the 4th of February 2014. The length of the interviews varies from 39 to 82 minutes.

[2] Typical cases refer to cases which are representative within the group they are assigned to and different from the group they do not belong to (see Rohlfing, 2012).

[3] Attended events: (1) EFSA Scientific Colloquium XIX—Biodiversity as Protection Goal in Environmental Risk Assessment for EU, 7th–28th November 2013, organised by EFSA, Parma. (2) Conference for Better Bee Health, 7th April 2014, organised by the European Commission, Brussels.

## 4. Empirical Analysis

### *4.1. Two Interacting Explanatory Factors: High Internal Capacity and High Formal and Informal Pressure*

The Commission's decision to give a mandate to EFSA to conduct an independent scientific evaluation on the neonicotinoid pesticides has its roots in recent scientific developments and the work of academic scientists who prompted the Commission to address the risks of neonicotinoids to bees.[4] The Commission requested a review of this new scientific knowledge regarding the role of active neonicotinoid substances, reasoning that the neonicotinoid pesticides have already been under scrutiny in the academic community - scrutiny which resulted in new findings on the issue.[5] In recent years, scientists' attention focused on neonicotinoids which, in turn, encouraged academic and non-academic experts from advancing scientific understanding of the effects of neonicotinoids on bees: "The whole discussion picked up speed after the Colony Collapse Disorder phenomenon in the US in 2006, there were a lot of scientific projects in the area, basically a lot of laboratory studies."[6] Industry, on the contrary, was interested in maintaining its product's place on the market, and therefore invested a lot of money in field research to provide evidence that the product is safe. Consequently, there is more expertise, data, knowledge, and understanding of honeybees and the neonicotinoid pesticides relative to other stressors affecting bee health. Pesticides and honeybees have featured heavily in discussions on the health of bees.[7] Experts argue that existing knowledge in the field is relatively rich and the capacity of EFSA to address this issue was high as they managed to mobilise internal resources, i.e. the Pesticides Unit.

However, besides the high capacity of EFSA to produce scientific outputs on the topic, constant external demands can also be empirically observed. To illustrate, concerns about neonicotinoids were initially raised in France after the launch of imidacloprid and its use as a seed treatment of sunflowers.[8] Concerns among French beekeepers persisted and the French regulatory authorities eventually responded in a precautionary manner by banning the product. Data was re-evaluated from time to time, and the ban on neonicotinoids was lifted and re-established. The academic expert suggested that "to some extent it looks as if French authorities have possibly responded to whatever pressures from the different stakeholders being passed from whether—the ministry, the government, industry, beekeeping or farming communities—differently at different points in time. But the way they switched from allowing to not allowing suggests that there were some pressures applied."[9] Eventually, this political debate was transferred to the EU level.

EU institutions, i.e. the European Parliament and the European Commission, called for actions regarding the neonicotinoid pesticides risk assessment for bees at the EU level as the European bee population plays a vital role in both pollination and the production of honey and other products within the EU: pollinators contribute 22 billion Euros each year to European agriculture as 84 per cent of crops need insect pollination, more than 80 per cent of wild flowers require pollinators to reproduce (European Commission, 2014). For this reason, the decline of the bees raises strong concerns in the European Community. The issue has received a particular attention from the European institutions. For instance, the European Parliament played a significant role in bringing the issue to the EU agenda.[10] The European Commission has laid down specific EU rules to protect and maintain the health of bees within the EU.

The EFSA's scientifically-driven process of understanding the risks caused by the pesticides was particularly monitored and strongly criticised or supported by a wide variety of institutional and non-institutional external actors.[11] The case can be characterised as having many external actors actively involved in the process of scientific output drafting, including both political and non-political actors, e.g. industry, academics, national regulatory authorities, and civil society. Scientific experts invariably refer to high external pressure when they discuss the performance of EFSA and the Commission's commitment to taking decisive action in this particular case. According to the interviewees "strong political NGO pressure (media pressure came later) created a very difficult environment for the European Commission."[12] Interviewees confirm that the bee issue involves a lot of "political dynamics and there was a lot of pressure on the European Parliament by the NGOs and individual representatives in the Parliament." One interviewee stated, "I have been personally present when the European Commission presented the EFSA results and they clearly admitted in this presentation that there was a lot of political pressure."[13] The case can be characterised as politically contested as in recent decades the issue of bees' health has gained significant attention within the EU and beyond Europe.

[4] Academic expert #2, Industry expert #3, #7
[5] New scientific evidence available: e.g., Henry et al. (2012), and Whitehorn, O'Connor, Wackers and Goulson (2012).
[6] Industry expert #10
[7] Academic expert #4
[8] Industry expert #3; Academic expert #6
[9] Academic expert #6
[10] Industry expert #3, Academic expert #1 and #6
[11] All scientific experts
[12] Industry expert #3
[13] Industry expert #8

This, in turn, increased the flow of information as actors possessing information supporting their position were highly interested in providing EFSA with the evidence they possessed. The key actors in the environmental field had strongly contradicting positions and scientific evidence supporting these positions. For instance, pesticide manufacturers flooded EFSA with field research evidence, while independent academics provided EFSA with laboratory research results. NGOs and beekeeping associations provided monitoring data, arguing that the leading cause of bee population decline was neonicotinoids. As a consequence, the volume of information coming from outside was exceedingly high and contained diverse and opposing conclusions. On one side there were academics causing alarm by referring to the laboratory studies, while on the other side industry actors invariably referred to field research where neonicotinoids were shown to have no effect to honeybee mortality: "It was high profile—a lot of interest from the media, a lot of research funding for studies looking into the danger posed to bees by neonicotinoids, lots of articles published in the last two years. Many such articles suggested a problem, identified a potential hazard, or provided neonicotinoids as a possible explanation for why we see a decline in the health of bees. Yet studies carried out under field conditions told a different story."[14]

The scientific debate was polarised along political lines, i.e. participants' economic and ideological well-being was at stake. Opposing coalitions were built to promote their own interests and to respond in a united fashion. One such coalition was made up of industry actors, while the other was the Commission strongly pressured by NGOs and beekeeper associations.[15] The biggest industry companies united by attracting academics who claimed that the regulatory decision and process was highly flawed and patterns of issue politicisation can be observed. "We [industry] have got an association that can represent us—the European Crop Protection Association. On the European Commission side it was easier for them because they are getting a consistent message."[16]

Besides differences of opinion among scientific experts, the issue of bee health has received a large amount of public attention. The topic was widely discussed in the media at national, international and European levels. "Bees are an emotional topic. With all the publicity that you have when you're talking bees, especially on the governmental organisation level, the pressure is high. It's clear that science is not the only basis, but to which parts other factors play into that. Most scientists, a great majority of them, are very uncomfortable how the public debate has developed."[17]

The article proceeds with an empirical analysis of how the specified causal configuration—high formal and informal pressure and high internal capacity to produce scientific outputs—led to the outcome.

### *4.2. Strategic Substantiating Use of Expertise?*

This section focuses on the "scientific" elements, i.e. it aims to trace how scientific outputs were developed by the main scientific expertise body, i.e. the European Food Safety Authority, whose influence was defining and has led to the major policy change, i.e. the restriction of relatively new and most commonly used insecticides.

#### 4.2.1. A Tale of two Regulatory Approaches: Laboratory Research vs. Field Research

As already discussed, there are contradictions to be found when comparing scientific evidence coming from laboratory studies and field research. Academic research conducted in laboratory conditions indicates the high risks associated with neonicotinoids, while industry-funded research, i.e. field research, concludes that under real conditions, neonicotinoids do not put bees at an unacceptable risk. *Field research* is recognised as typically more complex, incorporating many different facets and tends to be given certain prominence in regulatory decision-making due to the inherently more realistic exposure scenarios incorporated into it.[18] There is recognition that *laboratory research* is done in a simple environment, e.g. "for honeybees that involve individuals isolated in a glass cage, where they are not exhibiting normal behaviours or have no opportunity to avoid exposure to pesticides."[19] For this reason, laboratory studies are presented as the worst-case scenario but regarded as relevant for their repeatability and higher statistical power.

Academic scientists agree that the existing scientific knowledge is not in a position to relate the interpretation from laboratory to field research, and more data is needed.[20] Academic experts state that, in terms of published work, they know that certain doses can lead to certain types of effects. However, scientific knowledge is limited: scientists do not know if these effects necessarily happen in field situations. They also do not know precisely what residues bees are exposed to in landscapes with diverse crops. Therefore, pesticides are recognised as a highly serious risk, however, there are many unanswered questions. Academic experts admit that "as a scientific community, we are unfortunately not in the position to give people the answers they are

[14] Industry expert #7
[15] Industry experts
[16] Industry expert #7
[17] Industry expert #10
[18] Academic expert #2, #6
[19] Academic expert #6
[20] Academic expert #6

looking for now."[21] Consequently, EFSA had a difficult task: to assess the contradicting evidence and to decide which evidence was valid and why. If expertise is used by EFSA for problem-solving purposes in this particular case, one should empirically observe conclusions independent from external interests, clear inclusion/exclusion criteria for evidence used in scientific outputs, and adherence to other scientific standards (as specified in Section 2.2). On the contrary, if scientific expertise is used for substantiating purposes, one should empirically observe the clear patterns of the one-sided use of scientific evidence that supports the interests of the key actors in the environmental field (see Section 2.2.).

As noted above, the Commission has been under a lot of pressure from various organised groups to take a decision regarding neonicotinoid pesticides.[22] Consequently, it issued a request (European Commission, 2012) to EFSA for a risk assessment of neonicotinoids related to their effect on the health of bees in light of new scientific knowledge and monitoring data. The point to note in the request is that the Commission asked EFSA to take into account the *forthcoming* "guidance document": EFSA scientific opinion on the science behind the development of a guidance document on the risk assessment of plant protection products on bees. The "guidance document" introduced a higher level of scrutiny for interpretation of field studies (EFSA, 2013d). This new EFSA scientific opinion revised and improved the level of protection regarding bees when evaluating risks posed by pesticides.

The guidance document was introduced in the middle of the neonicotinoid pesticide risk assessment and can be considered to have been a "game changer". The guidance document is seen as controversial by industry, national regulatory agencies and other implementing bodies; that is, it has received over a thousand comments from all stakeholders, including industry, and was not completely finalised by the time neonicotinoids were being evaluated (the document was finalised in July 2013 while the neonicotinoid pesticide review was published in January 2013). The majority of the data submitted by applicants, i.e. pesticide manufacturers, did not meet the new requirements and was considered inconclusive and not taken into account when drafting scientific conclusions regarding pesticides. "An EFSA review of the science behind the risk assessment for pesticides in bees—an opinion—a very large European document—changed the whole testing and risk assessment paradigm for bees, and then they assessed our [industry] existing data against that. Our data has been generated under the existing guidelines. When they evaluated this data they discounted a large proportion of data we had already conducted, and then the use of this data was not taken into account in their conclusions."[23] Consequently, when industry-produced data was held up to the new scientific standards set out in the guidance document, there were data gaps identified for many registered uses because none of field research that proved safe use were found to meet the new scientific standards. Industry claims: "The large number of data gaps identified in the EFSA review incorrectly gives an impression that industry has been negligent and ignored risks" (Campbell, 2013, p. 53). This suggests that extra efforts were taken by the Commission (and followed by EFSA) to justify the inclusion of studies proving a risk and exclude studies suggesting that there was no risk. This is an empirical observation suggesting that the evidence was used for substantiating purposes because without the introduction of new assessment standards—the new guidance document—the EFSA's scientific conclusions might have been different.

To illustrate, as discussed in the introduction of the article, the policy outcomes of EU and US regulatory authorities were different, i.e. neonicotinoids were restricted in the EU to prevent a decline in the bee population while the Environmental Protection Agency (EPA, the US regulatory authority) has a different approach and risk communication strategies. EPA claims to focus on the safe use of neonicotinoids, rather than restricting or banning the product, even though initial concerns about the phenomenon of Colony Collapse Disorder were raised in the US (US Environmental Protection Agency, 2013). The differences between the two approaches are rooted in the debate over which evidence can be counted as valid, i.e. laboratory research or field research. EPA decided not to exclude any source of evidence and this led to a conclusion allowing the use of pesticides and managing and controlling the risks posed by neonicotinoids. EPA explicitly notes that they base "pesticide regulatory decisions on the entire body of scientific literature, including studies submitted by the registrant, journal articles and other sources of peer-reviewed data."[24] On the contrary, EFSA was implicitly asked to follow a "conservative" approach by applying a stringent validation criterion towards evidence coming from pesticide manufacturers, which led to the exclusion of the majority of industry-funded research, i.e. field research:[25] "EFSA was given a narrow mandate and the time available to complete the reviews was extremely limited. Consequently, EFSA was pushed into taking an extremely critical and highly conservative approach in their review, identifying a long list of potential data gaps and risks to bees."[26] As a result, EFSA's conclusions exclusively relied on labora-

[21] Academic expert #6

[22] Industry and academic experts

[23] Industry expert #7, the same point was mentioned by all industry experts

[24] See US Environmental Protection Agency (2013)

[25] See Campbell (2013)

[26] Industry expert #7

tory research coming from academic scientists.

Industry experts believe that the most serious weakness of the scientific conclusions of EFSA is that a considerable part of the existing evidence from field research has been rejected and considered unusable in risk assessment.[27] They believe that this approach "demonstrates a bias in the standard of proof required. Evidence of potential harm seems to be easily accepted, whilst evidence of safety is subject to deep scrutiny. So even though there is a large body of semi-field and field work that shows no impact on long term health and survival of honeybee colonies, this is poorly accounted for in the risk assessment or entirely excluded, even where EFSA acknowledge the work to be of a high quality."[28] They claim that science is used politically when the reference to theoretical risks is made.[29] The essence of the concept of the substantiating expertise use is precisely communicated in the interviews; industry expert stated, "that was not my impression that they fundamentally prefer academic data over industry data, but I have noticed a certain focus to rather consider data that is substantiating a concern rather than data not supporting the concern."[30] Industry claims that the exclusion of field research data was a case-by-case decision, and EFSA (by taking into account the mandate of the Commission) were looking for a bigger or smaller perceived shortcoming in each study that led to their factual invalidation.

The interviews of scientific industry experts suggest that biased inclusion/exclusion criteria were used to evaluate evidence used in the scientific conclusions of EFSA. This might cast some doubts, as the pesticides industry has an enormous economic interest in keeping their products in the market. However, if one follows the entire process and triangulate data sources (i.e. relying on official documents) to find additional empirical evidence, one observes that the Commission and EFSA made extra efforts to introduce the new guidance document during the process of neonicotinoid risk evaluation. One could conclude that EFSA's scientific conclusions were in line with the problem-solving logic, if the new guidance document had been finalised before the neonicotinoid risk evaluation had started and if industry had had time to provide new data in line with the new guidelines. However, the process unfolded in reverse as external political and non-political pressures to take conclusive action against pesticides remained.

Given the scientific uncertainty, i.e. controversy, between field and laboratory research, "the political pressure was to apply the precautionary principle, which usually leans towards restriction or a ban. EFSA's report says simply "we need more evidence to be conclusive."[31] There has been a considerable amount of scientific data drawing into doubt the safety of these chemicals in relation to the health of bees and the academic expert confirmed: "If there is a benefit of doubt, it is on the side of bees. If industry in the coming years can provide evidence that this is not justified, these chemicals can be put on the market again."[32] Scientific experts agree that the precautionary principle was applied in response to high public interest and intense campaigning by many organisations—"it was important to be doing something."[33] Furthermore, Tonio Borg, a Commissioner of the DG for Health and Consumers has publicly stated: "it was my personal concern to take a decisive action."[34]

To conclude, the principle of precaution as the Commission defines it gives more freedom to justify stricter regulation in the absence of scientific certainty of actual risks. According to Majone (2002) the logic of the precautionary principle is likely to produce undesirable consequences as it can be easily misused to "justify protectionist measures" and it may promote distributive consequences that are against the logic of the problem-solving use of expertise. Such a model can lead to extrapolation from a toxicological experiment with the most sensitive species and maximum doses to conclusions referring to high risks in the realistic conditions (Majone, 2002). For instance, in the neonicotinoids case, the problem of extrapolation from laboratory research to risk in field conditions can be observed. This observation hints at broader generalisation, as the precautionary principle in the EU is used beyond food safety issues (e.g. genetically modified organisms). The principle of precaution is also used to ensure a higher level of environmental protection at the EU (see Tosun, 2013).

## 5. Conclusions

Recent academic literature has increasingly focused on EU agencies' formal and informal powers, and novel and far-reaching functions and influence. The article discusses these issues by examining the scientific day-to-day activities of one EU agency—the European Food Safety Authority (EFSA)—to trace how scientific expertise is used when the agency has to provide a scientific conclusion under a particular set of environmental conditions, i.e. high formal and informal pressure *and* high internal capacity to produce scientific outputs.

In the case of neonicotinoid pesticides, the European Commission made it explicit that the EFSA's scientific conclusions and not the Member States' positions

[27] Industry expert #3, #5, #7, #8, #10 and Campbell (2013).
[28] See Campbell (2013)
[29] See note 27
[30] Industry expert #5
[31] Industry expert #3
[32] Academic expert #1
[33] Academic expert #6
[34] Official speech at the Conference for Better Bee Health, 7th April 2014, organised by the European Commission, Brussels.

were crucial in the regulation restricting the use of pesticides. This leads us to believe that the need for expertise is one of the factors influencing the shifting authority from classical EU institutions and the unevenly distributed preferences of Member States to new non-state actors, i.e. agencies. However, an in-depth analysis of a single case study conveys a slightly different message: particular environmental circumstances call for different organisational actions and frame a specific context providing expertise organisations with *constraints* to use expertise in a required way and *opportunities* to grow in terms of power and influence, provided that the organisation acts as expected.

The article concludes that the interaction between high external pressure *and* high internal capacity to respond to this pressure leads to substantiating use of expertise, in which scientific evidence is used to promote the inclinations of those actors on which the agency depends most. One cannot observe the problem-solving logic because the process in which EFSA delivered scientific outputs did not follow common standards: extra measures were taken to rely on one particular source of expertise and scientific conclusions were unbalanced and vague. Symbolic practices were also absent as EFSA did not imitate what national agencies or the US authorities had concluded, on the contrary, it conducted a new risk assessment, introducing a different approach. Finally, EFSA did not engage in strategic political activities.

Multiple sources of evidence suggest that a strategic substantiating expertise use logic was followed. Empirical evidence of a single case study suggests that the line between risk assessor (EFSA) and risk manager (the Commission) is blurred, as the Commission in this particular case played an important role in predefining the conditions under which specific tasks should be carried out. As was illustrated with the comparison between the US and the EU, the differences between two approaches, i.e. EFSA and EPA (US authorities), are rooted in the debate as to which evidence counts as valid and reliable for drawing regulatory conclusions. The article argues that the narrow and stringent mandate provided a basis for one-sided scientific conclusions right from the outset. EFSA was implicitly asked to apply a rigid validation criterion towards evidence coming from pesticide manufacturers, i.e. field research, which led to the exclusion of the majority of industry-funded research. This, in turn, led to the more rigorous regulation on the neonicotinoid pesticides that was introduced in the logic of the precautionary principle.

However, this conclusion should not go too far and neglect the influence of other actors in the environmental field, such as various NGOs, various associations, media and strong public feeling regarding the issue. Non-political actors exercising informal pressures were active not only during the process of risk assessment, but also before the Commission made its request to EFSA to assess the risks neonicotinoids posed to bees. EFSA was pressured to use substantiating strategies to support strong public feeling, values and interests in the environmental field. In so doing, EFSA was highly successful in maintaining public trust by demonstrating its independence of the interests of industry and by exclusively relying on academic evidence, i.e. hypothetically the most reliable and unbiased evidence, which is crucial given the mission of EFSA - to gain and maintain public trust in its activities on food safety assurance. It seems that empirical evidence from the case study supports the theoretical argument: expertise organisations are likely to survive and grow in terms of power and influence if the organisation's internal capacity to deal with external pressure matches with external demands.

This study develops starting points for further research. The article has introduced a general theory explaining the differences in scientific expertise use, which have been tested only partly and in one particular context, i.e. one issue within one EU regulatory agency. However, the theoretical argument of the article could be said to be relevant to all expertise bodies acting on the basis of scientific expertise, including the Commission, comitology committees, national agencies, international organisations, or other executive, regulatory or information bodies whose expertise feeds into various policy-making stages. Testing the theoretical explanations outlined in the article in different contexts would clearly be a requisite for further research.

**Acknowledgements**

The article was presented at the ECPR General Conference in Glasgow, at the 5th ECPR Graduate Student Conference in Innsbruck, and at the Ludwig-Maximilians-Universität colloquium in Munich. The author thanks the participants of these conferences, as well as Berthold Rittberger, Sandra Eckert, Eva Ruffing, Holger Straßheim, Verena Simmel, Bernhard Zangl, Michael Blauberger, Alexander Spencer, Andreas Kruck, Karina Shyrokykh, Stefan Jagdhuber, Nina Guérin, Moritz Weiß and last but not least Andrius Tilvikas for their insightful comments and suggestions. Eugenija Golubova deserves credit for transcribing the interviews. I also thank the anonymous reviewers and the guest editors, Åse Gornitzka and Cathrine Holst, for their highly constructive comments.

**Conflict of Interests**

The author declares no conflict of interests.

**References**

Blatter, J., & Haverland, M. (2012). *Designing Case Studies. Exploratory Approaches in Small-n Re-*

*search*. Houndsmill, Basingstoke, Hampshire: Palgrave Macmillan

Blom, T., Radulova, E., & Arnold, C. (2008). Theorizing modes of governance in the EU: Institutional design and informational complexity. *European Governance Articles*. Retrieved from http://www.mzes.uni-mannheim.de/projekte/typo3/site/fileadmin/wp/pdf/egp-connex-C-08-04.pdf

Borràs, S., Koutalakis, C., & Wendler, F. (2007). European agencies and input legitimacy: EFSA, EMEA and EPO in the post-delegation phase. *Journal of European Integration*, *29*(5), 583-600.

Boswell, C. (2008). The political functions of expert knowledge: Knowledge and legitimation in European Union immigration policy. *Journal of European Public Policy*, *15*(4), 471-488.

Boswell, C. (2009a). Knowledge, legitimation and the politics of risk: The functions of research in public debates on migration. *Political Studies*, *57*, 165-186.

Boswell, C. (2009b). *The Political Uses of Expert Knowledge: Immigration Policy and Social Research*. Cambridge: Cambridge University Press.

Brunsson, N. (1989). *The Organization of Hypocrisy: Talk, Decisions and Actions in Organizations*. Chichester: John Wiley & Sons.

Busuioc, M., Groenleer, M., & Trondal, J. (Eds.). (2012). *The Agency Phenomenon in the European Union: Emergence, Institutionalisation and Everyday Decision-making*. Manchester: Manchester University Press.

Campbell, P. J. (2013). Declining European bee health: Banning the neonicotinoids is not the answer. *Outlooks on Pest Management.* Retrieved from http://www3.syngenta.com/country/ca/SiteCollectionDocuments/Corporate/Campbell_2013_E.pdf

Chiti, E. (2013). European agencies' rulemaking: Powers, procedures and assessment. *European Law Journal*, *19*(1), 93-110.

Coen, D., & Thatcher, M. (2005). The new governance of markets and non-majoritarian regulators. *Governance*, *18*(3), 329-346.

Dehousse, R. (2008). Delegation of powers in the European Union: The need for a multi-principals model. *Western European Politics, 31*(4), 789-805.

DiMaggio, P. J., & Powell, W. W. (1983). The iron cage revisited: Institutional isomorphism and collective rationality in organizational fields. *American Sociological Review*, *48*(2), 147-160.

EFSA. (n.d.). Requests and mandates. Retrieved from http://www.efsa.europa.eu/en/request/requests.htm

EFSA. (2013a). Conclusion on the peer review of the pesticide risk assessment for bees for the active substance clothianidin. Retrieved from http://www.efsa.europa.eu/en/efsajournal/pub/3066.htm

EFSA. (2013b). Conclusion on the peer review of the pesticide risk assessment for bees for the active substance imidacloprid. Retrieved from http://www.efsa.europa.eu/en/efsajournal/pub/3068.htm

EFSA. (2013c). Conclusion on the peer review of the pesticide risk assessment for bees for the active substance thiamethoxam. Retrieved from http://www.efsa.europa.eu/en/efsajournal/pub/3067.htm

EFSA. (2013d). Press release: EFSA identifies risks to bees from neonicotinoids. Retrieved from http://www.efsa.europa.eu/en/press/news/130116.htm?wtrl=01

European Commission. (2012). Mandate for scientific and technical assistance (EFSA Conclusions) in accordance with Article 21 of Regulation (EC) No 1107/2009 to perform an evaluation of neonicotinoids as regards the risk to bees. Retrieved from http://ec.europa.eu/food/animal/liveanimals/bees/docs/1107_2009_en.pdf

European Commission. (2013). Implementing Regulation (EU) No 540/2011, as regards the conditions of approval of the active substances clothianidin, thiamethoxam and imidacloprid, and prohibiting the use and sale of seeds treated with plant protection products containing those active substances. *Official Journal of the European Union.* Retrieved from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:139:0012:0026:EN:PDF

European Commission. (2014). Honey bees. Retrieved from http://ec.europa.eu/food/animal/liveanimals/bees/index_en.htm

European Parliament, & Council of the European Union. (2002). Regulation (EC) No 178/2002 European Parliament and the Council of the European Union of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. *Official Journal of the European Union.* Retrieved from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:031:0001:0024:EN:PDF

Groenleer, M. (2009). *The Autonomy of European Union agencies: A Comparative Study of Institutional Development.* Delft: Eburon.

Henry M., Beguin, M., Requier, F., Rollin, O., Odoux, J.-F., Aupinel, P., Aptel, J., Tchamitchian, S., & Decourtye, A. (2012). A common pesticide decreases foraging success and survival in honey bees. *Science*, *336*(6079), 348-350.

Herbst, S. (2003). Political authority in a mediated age. *Theory and Society, 32*, 481-503.

Héritier, A., & Rhodes, M. (2011). Conclusion: New Modes of Governance: Emergence, Execution, Evolution and Evaluation. In A. Héritier & M. Rhodes (Eds.), *New Modes of Governance in Europe,* 163–174. Houndsmill, Basingstoke, Hampshire: Palgrave Macmillan.

Hertin, J., Turnpenny, J., Jordan, A., Nilsson, M., Russel, D., & Nykvist, B. (2007). Rationalising the policy

mess? Ex ante policy assessment and the utilisation of knowledge in the policy process. *Environment and Planning, 41*(5), 1185-1200.

Hofmann, H. C. H., & Morini, A. (2012). Constitutional aspect of the pluralisation of the EU executive through "agencification". *European Law Review, 4*(37), 419-443.

Kelemen, D. R. (2002). The politics of "Eurocratic" structure and the new European agencies. *West European Politics*, *25*(4), 93-118.

Maggetti, M. (2012). *Regulation in Practice*. Colchester: ECPR Press.

Majone, G. (1996). *Regulating Europe*. London: Routledge.

Majone, G. (2002). What price safety? The precautionary principle and its policy implications. *Journal of Common Market Studies*, *40*(1), 89-109.

Meyer, J., & Rowan, B. (1991). Institutionalized Organizations: Formal Structure as Myth and Ceremony. In W. Powell & P. DiMaggio (Eds.), *The New Institutionalism in Organizational Analysis*. Chicago, Illinois: University of Chicago Press.

Radaelli, C. M. (1995). The role of knowledge in the policy process. *Journal of European Public Policy, 2*(2), 159-183.

Radaelli, C. M. (2009). Measuring policy learning across Europe: Regulatory impact assessment in comparative perspective. *Journal of European Public Policy*, *16*(8), 1145-1164.

Rimkutė, D. & Haverland, M. (2014). How does the European Commission use scientific expertise? Results from a survey of scientific members of the Commission's expert committees. *Comparative European Politics.* doi:10.1057/cep.2013.32

Rohlfing, I. (2012). *Case Studies and Causal Inference: An Integrative Framework*. Basingstoke: Palgrave Macmillan.

Schrefler, L. (2010). The usage of scientific knowledge by independent regulatory agencies. *Governance, 23*(2), 309-330.

Schrefler, L. (2013). *Economic Knowledge in Regulation: the Usage of Scientific Knowledge by Independent Regulatory Agencies.* Colchester: ECPR Press.

Scott, C. (1998). Agencies for European Regulatory Governance: A Regime Approach. In D. Geradin, R. Muñoz, & N. Petit (Eds.), *Regulation through Agencies in the EU. A New Paradigm of European Governance* (pp. 67-88). Cheltenham: Edward Elgar.

Shapiro, M. (1997). The problems of independent agencies in the United States and the European Union. *Journal of European Public Policy*, *4*(2), 276-297.

Skogstad, G. (2003). Legitimacy and/or policy effectiveness? Network governance and GMO regulation in the European Union. *Journal of European Public Policy*, *10*(3), 321-338.

Tallberg, J. (2006). Executive Politics. In K. E. Jørgensen, M. Pollack, & B. Rosamond (Eds.), *Handbook of European Union politics* (pp. 195-212). London: SAGE.

Thatcher, M., & Stone Sweet, A. (2002). Theory and practice of delegation to non-majoritarian institutions. *West European Politics*, *25*(1), 1-22.

Thatcher, M. (2002). Delegation to independent regulatory agencies: Pressures, functions and contextual mediation. *West European politics*, *25*(1), 125-147.

Tosun, J. (2013). How EU handles uncertainty risks: Understanding the role of the precautionary principle. *Journal of European Public Policy*, *20*(10), 1517-1528.

US Environmental Protection Agency. (2013). *Colony Collapse Disorder: European Bans on Neonicotinoid Pesticides*. Retrieved from http://www.epa.gov/pesticides/about/intheworks/ccd-european-ban.html

Versluis, E., van Keulen, M., & Stephenson, P. (2011). *Analyzing the European Union Policy Process*. Houndmills: Palgrave MacMillan.

Weiss, C. H. (1979). The many meanings of research utilization. *Public Administration Review*, *39*, 426-431.

Whitehorn, P. R., O'Connor, S., Wackers, F. L., & Goulson, D. (2012). Neonicotinoid pesticide reduces bumble bee colony growth and queen production. *Science*, *336*(6079), 351-352.

Wonka, A., & Rittberger, B. (2010). Credibility, complexity and uncertainty: Explaining the institutional independence of 29 EU agencies. *West European Politics*, *33*(4), 730-752.

**About the Author**

**Dovilė Rimkutė**

Dovilė Rimkutė has been a PhD candidate in Political Science at the Ludwig-Maximilians-Universität (LMU) München since March 2014. Before joining LMU she held a Marie Curie scholarship for Early Stage Researchers and worked as a Research Associate at the Mannheim Centre for European Social Research. Her research interests cover a range of European Union policy/decision-making topics, however, risk regulation and evidence-based governance in EU regulatory processes and factors affecting it take a central role. In her current research, Dovilė investigates the effect of external demands and internal capacities of European Union regulatory agencies on the patterns of scientific expertise use.

**Politics and Governance (ISSN: 2183-2463)**
**2015, Volume 3, Issue 1, Pages 128-138**
**Doi: 10.17645/pag.v3i1.95**

Article

# The Implementation of the REACH Authorisation Procedure on Chemical Substances of Concern: What Kind of Legitimacy?

Christoph Klika

Faculty of Arts and Social Sciences, Maastricht University, 6200MD Maastricht, The Netherlands;
E-Mail: c.klika@maastrichtuniversity.nl

Submitted: 2 June 2014 | In Revised Form: 20 September 2014 | Accepted: 19 November 2014 |
Published: 31 March 2015

**Abstract**
With the increasing "agencification" of policy making in the European Union (EU), normative questions regarding the legitimacy of EU agencies have become ever more important. This article analyses the role of expertise and legitimacy with regard to the European Chemicals Agency ECHA. Based on the REACH regulation, so-called Substances of Very High Concern (SVHCs) are subject to authorisation. The authorisation procedure aims to ensure the good functioning of the internal market, while assuring that risks of SVHCs are properly controlled. Since ECHA has become operational in 2008, recurring decisions on SVHCs have been made. The question posed in this article is: to what extent can decision making in the REACH authorisation procedure be assessed as legitimate? By drawing on the notion of throughput legitimacy, this article argues that decision making processes in the authorisation procedure are characterized by insufficient legitimacy.

**Keywords**
authorisation; ECHA; expertise; REACH; SVHCs; throughput legitimacy

**Issue**
This article is part of the special issue "The Role of Expert Knowledge in EU Executive Institutions", edited by Professor Åse Gornitzka (University of Oslo, Norway) and Dr. Cathrine Holst (University of Oslo, Norway).



## 1. Introduction

In the European Union (EU), regulatory tasks have been increasingly delegated to decentralized agencies since the 1990s (see e.g., Busuioc, Groenleer, & Trondal, 2012). With the increasing "agencification" of policy making, normative questions regarding the legitimacy of EU agencies have become ever more important (see Rittberger & Wonka, 2011). This is particularly the case with regulatory agencies which are de facto decision makers without having de jure decision making powers (Gehring & Krapohl, 2007; Klika, Kim, & Versluis, 2013; Krapohl, 2004). The European Medicines Agency EMA and the European Food Safety Authority EFSA are well-known cases. While these normative questions somewhat reflect the debate about the alleged democratic deficit of the EU, the issue of EU agency legitimacy is a special case of this debate. In general, agencies are special because technical tasks are delegated to insulate decision making processes from electoral cycles and partisan politics. Such insulation limits the legitimacy of agencies because they are, in contrast to governments, not directly linked to democratic representation based on elections. In order to compensate for this limitation, agencies are expected to provide more effective problem solving (Majone, 1996). It is assumed that agencies are better able to process technical information, meaning that expertise, rather than democratic representation, is their main source of legitimacy (Sabatier, 1978; European Commission, 2008).

In this article, I analyse the role of expertise and legitimacy with regard to the European Chemicals Agency ECHA. The creation of the agency is based on the so-called REACH regulation on industrial chemicals, which can be understood as the flagship of EU chemicals policy (European Parliament, & Council of the European

Union, 2006). REACH was adopted in December 2006, after a lengthy and controversial legislative process (e.g., Pesendorfer, 2006; Selin, 2007). Due to the complexities of chemicals policy, REACH combines different regulatory instruments and ECHA has varying tasks related to these instruments. The analysis here is restricted to the authorisation procedure dealing with so-called Substances of Very High Concern (SVHCs). As a first step, I will analyse the role of ECHA in this procedure and then I proceed to answer two research questions: How can we assess the legitimacy of EU agency decision making and to what extent is decision making in the REACH authorisation procedure legitimate? After the conceptual discussion, I present empirical material supporting the argument that agencies have the potential of increasing the legitimacy of decision making based on set rules and procedures. However, decision making processes in the authorisation procedure are characterized by insufficient legitimacy because such rules and procedures have been altered during the implementation of the authorisation procedure. As a result, and regardless of concrete decision outcomes, vital aspects of legitimacy such as inclusiveness and transparency are negatively affected, which in turn reduces the acceptability of these outcomes for multiple stakeholders.

A vast literature, in the natural sciences, law as well as political science, deals with the highly controversial legislative process and the governance arrangements enshrined in REACH. Yet, in-depth analyses of how decision making unfolds in the implementation of REACH by and through ECHA is still relatively patchy, despite increasing scholarly attention (see e.g., Bergkamp, 2013; Lee, 2014a; Ossege, 2014; Scott, 2009; Stokes & Vaughan, 2013). Hence, this article contributes to this literature by presenting empirical evidence of implementing the REACH authorisation procedure. The analysis draws on legislative texts, a wide range of policy documents, technical guidance and minutes of the respective ECHA decision making bodies. In order to increase the validity of the analysis, the documentary evidence is complemented by semi-structured interviews with policy makers, experts and stakeholders. In order to ensure reliability, the selection of interviewees was based on the set of actors which are formally entitled to make decisions in the authorisation procedure, i.e., the Member States (MS), the European Commission (COM) as well as ECHA. In addition, interviews were held with representatives of stakeholder organisations (STO), the European Parliament and experts on EU chemicals policy (EXP). The interviews are cited in-text with the acronyms given and numbered in case of multiple respondents. The empirical evidence and analysis cover a crucial period (as explained below)—from mid-2008 to the end of 2012—regarding the implementation of REACH.

## 2. The Case of ECHA and the Authorisation of Substances of Very High Concern

At the core of EU chemicals policy is the classification of hazardous substances (see e.g., Heyvaert, 1999), i.e., substances that might be toxic, carcinogenic or persisting in the environment. In the regulatory regime prior to REACH (henceforth the old regime), thousands of hazardous substances have been classified at the EU level. Today, these substances are listed in the regulation on Classification, Labelling and Packaging (CLP), a complementary regulation to REACH (European Parliament, & Council of the European Union, 2008). The list of classified substances is regularly updated through procedures laid down in the CLP regulation. In REACH terminology, hazardous substances are referred to as Substances of Very High Concern (SVHCs). Three types of SVHCs are distinguished (Art. 57 REACH): carcinogens, mutagens and substances toxic for reproduction (CMRs), substances persisting and accumulating in the environment (PBTs), as well as substances of equivalent concern (ECs). The authorisation procedure aims to ensure the good functioning of the internal market, while assuring that risks of SVHCs are properly controlled (Art. 55 REACH). This means that certain industrial uses of SVHCs might be banned due to their risks, yet without overly harming the chemicals industry that would have to substitute these substances for suitable alternatives.

In addition to classification, the old regime already entailed the possibility to limit the use of hazardous substances through legislative restrictions. To this end, Member States' regulatory authorities had the responsibility to conduct extensive risk assessment on prioritized substances, which then had to be endorsed by various expert committees. This cumbersome procedure put the burden of proof regarding substances' risk on Member States' regulatory authorities. Decision making not only suffered from such cumbersome procedures, but also from limited availability of information. Under the old regime, there was little incentive for companies to supply technical information and contribute to efficient risk assessment. It was therefore seen as a failure because even if the risk assessment concluded the existence of risk, the use of hazardous substances was hardly ever restricted as a direct result of the assessment process (European Commission, 1998). Although REACH has retained the instrument of restrictions (see Art. 67-73 REACH), the very existence of the authorisation procedure in REACH is intrinsically related to this failure. By giving companies the responsibility to conduct risk assessment on hazardous substances, the procedure aims to facilitate regulatory decision making by reversing the burden of proof (see Chapman, 2007, p. 69; European Commission, 2001; Koch & Ashford, 2006, p. 40).

To this end, the procedure consists of two stages. First, SVHCs are included in the so-called Candidate List. The inclusion of SVHCs requires companies to communicate information about products containing the substance (Art. 7 & 33 REACH). Second, SVHCs in the Candidate List are selected for eventual inclusion in Annex XIV of REACH. As soon as a substance is included in Annex XIV, companies wishing to use it in industrial processes need to apply for authorisation. The burden of proof is reversed insofar as companies applying for authorisation need to conduct extensive risk assessment for specific uses of substances for which authorisations are applied for.[1] Decision making at both stages can be distinguished as hazard-based at the first stage, i.e., SVHC inclusion in the Candidate List, and risk-based at the second stage, i.e., SVHC inclusion in Annex XIV (see Hansen & Blainey, 2006). The hazard-based inclusion means that substances can be identified as SVHCs based on their molecular structure, i.e., their intrinsic properties. If a substance is in line with the SVHC criteria laid down in REACH Article 57, no additional information is needed to include the substance in the Candidate List. The risk-based inclusion means that substances are selected for Annex XIV not only because of their intrinsic properties, their hazard, but also because of the volume and uses of the substance, as well as exposure data for certain populations (Art. 58 REACH). Although risk-based selection falls short of full-fledged risk assessment, decision making is more complex since additional information needs to be processed to make such selections. Since this information is meant to give an indication of the level of risk, the selection of SVHCs from the Candidate List is referred to as prioritisation.

Since ECHA has a fairly common organisational structure for EU agencies, I here discuss only those decision making bodies that are essential for the authorisation procedure. In order to include a substance as SVHC in the Candidate List, it first needs to be proposed. This can be done by each Member State and the Commission (Art. 58). If a substance is proposed as SVHC, a respective dossier needs to be submitted; in the case of the Commission, it is ECHA that submits a dossier on behalf of the Commission. A proposed substance is then included in the Candidate List by the Member State Committee (MSC) (Art. 59 REACH). The MSC is an ECHA body that is composed of national representatives, one per Member State, usually from the national regulatory authority dealing with chemicals (see Art. 85 REACH). The MSC, however, is not a clear-cut technical committee; although it consists of experts from national regulatory authorities, it is political in the sense that national interests are explicitly represented in committee deliberations (see ECHA, 2010). As such, those nominated for the committee are wearing different "hats", being simultaneously members of an agency committee, policy experts and representatives of national interests (Egeberg & Trondal, 2007).

Regarding the prioritisation of SVHCs, ECHA is entitled to select substances from the Candidate List and recommend priority substances for Annex XIV inclusion; by doing so, ECHA has to take into account the opinion of the MSC (Art. 58 REACH). Prioritisation is accompanied by consultation, whereby stakeholders are invited to submit comments on the prioritised substances. The recommendation, including the prioritised substances, is then sent to the Commission which is entitled to include SVHCs in Annex XIV by way of comitology (Art. 133 REACH). This article refers to the respective comitology legislation and specifies that decisions on Annex XIV inclusion are to be made through the regulatory procedure with scrutiny. The new system of delegated and implementing acts brought about by the Lisbon Treaty, and replacing the system of comitology, has not yet affected these provisions and, for the time being, decisions are made in line with the old comitology system.

## 3. Conceptual Framework

A popular framework of analysis regarding EU agency legitimacy is the distinction between input and output legitimacy (see Scharpf, 1999; also Borrás, Koutalakis, & Wendler, 2007; Griller & Orator, 2010; Krapohl, 2008; Weimer, 2008). Input legitimacy refers to the institutional arrangements of political systems that ensure equal participation through elections and subsequent chains of delegation to governments and administrative bodies. Output legitimacy refers to effective problem solving in the sense that policy outcomes meet citizens' preferences. An important part of the scholarly debate is the question of whether input and output legitimacy are positively or negatively correlated, i.e., whether decreasing input legitimacy necessarily leads to increasing output legitimacy, and vice versa, or whether both forms of legitimacy are mutually reinforcing (see e.g., Bellamy, 2010). This fundamental question, to which I don't give a general answer, provides an important backdrop for the argument developed in this section. Drawing on a conceptual discussion of the input-output framework, and in reference to my earlier question regarding assessing the legitimacy of EU agency decision making, I argue that throughput legitimacy is the better normative standard (see Schmidt, 2013).

Generally, agencies are created with certain expectations relating to their ability to process technical information and produce more effective policy outcomes. The decrease of input legitimacy is accepted, because agencies promise increased output legitimacy, which in certain political systems or policy areas make agency creation more desirable or even feasible (Ma-

[1] In this article, I deal only with the inclusion of SVHCs in Annex XIV and not actual applications for authorisations. In the time period covered by the empirical analysis, mid-2008 until the end of 2012, no authorisations were submitted.

jone, 1996; Scharpf, 1999). Hence, while advocates of input legitimacy stress the importance of equal participation for every citizen, even at the risk of producing sub-optimal policy outcomes, advocates of output legitimacy stress the problem solving capacities of experts (see Bellamy, 2010). Hence, if one were to subscribe to the assumption of negative correlation between input and output legitimacy, a causal relation could be established, generating clear theoretical expectations. If input legitimacy increases, output legitimacy decreases, and vice versa. This expectation has been shown to hold with regard to the European Medicines Agency EMA and the European Food Safety Authority EFSA (Krapohl, 2008). While the causal relation generating theoretical expectations is rather straightforward, there remains a problem of measurement which does not only affect the conceptual foundation of the input-output model. If the seemingly solid conceptual foundation becomes fragile, it also questions normative arguments which are based on the input-output model and specifically the emphasis on effective problem solving as output legitimacy.

The normative standard of output legitimacy accepts decreasing input legitimacy not only for practical reasons, but also because it is believed that agencies' expertise will lead to more effective policy outcomes. To this end, participation in decision making processes, in contrast to elections as a form of input legitimacy, can be limited to experts capable of giving well-informed justifications for decisions. This means that, whereas public participation through elections does not require deliberation per se, expert decision making is intrinsically related to deliberation and sophisticated reasoning (Moore, 2014, p. 67). This is why some scholars advocate that certain issues are left to experts since citizens are neither capable of nor interested in partaking in such decision making processes. If expert decision making then meets these citizens' preferences, output legitimacy is given. Yet, advocating expert decision making hinges on the assumption of unequivocal standards of output legitimacy, i.e., policy outcomes meeting citizens' preferences effectively. The problem here is that even highly technical problems imply an array of possibly conflicting preferences among multiple actors regarding policy outcomes. If these actors hold conflicting preferences on such outcomes, invoking output legitimacy as a normative argument is problematic, because objective measurement of policy effectiveness is inevitably skewed. In order to evade problems of measuring output legitimacy, scholars have applied indicators derived from accountability concepts (see Kraphol, 2008). While such indicators allow for instructive empirical analysis, the question remains whether they actually measure output legitimacy.

A similar observation can be made regarding input legitimacy, given that some of the indicators used to assess input legitimacy seem to address decision making processes by and through EU agencies (see Borrás et al., 2007; Krapohl, 2008). Yet, understanding input legitimacy more in terms of delegating chains by which electorates or governments delegate tasks to representative or administrative bodies respectively, seems at odds with these indicators. Alternatively, the involvement of the European Parliament (EP) in the act of secondary legislation that delegates tasks to the agency has been used as an indicator of input legitimacy (Krapohl, 2008). The assumption being that the application of the former co-decision procedure, and current ordinary legislative procedure, increases input legitimacy due to the involvement of the EP, given that there is a clear chain of delegation from the basic legitimation through elections to a delegating act at the EU level. However, agencies have been increasingly created by secondary legislation involving both the EP and the Member States in the Council. Moreover, after years of intensive discussions, EU institutions finally agreed on a common approach regarding the creation and operation of agencies, which, for the time being, concluded the struggle for a systematic framework of EU agencies (see European Commission, 2008). As a result, input legitimacy has lost some of its analytical meaning as normative criterion given that the EP, in the course of the legislative procedure, has often managed to amend delegating acts in its favour (Lord, 2011).

Hence, due to the conceptual problems with the input-output framework, I argue that throughput legitimacy is the better normative standard to assess the legitimacy of decision making through EU agencies (see Schmidt, 2013). This standard seems promising, because regardless of the conceptual problems of the input-output framework, the causal relation is compelling and based on solid argumentation. At the heart of the matter here is the tension between expert decision making and democratic participation of the public (see Holst & Molander, 2014). While decision making in complex societies has to rely on expertise to deal with technical difficulties, this also limits equal participation for the simple fact that not everybody is an expert on the issue. This tension resonates with the question of whether input and output legitimacy are positively or negatively correlated. As Schmidt (2013, p. 3) notes, the concept of throughput legitimacy provides a better understanding of the input-output relation and is thus a normative standard that brings together the vast literature dealing with questions of decision making processes.

The key question then is how limited access to decision making and democracy can be reconciled; or more specifically, what kind of organisational arrangements are required to ensure legitimate decision making by experts (Holst & Molander, 2014). In general, throughput legitimacy refers to the rules and procedures by which decisions are made in and by organisations (Bekkers & Edwards, 2007; Majone, 1980). As Majone points out, a key feature of legitimate decision making is the acceptability of decision outcomes by citizens, or

stakeholders as intermediaries of societal interests including citizens. It does not necessarily follow that concrete decision outcomes are indeed accepted by stakeholders. Yet, as a normative standard, throughput legitimacy assesses the extent to which decision making procedures can be accepted from a theoretical point of view (see also Schmidt, 2013, pp. 9-10).

In line with Moore (2014, pp. 71-72), such acceptability can be distinguished with regard to internal and external legitimacy. Internal legitimacy refers to acceptability by those who were part of the decision making process, hence "inside the room" as Moore puts it, and thus speaks to various indicators of throughput legitimacy identified in the literature, such as participation and consultation. External legitimacy refers to acceptability "outside the room" and thus speaks to indicators such as transparency and public justification. This distinction helps to further substantiate the argument that throughput legitimacy is the better normative standard of decision making processes. It allows for a fine-tuned analysis of the organisational structures of decision making, and whether these structures facilitate the acceptability of decision outcomes. Depending on the normative point of view, one might argue in favour of internal or external legitimacy, i.e., whether expert decision making should be acceptable to other actors inside the room or to stakeholders outside the room (see Holst & Molander, 2014; also Pedersen, 2014).

Yet, a key feature of legitimate decision making is that the boundaries between those inside and outside the room are not entirely closed off (see Moore, 2014, pp. 72-74). If this were so, as Moore points out, "then what is left to those outside the room is only acclamation or rejection" (Moore, 2014, p. 72). Hence, legitimate decision making implies that decisions can be contested by those outside the room, even though informally and infrequently, without completely removing the boundaries to expert decision making inside the room. Drawing on the boundary between internal and external legitimacy, I assess to what extent decision making is legitimate in the REACH authorisation procedure. In the following empirical sections, it will be shown that legitimacy is insufficient because during the implementation process, boundaries have been redrawn in favour of internal legitimacy, thus reducing the acceptability of decision outcomes by multiple stakeholders. While a lack of inclusiveness and transparency might be justified with a need for free deliberation and discretionary decision making by experts, the implementation of the authorisation procedure does not live up to such deliberative norms.

## 4. The Inclusion of SVHCs in the Candidate List and Annex XIV

As mentioned before, three types of SVHCs are distinguished in Article 57 of REACH, i.e., CMR, PBT and EC substances. Regarding the three types, CMRs are the easiest to identify because their type is based on definitive criteria. If the substance in question has received harmonised classification at the EU level, even in the old regime, and is, therefore, listed in the CLP as carcinogenic, mutagenic or toxic for reproduction, it can already be known that the substance has SVHC properties. In contrast to CMRs, the identification of PBTs and ECs is more complex because their type is based on "open" criteria, i.e., a thorough examination of the substance is needed to determine its properties and the outcome of this determination is not known in advance. Hence, it can be decided after such examination that the proposed substance does not fulfil PBT and EC criteria as laid down in REACH. As a result, there is no predetermined number of SVHCs which are known to be subject to the authorisation procedure. Shortly before the adoption of REACH, the Commission estimated that around 1,500 substances could be identified as SVHCs.[2] Although almost thousand substances were known to have SVHC properties before the adoption of REACH, in the process of implementation, from mid-2008 until the end of 2012, only a limited number of 138 SVHCs has been included in the Candidate List (see Table 1). The reason for this is an agreement between Member States and the Commission not to propose all substances known to be SVHCs.

[2] The number is based on 900 substances known to have SVHC properties, whereas 600 were expected to emerge through the REACH requirement for the registration of all substances on the market; see European Commission (2006).

**Table 1.** Number of SVHCs included in the candidate list, 2008 to 2012.

| Round | Date | | No. of SVHCs included | No. of SVHCs in the Candidate List |
|---|---|---|---|---|
| 1 | October | 2008 | 15 | — |
| 2 | January | 2010 | 15 | 30 |
| 3 | June | 2010 | 8 | 38 |
| 4 | December | 2010 | 8 | 46 |
| 5 | June | 2011 | 8 | 54 |
| 6 | December | 2011 | 20 | 74 |
| 7 | June | 2012 | 13 | 87 |
| 8 | December | 2012 | 54 | 141 (138) |

Note: After the eighth round, 138 substances were included in the Candidate List. The number of decisions (141) is higher because for three substances the Member State Committee made a decision twice. Furthermore, the number of proposed substances is higher as well (145) because not all substances proposed were included. In the second round, one substance was formally included in March.

*4.1. Candidate List*

The agreement of the Member States and the Commission can best be understood when contrasted with the demand voiced by the environmental and public health committee in the EP during the legislative process of REACH. The committee inserted an amendment that all substances known to have SVHC properties *shall* be included in the Candidate List (European Parliament, 2005). The amendment was rejected by the Council that insisted that SVHCs *may* be included (Council, 2006). Hence, the agreement of the Member States and the Commission to not propose all known SVHCs entails two basic consequences. First, if not all known SVHCs shall be included; those that shall be included need to be identified first. As shown in Table 1, known SVHCs are not included at once, but in subsequent rounds with a varying number of substances. Unsurprisingly, this staggered approach was much criticized by NGOs, trade unions and members of the EP's environmental and public health committee (see e.g., Chemtrust et al., 2008; European Parliament, 2008, 2010). According to these stakeholders, the limited number of proposed SVHCs only serves the interests of industries at the expense of human health and environmental protection. In order to support such criticism and raise awareness, various lists containing hundreds of substances were created, applying the legal criteria of REACH, which could and should be included immediately.[3]

Second, if not all known SVHC shall be included in the Candidate List; an approach is needed regarding specific substances and whether or not they shall be included. Since REACH does not contain any provisions in this respect, ECHA convened a workshop shortly after the first round of inclusion (ECHA, 2009a). The workshop was attended by representatives of the Member States and the Commission and the purpose of the workshop was to clarify which and how the known SVHCs shall be included in the Candidate List. To this end, an informal expert group, consisting of experts from six Member States (The Netherlands, Germany, Sweden, Denmark, Austria and France), came up with a "source list" of known SVHCs from which substances could be eventually proposed for authorisation. It was also concluded that a coordinative framework for decision making should be set up, in which Member States shall coordinate the decisions to propose specific SVHCs for the Candidate List. This framework is referred to as Risk Management Options (RMO) analysis. The RMO aims to reflect on the effectiveness of various options to deal with a substance, and based on such reflection, a decision for one or the other regulatory instrument would be made. The main respective options are the regulatory instruments of REACH, thus authorisation and restriction of substances, as well as the option not to regulate a substance at all. In a nutshell, the RMO analysis aims to share information among Member States, and to coordinate national activities regarding the proposal of substances for the authorisation procedure. Another important reason for the set up of the RMO analysis concerns the role of the MSC regarding SVHC inclusion in the Candidate List.

Formally, the MSC is entitled to include substances, yet the mandate is formulated as such that it can only make a decision based on the intrinsic properties of a substance, i.e., hazard-based inclusion (see ECHA, 2007). This means that if a substance, which is known to have SVHC properties, is proposed by one Member State or the Commission, the MSC has de facto no choice but to include the substance in the Candidate List, even though one or more Member States in the committee might disagree. This applies mainly to CMRs, because they have received harmonised classification, and are therefore listed in the CLP regulation. According to the REACH criteria on CMRs, existing harmonised classification cannot be challenged within the authorisation procedure. In fact, most of the 138 substances in the Candidate List are CMRs for which harmonised classification had been agreed on before.

*4.2. Annex XIV*

In the time period covered by the empirical analysis, 22 SVHCs have been included in Annex XIV, thus prioritised from 138 substances included in the Candidate List. In the implementation process, two inter-related features of the decision making appear noteworthy. First, it appears from the empirical evidence that ECHA, when making recommendations on prioritised substances, does not falter when faced with Member States' opposition (see ECHA, 2011b; also ECHA, 2011c). It regularly adjusts technical details of the recommendation in line with the set rules and procedures, yet substantial changes are not included in the recommendations. In case of politically salient issues, Member States' opposition is then expressed as minority positions and attached to the opinion of the MSC. Second, the Commission plays a crucial role here because it is entitled to transmit the agency recommendation in a draft regulation for comitology decision making. The 22 substances included in Annex XIV until the end of 2012 were based on three rounds of recommendations by ECHA in which 28 substances were prioritised. If the 28 substances prioritised by ECHA represent 28 cases of decision making, the Commission has altered some technicalities pertaining to individual substances in the recommendation in 17 cases, i.e., in two-thirds of all cases. Hence, the Commission is not merely rubber-stamping ECHA's recommendation.

[3] See for instance the SIN list ("Substitute it now"), see www.sinlist.org.

## 5. Discussion: What Kind of Legitimacy?

In the conceptual discussion, it was argued that throughput legitimacy is the better normative standard to assess the legitimacy of decision making processes. A distinction was made between internal legitimacy, acceptability of decision outcomes by those inside the room, and external legitimacy, acceptability of decision outcomes by those outside the room. This distinction highlights the boundaries drawn between those inside and those outside the room, and thus allows for a fine-tuned analysis of the organisational structures of decision making. While the empirical section presented the authorisation procedure in a linear structure, in this section I discuss the question of legitimate decision making based on the conceptual distinction between internal and external legitimacy. By doing so, I hope to show how the boundaries between internal and external legitimacy have been redrawn, and why this redrawing negatively affects throughput legitimacy.

### *5.1. Prospects of External Legitimacy in the REACH Authorisation Procedure*

A number of recitals and provisions of REACH refer to transparency and participation. In the authorisation procedure specifically, stakeholders such as industry associations, trade unions and NGOs are admitted to the meetings of the MSC as observers. The non-confidential versions of the minutes are published and technical documentation of SVHCs proposals is also publicly available. Since the MSC is more than just an expert committee, if vital national interests are affected through SVHC proposals, controversies are brought into the open and minority opinions are made public (see ECHA, 2009b; ECHA, 2012). Although stakeholders have no formal say in the decision making, their scrutiny with regard to deliberative processes provides for external legitimacy, given that stakeholder organisations are assumed to represent those outside the room. However, in the majority of cases in which SVHCs are included in the Candidate List, the MSC does not deliberate. Since most of the 138 substances included in the Candidate List are CMRs, the decision outcome is pre-determined and in many cases these substances are not even considered by the committee, but directly included. As a result, the prospect of the MSC as a deliberative forum is only truly materialized when PBT or EC substances are proposed for the Candidate List. These substances, however, are the minority of SVHCs in the Candidate List.

The prioritisation of SVHCs for Annex XIV inclusion, likewise, is formally characterized by transparency and access of stakeholders. The methodology of the prioritisation, developed and revised together with Member States, is publicly available and each round of prioritisation is accompanied by public consultation. If the prioritisation of ECHA is faced with Member States' opposition, minority opinions are made public and ECHA provides extensive documentation, justifying decisions on prioritisation (see ECHA, 2011a). While the prioritisation of ECHA seems to support external legitimacy, the following step in the procedure, comitology decision making, is not as straightforward (e.g. Lee, 2014b).

In the literature, comitology is sometimes seen as a specific form of supranational governance, in which deliberation prevails and factual arguments are more important than tit-for-tat bargaining (Joerges & Neyer, 1997). However, comitology is also notoriously non-transparent and largely excludes the EP, despite the right of scrutiny. As Blom-Hansen and Brandsma (2009) show, comitology decision making is not only characterized by deliberative decision making by experts, but also by intergovernmental bargaining. Indeed, in two out of three rounds of Annex XIV inclusion, the Commission proposal was adopted with a qualified majority, whereas only in one case, unanimity was achieved. This means that good arguments and deliberation are not always sufficient to aggregate Member States' preferences. In some cases when national preferences are affected, voting is needed to make a decision. Thus, some of the rules and procedures which seem to provide external legitimacy, at both stages of the procedure, are perceived by some actors as constraints. By invoking images of output legitimacy, these actors attempt to redraw the boundaries between internal and external legitimacy. If this redrawing favours internal legitimacy over external legitimacy, this might turn constraints into opportunities.

### *5.2. Redrawing Boundaries in Favour of Internal Legitimacy*

The set up of the RMO analysis is supposed to increase output legitimacy by deciding on the most effective instrument to deal with SVHCs. It might well be argued that SVHCs which are not used in high volumes or which are essential for certain industrial processes are better not proposed for the authorisation procedure; regulatory resources and expertise are better spent on priority substances. However, such reasoning does not meet NGOs' and trade unions' preferences. If it is assumed that these actors legitimately represent citizens' interests regarding environmental and human health, the limited inclusion of SVHCs in the Candidate List can hardly be seen as increasing output legitimacy. Moreover, since RMO is not mentioned in the legal provisions of REACH, Member States' experts are meeting in the framework of a Commission expert group. To this group, neither industry nor NGOs have formal access and no supporting documentation regarding decision making is made public (European Commission, 2013).[4]

[4] The RMO analysis is becoming increasingly formalised and

From the perspective of many Member States, the lack of inclusiveness and transparency is needed to ensure technical, non-political deliberation among experts (MS#1; see also Chemical Watch, 2011; European Commission, 2011). However, if boundaries are to be redrawn because the MSC does not provide the right forum of deliberation, it should not happen at the expense of external legitimacy.

The RMO analysis is not only informal, but it is also not legally binding and neither Member States nor the Commission can be forced to coordinate their actions before submitting a proposal. After all, SVHC proposals are not merely technical issues, but reflect national interests in getting particular groups of substances in the Candidate List (EXP; MS#4). Hence, not only does the RMO redraw boundaries towards internal legitimacy, the deliberative potential of internal legitimacy, for instance through experts' peer review, is not even fully realized. This is the case if no deliberation in the context of RMO takes place. While this might change in the future, in the first years of REACH implementation, the lack of coordination and deliberation is obvious. Not only were the substances proposed without RMO analysis, but also some substances were discarded by some Member States only to be proposed by others (MS#2). In the eighth round of identification in 2012, the Commission, which is a stern advocate of RMO, asked ECHA to propose more than thirty substances without conducting RMOs (see Table 1). The perceived or claimed output legitimacy of RMO analysis is undermined in such cases, if the proposed substances were not of high priority (MS#3). Instead, the Commission asked ECHA to propose these substances in order to keep their political promise to have 136 substances in the Candidate List by the end of 2012 (COM#1; COM#2; also Chemical Watch, 2010).

At the stage of substance prioritisation, similar redrawing can be observed. It has been said that the Commission is not rubber-stamping ECHA recommendations, given that in two thirds of all recommended substances, specific changes were made. In some cases, substances opposed by Member States during prioritisation were removed altogether from the recommendation. Admittedly, it is the prerogative of the Commission to deviate from the agency recommendation when issuing draft regulations to the comitology committee. In the context of comitology decision making, the Commission needs to garner broad support in the committee to ensure effective implementation at the national level (Joerges & Neyer, 1997). From this perspective, consultations with industry and Member States prior to formal decision making in comitology committees actually increases legitimacy, if such consultation contributes to effective problem solving. Accordingly, the Commission in justifying their decisions invokes images of output legitimacy, as it is argued that other regulatory instruments than authorisation are more effective to deal with some of the substances (COM#1; also Herbatschek, Bergkamp, & Mihova, 2013). However, similar to the RMO, boundaries are redrawn, because in contrast to public consultation and extensive deliberation of ECHA prioritisation, the decision making processes in the Commission are informal and non-transparent. As a result, access to the Commission is crucial. While Member States were able to reiterate their opposition regarding the inclusion of contested substances (MS#3), NGOs claim that the Commission was also under heavy lobbying pressure from industry to remove these substances (NGO).

However, the opposition by companies and Member States is motivated by economic concerns for vital industries. Again, invoking images of output legitimacy is questionable, given the diverging preferences of NGOs and sometimes trade unions. Irrespective of the aforementioned conceptual problem of output legitimacy, arguing that the Commission relies on these consultations in order to profit from stakeholders' expertise is unconvincing in the age of EU agencification. The rationale behind agencies' creation is the expectation that they develop expertise that contributes to regulatory decision making. In the context of agency decision making, Member States' experts and stakeholder are involved in decision making processes according to set rules and procedures. The redrawing of boundaries at the second stage of the authorisation procedure, however, favours those actors which have preferential access to the Commission, namely industry and salient Member States (EXP). This somewhat nullifies the elaborate procedure of ECHA decision making which is based on inclusiveness, consultation and transparency. Although these procedures are not without problems, from this perspective, the argument of Majone (2010) for strong EU agencies is appealing. Regardless of whether one advocates expert decision making or inclusive participation, thus invoking output and input legitimacy respectively, decision making by and through agencies based on set rules and regulations certainly increases throughput legitimacy. This seems of particular importance in policy areas in which output legitimacy is faced with limitations due to conflicting preferences and diverging perceptions of policy effectiveness. In set rules and procedures, boundaries between internal and external legitimacy are drawn and cannot be easily redrawn through informal processes.

## 6. Conclusions

This article set out to assess the legitimacy of decision making in the REACH authorisation procedure. Based

some documentation, albeit limited, might be released. These developments, however, are rather recent inventions beyond the scope of this article.

on a discussion of the input-output framework of legitimacy, it was argued that throughput legitimacy is the better normative standard. This is particularly the case in highly contested policy areas, in which the notion of policy effectiveness defies objective standards of measurement. The adoption of REACH came about after a controversial legislative process, due to competing preferences on industrial competitiveness versus human health and environmental protection. The intricacies of decision making in the authorisation procedure are the result of these competing preferences. During the implementation process, such intricacies provide opportunities and constraints for multiple actors, and these actors invoke different images of legitimacy to pursue their preferences. It was shown that boundaries between internal and external legitimacy are redrawn towards the former, yet without living up the normative standards of expert deliberation and justification associated with internal legitimacy. Although this affects the acceptability of decision outcomes in general, some actors nevertheless enjoy preferential access to decision making bodies. The resulting insufficiency of legitimacy is due to the alteration of rules and procedures of decision making during the implementation of the authorisation procedure. The empirical material presented here is thus important for complementing the vast literature on REACH, as it sheds light on the way ambiguous legislative provisions are materialized in the implementation process.

**Acknowledgements**

The author wishes to thank the editors of this special issue as well as the anonymous reviewers. Their criticisms and suggestions were of tremendous help to improve the final version of this article. All remaining errors are my responsibility.

**Conflict of Interests**

The author declares no conflict of interests.

**References**

Bekkers, V., & Edwards, A. (2007). Legitimacy and democracy: A conceptual framework for assessing governance practices. In V. Bekkers, G. Dijkstra, A. Edwards, & M. Fenger (Eds.), *Governance and the democratic deficit: Assessing the democratic legitimacy of governance practices* (pp. 35-60). Aldershot: Ashgate Publishing Limited.

Bellamy, R. (2010). Democracy without democracy? Can the EU's democratic "outputs" be separated from the democratic "inputs" provided by competitive parties and majority rule? *Journal of European Public Policy*, *17*(1), 2-19.

Bergkamp, L. (Ed.). (2013). *The European Union REACH regulation for chemicals. Law and practice*. Oxford: Oxford University Press.

Blom-Hansen, J., & Brandsma, G. (2009). The EU comitology system: Intergovernmental and deliberative supranationalism. *Journal of Common Market Studies*, *47*(4), 719-740.

Borrás, S., Koutalakis, C., & Wendler, F. (2007). European agencies and input legitimacy: EFSA, EMeA and EPO in the post-delegation phase. *Journal of European Integration*, *29*(5), 583-600.

Busuioc, M., Groenleer, M., &Trondal, J. (Eds.) (2012). *The agency phenomenon in the European Union*. Manchester: Manchester University Press.

Chapman, A. (2007). *Democratizing technology. risk, responsibility and the regulation of chemicals*. London & Sterling, VA: Earthscan.

Chemical Watch. (2010, March 25). New EU chiefs put REACH centre-stage. Retrieved from http://chemicalwatch.com/3525/new-eu-chiefs-put-reach-centre-stage

Chemical Watch. (2011, February 11). EU states in silent protest over MEPs' role in Caracal. Retrieved from http://chemicalwatch.com/6488/eu-states-in-silent-protest-over-meps-role-in-caracal

Chemtrust, Center for International Environmental Law (CIEL), European Environmental Bureau, Friends of the Earth Europe, Greenpeace, Health and Environment Alliance, Women in Europe for a Common Future, & WWF. (2008, October 28). First REACH hazardous chemicals list is a drop in the ocean. Retrieved from http://www.chemtrust.org.uk/wp-content/uploads/PR_first_candidate_list_2008-10_FINAL_pr2.pdf

Council. (2006). *Common position (EC) No 17/2006 of 27 June 2006 adopted by the Council, acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community, with a view to adopting a Regulation of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC of the European Parliament and of the Council and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC*. Brussels: Council of the European Union.

ECHA. (2007). *Guidance for the preparation of an Annex XV dossier on the identification of substances of very high concern* (June 2007). Helsinki: ECHA.

ECHA. (2009a). *Proceedings of the workshop on the candidate list and authorisation as risk management instruments, Helsinki, 21–22 January 2009*. Helsinki: ECHA.

ECHA. (2009b). *Minutes of the 8th Meeting of the*

*Member State Committee (MSC-8), 18–20 May 2009* (MSC/M/08/2009 Final). Helsinki: ECHA.

ECHA. (2010). *Minutes of the 15th Meeting of the Member State Committee (MSC-15), 1–3 December 2010* (MSC/M/05/2010). Helsinki: ECHA.

ECHA. (2011a). *Responses to comments document (RCOM) on ECHA's draft 3rd recommendation for the group of recommended Cobalt(II) substances* (20 December 2011). Helsinki: ECHA.

ECHA. (2011b). *Minutes of the 18th Meeting of the Member State Committee (MSC-18), 25–27 May 2011* (MSC/M/018/2011). Helsinki: ECHA.

ECHA. (2011c). *Minutes of the 21st Meeting of the Member State Committee (MSC-21), 7–9 December 2011* (MSC/M/021/2011). Helsinki: ECHA.

ECHA. (2012). *Minutes of the 27th Meeting of the Member State Committee (MSC-27), 10–13 December 2012* (MSC/M/027/2012). Helsinki: ECHA.

Egeberg, M., & Trondal, J. (2007). National agencies in the European administrative space: Government driven, Commission driven or networked? *Public Administration*, *87*, 779-790.

European Commission. (1998). *Report on the operation of directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances. Directive 88/379/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous preparations. Regulation (EEC) 793/93 on the evaluation and control of the risks of existing substances. Directive 76/769/EEC on the approximation of the laws, regulations, and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations. Commission working document. SEC (98) 1986 final, 18 November 1998*. Brussels: European Commission.

European Commission. (2001). *Strategy for a future chemicals policy* (COM(2001) 88 final). Brussels: European Commission.

European Commission. (2006). *Q and A on the new chemicals policy, REACH* (MEMO/06/488). Brussels: European Comission.

European Commission. (2008). *European agencies—The way forward, communication from the Commission to the European Parliament and the Council* (COM (2008) 135 final). Brussels: European Commission.

European Commission. (2011). *Summary record 7th meeting of competent authorities for REACH and CLP* (Doc. CA/34/2011 Rev 2). Brussels: European Commission.

European Commission. (2013). *12th meeting of competent authorities for REACH and CLP, roadmap for SVHCs identification and implementation of REACH risk management measures from now to 2020* (Doc. CA/2/2013). Brussels: European Commission.

European Parliament. (2005). *Report on the proposal for a regulation of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency* (A6-0315/2005 FINAL, Amendment 214). Brussels: European Parliament.

European Parliament (2008). *Notice to members (2008/8), question for question time in committee 2008/8 under Rule 187 of the rules of procedure by Satu Hassi* (19.11.2008). Brussels: European Parliament.

European Parliament (2010). *Letter by Joe Leinen, chairman of the Committee on the Environment, Public Health and Food Safety* (IPOL-COM-ENVI D(2010) 15043, 18.03.2010). Brussels: European Parliament.

European Parliament, & Council of the European Union. (2006). *Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, OJ L 396*. Brussels: European Union.

European Parliament, & Council of the European Union. (2008). *Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directive 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006, OJ L 353*. Brussels: European Union.

Gehring, T., & Krapohl, S. (2007). Supranational regulatory agencies between independence and control: The EMEA and the authorization of pharmaceuticals in the European Single Market. *Journal of European Public Policy*, *14*(2), 208-226.

Griller, S., & Orator, A. (2010). Everything under control? The "way forward" for European agencies in the footsteps of the Meroni doctrine. *European Law Review*, *35(*1), 3-35.

Hansen, B., & Blainey, M. (2006). REACH: A step change in the management of chemicals. *Review of European Community and International Environmental Law*, *15*(3), 270-280.

Herbatschek, N., Bergkamp, L., & Mihova, M. (2013). The REACH programmes and procedures. In L. Bergkamp (Ed.), *The European Union REACH regulation for chemicals. Law and practice* (pp. 82-170). Oxford: Oxford University Press.

Heyvaert, V. (1999). *Coping with uncertainty. The regulation of chemicals in the European Union* (Doctoral Dissertation). European University Institute, Florence, Italy.

Holst, C., & Molander, A. (2014). Epistemic democracy and the accountability of experts. In C. Holst (Ed.), *Expertise and Democracy* (ARENA Report No 1/14, pp. 13-35). Oslo: University of Oslo.

Joerges, C., & Neyer, J. (1997). Transforming strategic interaction into deliberative problem-solving: European comitology in the foodstuffs sector. *Journal of European Public Policy*, *4*(4), 609-625.

Klika, C., Kim, J., & Versluis, E. (2013). Why science cannot tame politics: The new EU comitology rules and the centralised authorisation procedure of GMOs. *European Journal of Risk Regulation*, *4*(3), 327-334.

Koch, L., & Ashford, N. (2006). Rethinking the role of information in chemicals policy: Implications for TSCA and REACH. *Journal of Cleaner Production*, *14*, 31-46.

Krapohl, S. (2004). Credible commitment in non independent regulatory agencies: A comparative analysis of the European agencies for pharmaceuticals and foodstuffs. *European Law Journal*, *10*(5), 518-538.

Krapohl, S. (2008). Legitimising supranational risk regulation: The EU pharmaceutical and food safety regimes. *German Policy Studies*, *4*(1), 237-276.

Lee, M. (2014a). *The legal institutionalisation of public participation in the EU governance of technology* (July 1, 2014, draft for Brownsword, Scotford and Yeung, Oxford Handbook of Law and Regulation of Technology, Forthcoming; ECPR Regulatory Governance Conference, June 2014). Retrieved from http://ssrn.com/abstract=2461145

Lee, M. (2014b). *Experts and publics in EU environmental law* (March 6, 2014, Oxford Handbook of European Union Law, Forthcoming). Retrieved from http://ssrn.com/abstract=2424694

Lord, C. (2011). The European Parliament and the legitimation of agencification. *Journal of European Public Policy*, *18*(6), 909-925.

Majone, G. (1980). Process and outcome in regulatory decision-making. In C. H. Weiss & A. H. Barton (Eds.), *Making Bureaucracies Work* (pp. 235-256). Beverly Hills: Sage.

Majone, G. (Ed.). (1996). *Regulating Europe*. London and New York: Routledge.

Majone, G. (2010). Foundations of risk regulation: Science, decision-making, policy learning and institutional reform. *European Journal of Risk Regulation*, *1*(1), 5-19.

Moore, A. (2014). Democratic theory and expertise. Between competence and consent. In C. Holst (Ed.), *Expertise and Democracy* (ARENA Report No 1/14, pp. 49-83). Oslo: University of Oslo.

Ossege, C. (2014). Is expertise the driving force? Explaining agency autonomy in the EU. In C. Holst (Ed.), *Expertise and Democracy* (ARENA Report No 1/14, pp. 393-423). Oslo: University of Oslo.

Pedersen, D. (2014). A dual justification for science-based policy-making. In C. Holst (Ed.), *Expertise and Democracy* (ARENA Report No 1/14, pp. 37-48). Oslo: University of Oslo.

Pesendorfer, D. (2006). EU environmental policy under pressure: Chemicals policy change between antagonistic goals? *Environmental Politics*, *15*(1), 95-114.

Rittberger, B., & Wonka, A. (2011). Introduction: Agency governance in the European Union. *Journal of European Public Policy*, 18(6), 780-789.

Sabatier, P. (1978). The acquisition and utilization of technical information by administrative agencies. *Administrative Science Quarterly*, *23*, 396-417.

Scharpf, F. (1999). *Governing in Europe—Effective and democratic*. Oxford: Oxford University Press.

Schmidt, V. (2013). Democracy and legitimacy in the European Union revisited: Input, output *and* "throughput". *Political Studies*, *61*, 2-22.

Scott, J. (2009). REACH: Combining harmonisation and dynamism in the regulation of chemicals. In J. Scott (Ed.), *Environmental protection: European law and governance* (pp. 56-91). Oxford: Oxford University Press.

Selin, H. (2007). Coalition politics and chemicals management in a regulatory ambitious Europe. *Global Environmental Politics*, *7*(3), 63-93.

Stokes, E., & Vaughan, S. (2013). Great expectations: Reviewing 50 years of chemicals legislation in the EU. *Journal of Environmental Law*, *25*(3), 411-435.

Weimer, M. (2008). Legitimacy through precaution in European regulation of GMOs? From the standpoint of governance as analytical perspective. In C. Joerges & P. F. Kjaer (Eds.), *Transnational standards of social protection. Contrasting European and international governance* (ARENA Report No 5/08; RECON Report No 4). Oslo: University of Oslo.

**About the Author**

**Christoph Klika**

Christoph Klika is Ph.D. candidate at the Faculty of Arts and Social Sciences at Maastricht University. He holds a Master's degree from the University of Vienna and has worked as researcher at the Institute for European Integration Research (Vienna) and the Centre for European Law and Governance (Cardiff). His primary research interests include European integration, EU policy making and risk regulation. He has published on EU risk regulation in the area of GMOs and chemicals policy.

**Politics and Governance (ISSN: 2183-2463)**
**2015, Volume 3, Issue 1, Pages 139-150**
**Doi: 10.17645/pag.v3i1.84**

Article

# The Politics behind the Consultation of Expert Groups: An Instrument to Reduce Uncertainty or to Offset Salience?

Bart Van Ballaert

Institut de Sciences Politiques Louvain-Europe (ISPOLE), University of Louvain, 1348 Louvain-la-Neuve, Belgium;
E-Mail: bart.vanballaert@uclouvain.be

Submitted: 2 June 2014 | In Revised Form: 15 September 2014 | Accepted: 19 November 2014 |
Published: 31 March 2015

**Abstract**
This paper answers the following question: Do the uncertainty and salience of issues determine whether the European Commission will use an expert group to assist with policy formulation? Using rationalist theory, three hypotheses test whether transversality, the importance of standard-setting and the salience of a policy proposal determine whether a Commission DG will ask an expert group to assist in preparing that same proposal. Data was retrieved from official documents via EUR-Lex. A binary logistic regression analysis has been conducted on a sample of 260 proposals that were drafted by DG Climate Action, DG Communications Networks, Content & Technology, DG Environment and DG Internal Market and Services. All proposals were adopted between 2010 and 2013. The empirical analysis shows that expert group involvement in policy formulation is neither negligible nor ubiquitous in terms of frequency as expert groups assisted in preparing 33.5% of the proposals. DGs were significantly more likely to consult an expert group when the proposal under preparation was more transversal in nature and/or when that proposal treated standard-setting more pronouncedly. In contrast, the salience of a proposal was shown to be insignificantly related to the presence of an expert group during policy formulation.

**Keywords**
bureaucratic politics; expert groups; European Commission; policy formulation; salience; uncertainty

**Issue**
This article is part of the special issue "The Role of Expert Knowledge in EU Executive Institutions", edited by Professor Åse Gornitzka (University of Oslo, Norway) and Dr. Cathrine Holst (University of Oslo, Norway).



## 1. Introduction

"Expertise is crucial for sound policies" or at least so argues the European Commission, which regularly consults expert groups. These groups are advisory committees composed with stakeholder representatives such as member states and/or interest groups. Expert groups are—amongst other tasks—asked by Commission services or DGs to assist in the preparation and formulation of new proposals and their involvement in the policy process is especially important at this stage because it enables them to shape the content of policy (Larsson & Murk, 2007; Princen, 2011). Given the role that is attributed to expert groups in the preparation of issues, it is quite remarkable that expert groups are usually not studied by looking at issue characteristics. In spite of this, scholars agree that the European Commission uses expert groups for two reasons, namely to engage in problem-solving and to mobilise support (Larsson & Murk, 2007; Robert, 2010, 2013). On one hand, problem-solving assumes that expert groups possess private information that is essential for the substantive quality of a proposal (Heard-Laureote, 2010). This suggests that the Commission services ask such groups to assist in the preparation of issues regarding which it experiences uncertainty. On the other hand, mobilising support assumes that experts act as representatives and that they may signal information

about member state and interest group preferences regarding an issue (Haverland, 2009; Haverland & Liefferink, 2012). It is argued here that such information is especially relevant for Commission services when preparing policies on salient issues. This paper therefore asks the following question: Do the uncertainty and salience of issues determine whether the European Commission uses an expert group or not to assist with policy formulation?

Until now the system of expert groups was perceived as being particularly fragmented and lacking structure (Larsson & Murk, 2007). This is especially troublesome given the overall size of a system that currently includes 358 expert groups active in policy formulation (European Commission, 2014). Some evidence suggests that the use of expert groups varies by policy area given that the Commission services which are responsible for the drafting of proposals are also in control of administering the expert groups (Douillet & de Maillard, 2010; Gornitzka & Sverdrup, 2008; Hrabanski, 2010). However, Gornitzka and Sverdrup (2008) added in a single effort that the system is as much a plethora of "issue- and policy-specific constituencies that evolve according to different logics" (p. 746). Expert groups are therefore often perceived as committees that further amplify sectoral differentiation within the European Union. Hence, previous studies were far from encouraging systematic comparisons of the use of expert groups across issues. But despite the diversity and the overall size of the system, expert groups are also not omnipresent in EU policy-making as they do not assist in the preparation of each proposal. For instance, expert groups did not appear to play a role in the drafting of a major initiative such as "A Clean Air Programme for Europe" (European Commission, 2013). This is puzzling because the lack of attention to issue characteristics left scholars wondering why the European Commission was using an expert group to assist in the preparation of some policy proposals while consulting no expert group regarding others. This paper addresses that gap by testing whether issue characteristics affect the presence or absence of expert groups in policy formulation. Hereafter issue characteristics are studied along two main lines, namely that of "uncertainty" and "salience". First, and while considering that expert groups sometimes engage in problem-solving, it should be relevant to study the effect of issue uncertainty on the use of expert groups. Uncertainty points to the incapability of policy-makers to understand an issue. Second, and after taking into account that expert groups may also be used by the Commission to mobilise support, it should be relevant to study the effect of issue salience on the use of expert groups. Salience refers to the political sensitivity of an issue for member states and interest groups.

Hereafter literature on expert groups and knowledge utilisation will be introduced. Afterwards, theories on executive politics will be addressed and based on the former, three hypotheses will be formulated which link issue characteristics to the use of expert groups. Data and methods will then be discussed before the empirical results are presented. Finally, concluding remarks about the research and its implications for future work on expert groups will be presented.

## 2. Expert Groups and the Black Box of Issue Characteristics

Since the European Commission created a register for expert groups in 2005, scholars have noted an increase in the Commission's use of them (Gornitzka & Sverdrup, 2008). Their proliferation in number was one reason for a renewed interest amongst academics in the phenomenon, although issue characteristics were never explicitly addressed to explain variation and instead they remained in a figurative black-box. Pioneer contributions focused on who these experts actually were and how these groups were configured (Gornitzka & Sverdrup, 2008; Larsson & Murk, 2007). Another reason for interest resided in transparency issues regarding these groups' composition and use due to which research focused mainly on the interactions occurring inside these groups while trying to determine the logic(s) underlying their use. Academic efforts here mainly aimed at demonstrating that expertise is not used *a priori* in a neutral, objective or apolitical way (Robert, 2010). However, the mushrooming of expert groups by now appears to have stabilised and although controversies about transparency have remained, they no longer seem all that different from concerns addressed to other forms of committee governance in the European Union such as comitology or Council Working Groups (Brandsma, 2013; Häge, 2012). After being confronted with a general lack of transparency and data constraints in the register of expert groups, scholars continued to study expert groups from similar angles. Following a critical report by Alter-EU (2008), Gornitzka and Sverdrup (2010, 2011) were again among the first to study in more detail the individual profiles of these experts, with Chalmers (2013) and Rasmussen and Gross (2014) following in their footsteps. Rimkuté and Haverland (2014) in turn explained why the European Commission actually uses expert groups, especially those composed of scientists. Taken together, there was little prospect that anyone would unpack the black box surrounding issue characteristics.

Quite recently, however, Metz (2013) explicitly addressed the matter and showed that the system of expert groups is less of a *sui generis* phenomenon than is often presumed. Based on semi-structured interviews and official documents, she argued that expert groups "feed into the preparatory work in multiple ways…depending on the issue context and the policy maker's corresponding demands" (p. 276). While one

could expect issue uncertainty and salience to play a more prominent role in such qualitative research (because data collection may pose fewer problems here), previous work was mostly constructivist in nature and tended to focus on the socialization processes occurring within these committees (Hrabanski, 2010; Robert, 2010). As such, the importance of experts to lend political authority and legitimacy to an initiative is stressed because committees are consulted to forge a European consensus (Douillet & de Maillard, 2010; Robert, 2013).

Alternatively, literature on knowledge utilisation mainly explains that policy-makers may resort to expertise for different political motives (Boswell, 2008; Radaelli, 1999). This is relevant to understanding how issue uncertainty and salience may incite Commission services to consult an expert group (Rimkuté & Haverland, 2014). The instrumental use of knowledge implies on one hand that policy-makers seek substantive advice from expert groups about issues which they do not understand adequately. Hence, whether expert groups are used according to a problem-solving logic should be linked to the level of uncertainty experienced by the Commission. Metz (2013) stated in that respect that expert groups are used mostly regarding issues that contain technical details (pp. 274-275). On the other hand, the Commission may equally use an expert group to foster consensus (Douillet & de Maillard, 2010; Metz, 2013). While expert groups offer non-binding advice and experts only act as informal representatives in these groups, a consensus between national experts in favour of an issue gives the Commission a powerful argument against subsequent political opposition. Correspondingly, Metz (2013) pointed out that expert groups are also relevant for tackling "controversial" issues which, again, hints at the relevance of studying issue salience. Furthermore, knowledge is sometimes also used solely for strategic purposes in order to substantiate pre-determined policy positions (Boswell, 2008). However, this strategic use takes place rather exceptionally while the instrumental use of knowledge is considered predominant (for instance, Rimkuté & Haverland, 2014). This research therefore focuses mainly on the latter. The following section further specifies on which theoretical grounds issue uncertainty and thereafter issue salience are related to the use of expert groups by Commission services.

## 3. The Effect of Uncertainty and Salience on Expert Groups

Uncertainty is defined as the incapability of policy-makers to tackle a policy problem by formulating a solution. Although uncertainty can also arise from causes rooted in a unique policy context, the present focus lies on causes that multiple proposals have in common. Two such causes, transversality and standard-setting, will be discussed hereafter. While acknowledging that other determinants of uncertainty may exist as well, transversality and standard-setting should frequently create an information disadvantage for the European Commission due to which the latter is expected to systematically seek advice from expert groups under these circumstances. An information disadvantage refers to a situation in which information is asymmetrically divided at the expense of the European Commission (Delreux, 2011, pp. 54-55). Actors that possess private information enjoy in particular an information advantage compared to other actors which are also in need of that information, and such asymmetry is in turn reflected in their bargaining position (Banks & Weingast, 1992; Calvert, 1985; Pollack, 2003, pp. 27-28). Applied with regard to EU policy formulation, this suggests that the European Commission can cope with uncertainty by consulting stakeholders such as interest groups, member states, etc. who possess private information. The more uncertain the Commission is, the more likely it is that it will seek external advice for instrumental purposes (Haas, 1992, Haverland, 2009). Admittedly, the Commission also has alternative means of expertise at its disposal for this purpose. Outsourcing consultation to a private consultancy is one such option, but a relatively expensive one. Organising workshops/seminars/etc. is another alternative, although they comprise only *ad hoc* meetings whereas expert groups have the advantage of meeting recurrently. This enables the latter to give advice throughout the entire process of policy formulation, which should render expert groups highly effective to tackle issue uncertainty.

Transversality points to the cross-cutting nature of policy proposals as their impact may spread across multiple policy areas (European Commission, 2009). For instance, the "Proposal for a Directive on public procurement" (European Commission, 2011) would qualify as a cross-cutting initiative because public procurement takes place in all policy areas, meaning that the initiative is of interest for most public actors as well as for the private actors that carry out tenders. As a consequence of their cross-cutting nature, transversal proposals easily exceed the competence area of the leading DG that is preparing them. Commission services are organised along functionally specialised lines (Egeberg, 2012) and so a trade-off is likely to occur between issue transversality and the problem-solving capacity of a leading service regarding that issue. Put differently, transversality is detrimental to the problem-solving capacity of individual DGs and gives way to information asymmetries. This is relevant because bureaucratic politics are at play between DGs during policy formulation (Cini, 1996). Due to their diverging policy portfolios, ideological beliefs, and other related factors, individual DGs may develop preferences for particular policy proposals which ultimately need to converge into a common position (Hartlapp, Metz, &

Rauh, 2013). Although a leading DG could in principle cope with transversality by involving other DGs more closely in the preparation of an initiative, this could also weaken the bargaining position of the former towards the latter. Seeking external advice is a viable alternative as expert groups can evenly provide information about the cross-cutting nature of an issue to a leading DG. In addition, using an expert group allows the leading DG to somewhat limit the involvement of other DGs in the formulation of the initiative. The first hypothesis therefore states:

> $H_1$: The more transversal an issue is, the more likely it is that a leading DG will consult an expert group.

Standard-setting describes the importance of quantifiable information (like indicators, standards, targets) for the attainment of a policy goal in a proposal. Indicators, standards or targets are referred to collectively as "quantified measures" because quantitative data is frequently essential for issues involving economic regulation (Héritier & Lehmkuhl, 2011). For instance, the "Proposal for a Regulation to define the modalities for reaching the 2020 target to reduce $CO_2$ emissions from new passenger cars" illustrates this by name (European Commission, 2012). Quantified measures may hinder the formulation of a proposal by a Commission service in two ways. On one hand, a DG may not possess the necessary raw data (i.e. figures, numbers) to formulate a standard as the former are usually possessed by private stakeholders or by member state administrations (Héritier & Lehmkuhl, 2011). On the other hand, a DG may encounter difficulty in interpreting the adjustment costs that a standard will impose on various stakeholders (Majone, 2002). Thus, standard-setting activities should confront a leading DG recurrently with uncertainty as the DG faces an information disadvantage towards stakeholders such as business associations, but also national competent authorities who are better acquainted with the specific nature of standards and their impact on operational activities through their daily routine. In contrast to the transversality argument, a leading DG cannot resolve uncertainty caused by quantified measures through coordination with other DGs because the latter are equally prone to this information disadvantage. At this point, a leading service is expected to ask an expert group for assistance. Following a problem-solving logic, expert groups can provide information which helps the leading DG either to gather data or to estimate the policy impact of such data. That is why the second hypothesis is as follows:

> $H_2$: The more an issue involves standard-setting, the more likely it is a leading DG will consult an expert group.

Salience refers to the political sensitivity of an issue (Leuffen, Malang, & Woerle, 2013). Political actors are expected to abstain from making public concessions on salient issues because salience renders proposals susceptible to heavy criticism. In anticipation of legislative decision-making, this should be worrisome for the European Commission who wants primarily to ensure the adoption of its proposals in both legislative chambers. Moreover, this should be especially problematic in the Council of Ministers where there is a tendency to strive for consensus voting (Hayes-Renshaw, Van Aken, & Wallace, 2006). Hence, when a Commission service already perceives an issue as salient at the preparatory stage or as likely to become salient later, it will intensify contacts with member states and other stakeholders in secluded meetings. This way, the Commission can build towards a consensus out of the public eye, which lowers the transaction costs of negotiation for political actors. A suitable way of doing this is by using an expert group in advance of decision-making. Constructivist theory stresses in this respect that expert groups promote diffuse reciprocity between participants (Robert, 2010). The European Commission requires that experts are familiar with European decision-making processes and capable of making compromises, and usually ensures that representation in the expert groups is balanced in terms of nationality. Given that meetings are restricted, expert groups are considered ideally suited for supranational deliberation and consensus-building (Hrabanski, 2010; Robert, 2010, 2013). This in turn explains why the European Commission might again decide to consult expert groups for instrumental purposes, yet for reasons unrelated to problem-solving. When the Commission succeeds in convincing the experts to support its initiative, then their political peers will in fact have less substantive ground to keep opposing a political agreement later on. Expert groups thus have potential to facilitate decision-making and are used to mobilise support long before the onset of legislative decision-making (Larsson & Murk, 2007; Princen, 2011). The third hypothesis puts this as follows:

> $H_3$: The more salient an issue is, the more likely it is that a leading DG will consult an expert group.

Elsewhere, policy nature and, in particular, the distinction between (re)distributive and regulatory politics has been posited as a powerful determinant of EU policy-making (Majone, 2002). On average, DGs who formulate regulatory policy for instance consulted more expert groups than DGs engaging in (re)distributive policy (Gornitzka & Sverdrup, 2008). No satisfactory theoretical explanation was provided for this variation, but Kassim et al. (2013) gave new impetus by further specifying this variable. While some DGs mainly focus on formulating new policies or legislation (i.e. legislative DGs), other DGs actually focus more strongly on

the enforcement of existing policies (i.e. regulatory DGs) and this distinction may prove relevant when studying the variation in the use of expert groups across DGs. Given that legislative DGs mostly engage in formulating new proposals, they are expected to develop and maintain ties with diverse sets of stakeholders. Thus, legislative DGs may have a greater incentive to use expert groups in which they can meet stakeholders repeatedly. Meanwhile, regulatory DGs focus most of their attention on existing policy portfolios, due to which they may also depend more heavily on external advice when preparing new policies.

In addition, others approached uncertainty in terms of legal complexity and studied the concept in relation to adopted legislation (for example, see Klüver, 2013; Reh, Héritier, Koop, & Bressanelli, 2013). They argue that uncertainty is reflected in the length of legal acts, their number of recitals, their number of legislative articles, etc. because 'complex' legislation requires 'detailed elaboration'. In line with this legalist focus, one can alternatively argue that the drafting of legislative or legally-binding proposals—on average—creates higher transaction costs for a leading service than the drafting of proposals that are non-legislative or not legally-binding. Henceforth, a leading service can be expected to consult expert groups, especially when drafting legislative proposals.

## 4. Data and Method

Each policy proposal is considered an individual case and cases were identified through EUR-Lex.[1] EUR-Lex is an online database which gathers public documents issued by EU institutions. In 2014, the database merged with PRE-Lex which was formerly known to document legislative drafting. As such, EUR-Lex now compiles information about proposals (termed preparatory acts in the database) and decision-making procedures. The research sample includes nearly all proposals which were drafted by one of four selected Commission services and subsequently adopted by the College of Commissioners in the period between 2010 and 2013. The Commission services in question are DG Climate Action (DG Clima), DG Communications Networks, Content & Technology (DG Connect), DG Environment (idem) and DG Internal Market and Services (DG Markt). The sample was chosen to be diverse in terms of policy nature (Kassim et al., 2013). DG Climate Action and DG Environment are considered 'legislative DGs' whereas DG Markt is a 'regulatory DG'. Besides being a 'regulatory DG', DG Connect also engages in redistributive activities due to which it can be considered representative of those DGs that administer more hybrid policy domains. This sample allows us to test the policy nature variable empirically and to generalise causal inferences for other policy-making DGs. More specifically, the sample includes legislative proposals for regulations, directives, decisions and non-legislative proposals such as Commission communications, green papers, recommendations and white papers. No Commission opinions met the sampling criteria. Commission reports fell outside the scope of this research as they generally involve evaluation or implementation rather than the formulation of policy. This totalled to 260 cases as is shown in Table 1. Most cases in the sample were prepared by DG Markt followed by DG Environment, DG Connect and finally DG Clima.

[1] EUR-Lex is accessible via http://eur-lex.europa.eu

**Table 1.** Distribution of expert groups across DGs (2010–2013).

| Commission service | Number of expert groups assisting with policy formulation (column %, Register of Expert Groups) | Number of proposals (column %, sample) | Number of proposals where an expert group was used (% per DG, sample) |
|---|---|---|---|
| DG Climate Action | 7 (7.1%) | 23 (8.5%) | 10 (43.5%) |
| DG Communications Networks, Content and Technology | 18 (18.2%) | 37 (14.2%) | 15 (40.5%) |
| DG Environment | 29 (29.3%) | 80 (30.8%) | 18 (22.5%) |
| DG Internal Market and Services | 45 (45.4%) | 120 (46.5%) | 44 (36.7%) |
| Total | 99 (100%) | 260 (100%) | 87 (33.5%) |

The dependent variable use of expert group is dichotomous because the European Commission either uses an expert group to assist in policy formulation (= 0) or not (= 1). The information gathered in the register of expert groups is inadequate for cross-case comparisons, but Commission documents proved a valuable alternative source for this information. Most importantly, the COM-documents representing an issue usually contain a section in which a leading DG explains how it conducted consultation during the course of policy formulation. The relevant section in a COM-document is usually titled "Results of consultations with the interested parties and impact assessments" and one way to consult is of course by using an expert group. Occasionally, such information is provided elsewhere in the preamble of the proposal instead. Otherwise, one can look for involvement of expert groups in Impact Assessment reports and Roadmap documents which occasionally accompany COM-documents. In these documents a leading DG needs to justify how it took "Consultation and expertise" into account or in which way "stakeholders and experts have been consulted". When the European Commission was reported to have consulted a group/committee/etc. in any of these sources, the register of expert groups was checked to see whether this alleged expert group actually corresponded with a registered one. The dependent variable was then coded "1" while it was coded "0" for all other instances. However, the Commission may also announce in a proposal that an expert group has been established to assist with the formulation of related initiatives thereafter. In such a case the dependent variable is also coded as "0" because the expert group did not yet play any actual role in preparation of the initiative in question.

From 2010 onwards a total of 99 expert groups supposedly assisted one of four selected Commission services in policy formulation. Table 1 depicts the proportion of expert groups used by each DG and this approximates the proportion of issues formulated by the DGs quite well. However, the register of expert groups seems to overstate the involvement of expert groups as the latter were only used in 33.5 % of the cases in the sample (see Table 1). Thus, it is possible that expert groups were registered to assist - among others - in policy formulation while they were only consulted during the sample period for other purposes. Nonetheless some caveats need to be considered. On one hand, some expert groups assisted with preparing more than one proposal. In contrast, the Commission sometimes also asked multiple expert groups for advice about the same initiative. This cannot be inferred from the aggregated data in Table 1.

Independent variables are measured by multiple indicators which are based mostly on procedural information (see Table 2). Multiple-indicator measurement is used because measurement validity benefits from triangulation. Besides, large-N analysis is facilitated by decomposing thick concepts such as uncertainty and salience into several indicators for measurement because the latter focus on distinct properties of the original concept and therefore capture the broader meaning of that concept (Coppedge, 1999).

Firstly, transversality is a continuous measure whose operationalisation is based on two procedural indicators. On one hand, it was noted how many Commission services took part in an inter-service consultation organised by the leading service. During this internal meeting, the leading DG reports its progress on the drafting of an initiative to all other concerned DGs (Hartlapp et al., 2013). Relevant information was obtained from the Secretariat-General through personal correspondence. On the other hand, the number of European Parliament committees that formulated an opinion about the adopted initiative was also measured. Relevant information was retrieved via the Legislative Observatory. Despite the main focus on the European Commission, there is no reason why the number of parliamentary committees should not vary along with issue transversality in a similar direction as the number of Commission services would. In addition, this also allows for inferences about cases for which information on inter-service consultations is missing (see Table 2). It is argued that the more transversal an issue is, the more DGs/committees will show interest in policy formulation and decision-making. Next, the scores on both indicators were standardised in order to make them comparable and to combine them into a single measure.

Secondly, standard-setting is a continuous measure whose operationalisation came about in three steps. COM-documents were first searched for the following terms: "standards", "standardi", "indicator" and "target". The European Commission is particularly argued to experience structural information deficits concerning proposals that involve indicator-, standard- or target-setting. Next, the resulting search hits were all summed up and weighted by the length of the text document in which the word search took place.

Third, salience is measured through two indicators which capture the amount of attention that member states or private stakeholders pay to an issue (Warntjen, 2012). On one hand, it is measured whether the Commission already presented information about the initiative to the member states at a formal Council meeting before policy formulation was concluded (No = 0, Yes = 1). An initiative should, however, be mentioned in the meeting agenda under the heading "Any other business" as the other headings concern initiatives which have already been adopted by the Commission. On the other hand, the number of contributions in response to a public/online consultation is noted because it reflects the amount of attention that an initiative attracted from stakeholders (Klüver, 2013). When

the Commission did not organise a public consultation regarding an initiative, the latter was coded as "0". Missing values were attributed when the number of responses to a public consultation was unknown.

Lastly, two control variables are included in the analysis. Commission service is a categorical variable and indicates which Commission service drafted the policy initiative (DG Connect = 0, DG Clima = 1, DG Environment = 2 and DG Markt = 3). Legal act is a dichotomous variable that indicates whether a case concerns a non-legislative (= 0) or a legislative proposal (= 1). The former applies to 40% and the latter to 60% of cases.

The data was analysed using binary logistic regression analysis because the dependent variable is dichotomous. A Hosmer-Lemeshow test confirmed that logistic regression is an appropriate technique to analyse the sampling data (Field, 2013). The effects of the independent variables on the dependent variable are calculated using maximum likelihood estimators. Put differently, the study examined whether issue transversality, the importance of standard-setting and the salience related to particular issues make it less/more likely for the Commission to use an expert group to assist in policy formulation.

**Table 2.** Operationalisation of variables.

| Variables | Indicators | Values | Sources | Missing |
|---|---|---|---|---|
| Use of expert group | Does the European Commission report to have consulted an expert group during policy formulation? | No (0); Yes (1) | Adopted proposals (COM-documents); IA reports; Roadmaps | 0 |
| Transversality | Combined measure of standardized indicators. | Ratio (–1.684; 2.726) | Listed below | 13 |
| *Number of DGs* | Number of DGs participating in inter-service consultation. | Ratio (3; 39) | Overview of DGs participating in inter-service consultations | 48 |
| *Number of EP committees* | Number of parliamentary committees active on the proposal. | Ratio (1; 12) | Legislative Observatory | 71 |
| Standard-setting | Weighted indicator (according to text length). | Ratio (0; 22) | Listed below | 12 |
| *Frequency of search hits* | Number of times that indicator-, standard- or target-setting is mentioned in COM-document. | Ratio (0; 177) | Adopted proposals (COM-documents) | 12 |
| Salience | | | | |
| *Formal Council meeting* | States whether the proposal is discussed in the relevant Council configuration. | No (0); Yes (1) | Council meeting agendas | 4 |
| *Responses to public consultation* | Number of responses collected for a public consultation. | Ratio (0; 15538) | Your Voice in Europe | 5 |
| Commission service | States which DG is responsible for policy formulation. | DG Connect (0); DG Climate action (1); DG Environment (2); DG Markt (3) | EUR-Lex | 0 |
| Legal act | States whether the proposal is legally-binding. | Non-legislative proposal (0); Legislative proposal (1) | EUR-Lex | 0 |

## 5. Empirical Analysis

Table 3 shows the results of three regression models. Model 1 is a baseline model and only contains the variables relating to issue uncertainty and salience, whereas Model 2 also contains the control variables. Model 3 presents a full model which includes an interaction term of transversality and standard-setting as well. The individual effects of these independent variables on the use of expert groups are demonstrated by coefficients. The latter are in fact odds ratios which represent the change in odds occurring when a particular category of an independent variable is met. When the odds ratio has a value smaller than 1, this means that the Commission is less likely to use an expert group under the given circumstances. In return, the likelihood that the Commission will consult an expert group increases when an odds ratio is larger than 1. In the sample of 260 cases, 33 cases had missing values and 3 cases exerted a disproportionate influence on the model. These were excluded from the analysis which was eventually performed on 224 issues. A comparison between the three models demonstrates that each model scored statistically significantly, but the full model is capable of explaining 23.6% of total variance while the other two models only explain 12.6% and 18.5% as shown by their respective R-square measures. –2LL expresses the amount of variance that a model leaves unexplained. Again, a comparison shows that the unexplained variance decreased most for the third model. Hence, the overall model fit improved after adding the control variables and did so again when the interaction term was added. Hereafter the results of Model 3 will be discussed in more depth.

Firstly, transversality is related in a statistically significant way to the use of expert groups. The direction of the effect is positive, as a leading service is more than twice as likely to consult an expert group on proposals that are more transversal. Thus, the evidence strongly supports $H_1$ which attributes this to the fact that leading DGs have a high level of discretion regarding the way in which they use expert groups. This nuances other recent findings about bureaucratic politics within the European Commission. Rivalry between different Commission services used to be considered detrimental for the coherence of policy formulated by the Commission because individual DGs tried to further their own policy goals without taking the policy goals of other DGs into account (Cini, 1996). However, more recent work has suggested that this situation has improved considerably as the Barroso presidency promoted horizontal procedures to ensure consistency in policy formulation and also strengthened the role of the Secretariat-General in overseeing such coordination (Kassim et al., 2013). Internal consultations and procedures should therefore provide the Secretariat-General and other concerned services with ample opportunities to ensure that a proposal does not work counterproductively relative to proposals prepared by other services. This suggests that the European Commission has become more effective in coping with forms of uncertainty that arise from transversality than it used to be because the rationale that underpins these internal consultations is one emphasising the cross-cutting nature of proposals. Yet, the data shows that leading DGs are also more likely to meet expert groups regarding transversal issues, presumably because the latter are helpful in establishing or maintaining their privileged position in the process of policy formulation. This suggests that expert groups weaken horizontal coordination within the Commission although concerned Commission services occasionally attend expert meetings as well. Further research should test whether expert groups actually help a leading DG to keep proposals under preparation below the radar of other services or whether this relation is in fact a less contentious one.

Secondly, standard-setting also has a statistically significant effect on the use of expert groups. The odds ratio is larger than 1, meaning that the assistance of an expert group in the drafting of a proposal becomes more likely along with the importance of standard-setting regarding that issue. This confirms the argument raised by $H_2$. Of course, it is generally accepted that standard-setting may create an information disadvantage for political actors such as Commission services, but empirical confirmation of the fact that Commission services use expert groups in a systematic way to address such deficits is completely new. Previously, it was suggested that an expert group could assist in collecting relevant data or that it could provide advice about the impact of proposed measures. Based on the results depicted in Table 3, it is not possible to infer directly which reason(s) hold(s) true the most. Yet, it seems rather unlikely that the Commission would lack relevant data so frequently because the raison d'être of many regulatory agencies is exactly to gather, analyse and make available such data for the Commission. Furthermore, so-called European Standardisation Organisations are also active in creating common standards. For these reasons it seems more plausible that the Commission asks expert groups for feedback regarding estimated adjustment costs (whether the latter are proportional in nature, not discriminatory, etc.). Most suspicion surrounding the participation of private stakeholders in expert groups seems grounded in this context, where the risk for double-hatted experts is of course always imminent.

However, the effects of transversality and standard-setting should not be considered in isolation from one another as their interaction term also scored significantly. Beforehand, one would expect their combined presence to render expert involvement more likely because a Commission service should face a severe information deficit when drafting a cross-cutting issue

which involves standard-setting on top. Yet, the coefficient of the interaction term is smaller than 1, which means that it actually mitigates the individual effects of transversality and standard-setting on the use of an expert group. Despite this mitigating effect, the likelihood of using an expert group does still increase for cross-cutting issues which also involve standard-setting in comparison with issues that are only transversal or only involve standard-setting. Rather, the coefficient of the interaction term indicates that the odds do not increase exponentially. It is not clear-cut what this means, but it seems improbable that a single expert group can solve an information deficit which is rooted in different causes. As noted in the theory section, transversality and standard-setting require different sets of expertise. Multiple expert groups might be consulted to address these problems separately, but then again this would also require additional coordination between these groups. In this sense expert groups should neither be considered as a one-size-fits-all solution.

**Table 3.** Logistic regression models of "use of expert group".

| **Variables** | **Model 1** | **Model 2** | **Model 3** |
|---|---|---|---|
| Constant | 0.328*** | 0.155*** | 0.148*** |
| | (0.217) | (0.494) | (0.487) |
| UNCERTAINTY | | | |
| Transversality | 1.349 | 1.467* | 2.227*** |
| | (0.175) | (0.192) | (0.235) |
| Standard-setting | 1.312** | 1.389*** | 1.703*** |
| | (0.094) | (0.100) | (0.123) |
| Transversality * Standard-setting | | | 0.709*** |
| | | | (0.108) |
| SALIENCE | | | |
| Formal Council meeting | 1.632 | 1.739 | 1.666 |
| | (0.381) | (0.423) | (0.430) |
| Responses to public consultation | 1.000 | 1.000 | 1.000 |
| | (0.000) | (0.000) | (0.000) |
| CONTROL VARIABLES | | | |
| Commission service | | - | - |
| *DG Climate Action* | | 1.056 | 1.023 |
| | | (0.675) | (0.658) |
| *DG Environment* | | 0.683 | 0.748 |
| | | (0.536) | (0.533) |
| *DG Internal Market and Services* | | 1.388 | 1.154 |
| | | (0.467) | (0.468) |
| Legal act | | 2.536** | 2.419* |
| | | (0.346) | (0.351) |
| N | 224 | 224 | 224 |
| –2LL | 266.886 | 256.081 | 246.382 |
| Nagelkerke R Square | 0.126 | 0.185 | 0.236 |

Notes: Dependent variable—Use of expert group. Baseline categories: Commission service—DG Connect; Legal act—Non-legal initiative; Formal Council meeting—Not discussed. Coefficients represent odds ratios; standard errors in parentheses; significance levels: ***$p \leq 0.001$; **$p \leq 0.01$; *$p \leq 0.05$.

Thirdly, salience scored insignificantly, thereby proving H3 to be incorrect. It could already be observed that issue salience alone could not account for the presence of all expert groups in policy formulation as the majority of proposals are not salient. This was also the case for other research working with a full sample (Reh et al., 2013). By way of illustration, only 17.3% of all issues were discussed during a formal Council meeting, while the number of responses to public consultations clearly followed a right-skewed distribution. The reason why $H_3$ was not confirmed is probably because the Commission perceives salience in a more ambiguous way than was assumed. It was argued before that salience impedes decision-making which should give Commission services an incentive to use an expert groups for consensus-building. However, the Commission does not necessarily dislike salience. For instance, a Commission service may equally try to gain more attention for a proposal when public opinion seems to favour its policy position. In doing so, the DG then pressures other political actors to concede with its proposal. Evidently, referring a proposal to the secluded stage of expert groups would run counter to such ambition and hence, this could explain why $H_3$ was not confirmed. One could object that even under such circumstances a Commission service might consult an expert group for a more strategic purpose; experts can lend political legitimacy to the Commission by backing up a proposal with scientific argumentation (which makes it harder for opponents to discharge a proposal as being biased). Yet there is no reason why Commission services should use expert groups systematically in this strategic sense. In fact, previous research pointed out that this strategic use of expert groups remains the exception rather than the rule (Rimkuté & Haverland, 2014).

Lastly, the control variables presented a mixed providence in predicting the outcome variable. Regarding "Commission service", the distribution of expert groups differs across DGs, as was already shown in Table 1. The differences were quite subtle between DG Clima, DG Connect and DG Markt which is again reflected in the coefficients in Table 3. However, DG Environment really stood out as a low user, which is why its odds ratio scores below 1. The relationship further appears statistically insignificant in all models meaning that variation in use of expert groups—although notable in the first instance at the level of DGs—is better explained by the issue characteristics. Regarding "legal acts", expert groups are two and a half times more likely to be consulted about legislative proposals than regarding non-legislative proposals and this effect is significant. This makes sense in that the latter involves, for example, Commission Communications such as "A Clean Air Programme for Europe" which announce a future strategy rather than proposing detailed policy measures.

## 6. Conclusion

This paper examined whether issue characteristics affected the use of expert groups by the European Commission. An expert group was found to be present in 33.5% of policy proposals. When reverting to the initial puzzle, the analysis showed that Commission services use expert groups as an instrument to reduce uncertainty and not as a means to offset salience. These findings also speak to other research on expert groups because even though the system of expert groups constitutes a diverse patchwork at first sight, and thereby reflects to a large extent the sectoral differentiation within the European Union, this does not imply that expert groups have nothing in common across the borders of the respective policy niches or policy areas in which they work. For one thing, the results showed that issue characteristics have explanatory potential when studying expert groups. As long as more thorough assessments of expert groups through large-N studies are obstructed by data constraints, it should not be taken for granted that the expert group system itself lacks consistency. Therefore, further research could look for determinants of uncertainty other than transversality and standard-setting. In this view research on expert groups may benefit from looking at research that studies issue characteristics in relation to decision-making processes in other executive institutions.

Finally, Commission expert groups are frequently contested for their secrecy, although such criticism is usually grounded in more general concerns about secluded decision-making. Committees with restricted access, such as expert groups, are considered to increase the efficiency of executive decision-making. However, these efficiency gains also incur penalties regarding the political legitimacy that executive institutions such as the European Commission enjoy. This is so because the secluded nature of expert groups conceals how and under whose instigation politically relevant decisions came to life. Similarly to what has been seen before in the context of the comitology system, the European Commission is nowadays repeatedly being asked to make its expert group system more transparent. This has resulted in some minor concessions in previous years, but major improvements seem rather unlikely in light of the inherent trade-off that would occur between the efficiency and legitimacy of decision-making in expert groups. This research has highlighted some circumstances in which the European Commission is likely to use expert groups and, in doing so, these findings may enable scholars to make more finely-tuned normative assessments about whether such expert involvement can sometimes be justified, rather than contesting *a priori* that it is not.

**Acknowledgements**

This paper benefited from feedback obtained at a series of conferences during 2014. I am most grateful for the outstanding feedback from Tom Delreux, the referees and the guest editors of this Special Issue in Politics and Governance. Furthermore, I also want to acknowledge François Randour and Pauline Pirlot for their constructive criticism. Lastly, my appreciation goes to Cleo Nannes as she supported me from start to finish.

**Conflict of Interests**

The author declares no conflict of interests.

**References**

Alter-EU. (2008). *Secrecy and corporate dominance. A study on the composition and transparency of European Commission expert groups.* Brussels, Belgium: Alter-EU.

Banks, J. S., & Weingast, B. R. (1992). The political control of bureaucracies under asymmetric information. *American Journal of Political Science*, *36*, 509-524.

Boswell, C. (2008). The political functions of expert knowledge: Knowledge and legitimation in European Union immigration policy. *Journal of European Public Policy*, *15*(4), 471-488.

Brandsma, G. J. (2013). *Controlling comitology. Accountability in a multi-level system*. Basingstoke, UK: Palgrave Macmillan.

Calvert, R. L. (1985). The value of biased information: A rational choice model of political advice. *The Journal of Politics*, *47*(2), 530-555.

Chalmers, A. W. (2013). Getting a seat at the table: Capital, capture and expert groups in the European Union. *West European Politics*, *37*(5), 976-992.

Cini, M. (1996). *The European Commission: Leadership, organisation, and culture in the EU administration*. Manchester, UK: Manchester University Press.

Coppedge, M. (1999). Thickening thin concepts and theories: Combining large N and small in comparative politics. *Comparative Politics*, *31*(4), 465-476.

Delreux, T. (2011). *The EU as international environmental negotiator.* Farnham, UK: Ashgate.

Douillet, A.-C., & de Maillard, J. (2010). Les comités d'experts : Une ressource institutionnelle pas toujours maîtrisée. Le cas de la DG Justice, Liberté, Sécurité. *Politique* européenne, *Volume*(32), 77-98.

Egeberg, M. (2012). Experiments in supranational institution-building: The European Commission as a laboratory. *Journal of European Public Policy*, *19*(6), 939-950.

European Commission. (2009). *Impact assessment guidelines* (SEC(2009) 92). Brussels, Belgium: European Commission.

European Commission. (2011). *Proposal for a Directive on public procurement* (COM(2011) 896). Brussels, Belgium: European Commission.

European Commission. (2012). *Regulation of the European Parliament and of the Council. Amending Regulation (EC) No 443/2009 to define the modalities for reaching the 2020 target to reduce CO2 emissions from new passenger cars* (COM(2012) 393). Brussels, Belgium : European Commission.

European Commission. (2013). *A Clean Air Programme for Europe* (COM(2013) 918). Brussels, Belgium : European Commission.

European Commission. (2014). Register of expert groups and other similar entities. Retrieved from http://ec.europa.eu/transparency/regexpert/

Field, A. (2013). *Discovering statistics using IBM SPSS statistics and Sex and Drugs and Rock 'n Roll* (4th ed.). London, UK: Sage.

Gornitzka, Å., & Sverdrup, U. (2008). Who consults? The configuration of expert groups in the European Union. *West European Politics*, *31*(4), 725-750.

Gornitzka, Å., & Sverdrup, U. (2010). Enlightened decision making? The role of scientists in EU governance. *Politique européenne*, *32*, 125-149.

Gornitzka, Å., & Sverdrup, U. (2011). Access of experts: Information and EU decision-making. *West European Politics*, *34*(1), 48-70.

Haas, P. (1992). Knowledge, power, and international policy coordination. *International Organization*, *46*(1), 187-224.

Häge, F. M. (2012). *Bureaucrats as law-makers: Committee decision-making in the EU Council of Ministers*. London, UK: Routledge.

Hartlapp, M., Metz, J., & Rauh, C. (2013). Linking agenda setting to coordination structures: Bureaucratic politics inside the European Commission. *Journal of European Integration*, *35*(4), 425-441.

Haverland, M. (2009). How leader states influence EU policy-making: Analysing the expert strategy. *European Integration online Papers (EioP)*, *13*. Retrieved from http://ssrn.com/abstract=1553787

Haverland, M., & Liefferink, D. (2012). Member State interest articulation in the Commission phase. Institutional pre-conditions for influencing "Brussels". *Journal of European Public* Policy, *19*(2), 179-197.

Hayes-Renshaw, F., Van Aken, W., & Wallace, H. (2006). When and why the EU Council of Ministers votes explicitly. *Journal of Common Market Studies*, *44*(1), 161-194.

Heard-Laureote, K. (2010). *European Union governance: Efficiency and legitimacy in European Commission committees*. London, UK: Routledge.

Héritier, A., & Lehmkuhl, D. (2011). Governing in the shadow of hierarchy: New modes of governance in regulation. In A. Héritier & M. Rhodes (Eds.), *New modes of governance in Europe. Governing in the shadow of hierarchy* (pp. 48-74). New York, USA: Palgrave Macmillan.

Hrabanski, M. (2010). Les groupes d'experts de la DG agri: Diversité des usages de l'expertise et socialisation aux normes d'action publique de l'Union européenne. *Politique européenne*, *32*, 99-123.

Kassim, H., Peterson, J., Bauer, M. W., Connolly, S., Dehousse, R., Hooghe, L., & Thompson, A. (2013). *The European Commission of the twenty-first century*. Oxford: Oxford University Press.

Klüver, H. (2013). *Lobbying in the European Union: interest groups, lobbying coalitions, and policy change.* Oxford, UK: Oxford University Press.

Larsson, T., & Murk, J. (2007). The Commission's relations with expert advisory groups. In T. Christiansen & T. Larsson (Eds.), *The role of committees in the policy-process of the European Union. Legislation, implementation and deliberation* (pp. 64-95). Cheltemham & Northampton, UK: Edward Elgar.

Leuffen, D., Malang, T., & Woerle, S. (2013). *Structure, capacity or power? Explaining salience in EU decision-making*. Paper presented at the EUSA 13th Biennial Conference, Baltimore.

Majone, G. (2002). *Regulating Europe*. London, UK: Routledge.

Metz, J. (2013). Expert groups in the European Union: A sui generis phenomenon? *Policy and Society, 32*(3), 267-278.

Pollack, M. A. (2003). *The engines of European integration: Delegation, agency, and agenda setting in the EU.* Oxford, UK: Oxford University Press.

Princen, S. (2011). Agenda-setting strategies in EU policy processes. *Journal of European Public Policy*, *18*(7), 927-943.

Radaelli, C. M. (1999). The public policy of the European Union: whither politics of expertise? *Journal of European Public Policy*, *6*(5), 757-774.

Rasmussen, A., & Gross, V. (2014). Biased access? Exploring selection to advisory committees. *European Political Science Review*.

Reh, C., Héritier, A., Koop, C., & Bressanelli, E. (2013). The informal politics of legislation: Explaining secluded decision-making in the European Union. *Comparative Political Studies*, *46*(9), 1112-1142.

Rimkuté, D., & Haverland, M. (2014). How does the European Commission use scientific expertise? Results from a survey of scientific members of the Commission's expert committees. *Comparative European Politics*. doi: 10.1057/cep.2013.32

Robert, C. (2010). Les groupes d'experts dans le gouvernement de l'Union européenne. Bilans et perspectives de recherche. *Politique européenne*, *32*, 7-38.

Robert, C. (2013). Expert groups in the field of eurocracy. In D. Georgakakis & J. Rowell (Eds.), *The field of eurocracy. Mapping EU actors and professionals* (pp. 137-165). Basingstoke, UK: Palgrave Macmillan.

Warntjen, A. (2012). Measuring salience in EU legislative politics. *European Union Politics*, *13*(1), 168-182.

**About the Author**

**Bart Van Ballaert**

Bart Van Ballaert is affiliated as a PhD research fellow in EU politics to the University of Louvain (Louvain-la-Neuve, Belgium) where he is currently writing a PhD dissertation on the European Commission's consultation practices with external stakeholders during the drafting of proposals. Holding on to an institutionalist approach, he also studies affiliated topics in the fields of bureaucratic politics and EU committee governance.

**Politics and Governance (ISSN: 2183-2463)**
**2015, Volume 3, Issue 1, Pages 151-165**
**Doi: 10.17645/pag.v3i1.130**

Article

# Societal Inclusion in Expert Venues: Participation of Interest Groups and Business in the European Commission Expert Groups

Åse Gornitzka [1,*] and Ulf Sverdrup [2]

[1] Department of Political Science and Arena—Centre for European Studies, University of Oslo, 0316 Oslo, Norway; E-Mail: ase.gornitzka@stv.uio.no
[2] Norwegian Institute of International Affairs, 0033 Oslo, Norway; E-Mail: ulf.sverdrup@nupi.no

* Corresponding author

Submitted: 2 July 2014 | In Revised Form: 1 January 2015 | Accepted: 5 January 2015 | Published: 31 March 2015

**Abstract**
The elaborate system of expert groups that the European Commission organises is a key feature of EU everyday governance and also a potential channel of societal involvement in EU policy making. This article examines the patterns of participation in the expert group system of a broad set of societal actors—NGOs, social partners/unions, consumer organisations, and business/enterprise. The analysis is based on a large-N study of Commission expert groups. Taking on an "executive politics" perspective, we identify main patterns of participation and analyse organisational factors that affect the inclusion of societal actors in the expert group system. We find that such actors are strongly involved in this system. Yet, there is a striking heterogeneity in the extent to which the Commission's administrative units include societal groups as experts in the policy process. The logics that underpin the inclusion of business organisations are not identical to the logics of inclusion applied to social partners and NGOs. The Commission as the core supranational executive is thus selectively open for societal involvement in its expert groups system, and this bureaucratic openness is patterned, clustered, and conditioned by structural factors that affect how the Commission as a multi-organisation operates.

**Keywords**
Executives; expertise; European Commission; interests groups; organisation; public administration

**Issue**
This article is part of the special issue "The Role of Expert Knowledge in EU Executive Institutions", edited by Professor Åse Gornitzka (University of Oslo, Norway) and Dr. Cathrine Holst (University of Oslo, Norway).



## 1. Introduction

How public administration relates to societal actors varies considerably between political systems—variation is seen in how accessible public administration is to different types of societal actors, how these linkages are organised, and what the underlying rationales are. According to principles of *responsive* and *representative* public administration the status of unelected bureaucracies rests on acquiring "legitimacy from below" by connecting directly to the society it is supposed to serve (Rothstein, 2012b). At the same time, according to Weberian bureaucratic principles a main source of legitimacy for a *responsible* bureaucracy is upholding professional standards and applying expertise and specialised information when policies are formulated and implemented (Lægreid & Olsen, 1978; Olsen, 2006). From this perspective, public administration's relations to society have a different underlying rationale: only to the extent that societal actors carry with them specialised knowledge and information that are instrumental and indispensable to rational policy making processes and effective implementation, would such actors gain access. By including societal actors in-

to their information system bureaucracies can draw on the expertise that such actors may possess (Saurugger 2006). Hence, for responsive *and* responsible executive organisations how they deal with the interface between administration, expertise and society in principle becomes important for their legitimacy and effectiveness.

This article examines empirically this nexus—to what extent and under what conditions are different kinds of societal actors included in expert venues for policy making? We analyse these questions in the context of European Union (EU) policy making and the elaborate system of expert groups organised by the EU's executive centre—the European Commission (Commission). This set of expert venues is the most extensive organised supranational information system and a key feature of everyday governance at the EU level, as well as potentially a channel for societal involvement in policy making. Building on previous research on overall patterns of participation (Gornitzka & Sverdrup, 2010, 2011) we zoom in on societal actors as one of the main types of actors, in addition to national administrations and scientists, that the expertise system is composed of. The Commission as a "normalised" executive (Wille, 2013) can be expected to include societal actors in the way that other executives do. Yet, links with societal groups have been argued to be more important for EU executive bodies than for comparable administrations at national level since the EU's political-administrative system has traditionally had weakly structured connections with society through the "electoral channel". Studies of interest mediation at the European level concur in general that the presence of organised societal and private sector actors has developed into an institutionalized part of EU policy making (Greenwood, 2007, 2011; Mazey & Richardson, 2001) with the Commission as its most important contact point (Beyers, Eising, & Maloney, 2008). Considerable scholarship has established how the Commission and societal actors interact through a wide range of modes and means of consultation (see Eising, 2008), yet less is known about how societal actors feature as experts and how they participate in specialised, expert venues.

We unpack the notion of societal actors by looking into participation in the expert group system of a broad set of societal actors—non-governmental organisations (NGOs), social partners/unions, consumer organisations, and business organisations. We know already that such groups are present in the expert group system (see Gornitzka and Sverdrup 2011), but by conducting a more elaborate analysis of the data on participation of societal actors in the Commission's expert groups we can shed further light on what kinds of societal groups are brought into Commission policy making as members of expert groups, which factors affect the inclusion of such actors, and uncover different "logics of inclusion".

We take as our point of departure an "executive politics" perspective (Lodge & Wegrich, 2012) on the interaction between societal actors and the Commission rather than a theory of interest group politics and strategies (Beyers et al., 2008; Coen, 1998). Consequently, we focus on organisational factors that shape administrative behaviour and develop arguments anchored in organisation theory about how the executive branch of government in general, and the Commission in particular, can be expected to open up for societal participation in the policy making processes through expert venues.

The article proceeds as follows. First we present the analytical framework identifying the factors that can be expected to affect the interaction between the Commission and societal actors. The Commission, like national executives, can be regarded as a multi-organisation where different departments operate in different task environments, under a differentiated and specialised formal structure, and where they are carriers of different traditions, norms and practices. We assume that there is considerable variation among the Commission's Directorate Generals (DGs) in the extent to which they engage with societal actors and see them as relevant experts. Hence, specific arguments that can help explain such variation are introduced. In the subsequent section we give a brief presentation of what an expert group is, and which data and methods are used. Next, the findings on the patterns and configurations of societal participation in the expert group system are presented and discussed. Finally, we conclude by revisiting the main arguments about the nexus between administration, expertise, and society in the light of our main findings.

## 2. The Theoretical Arguments: Organisational Factors and the Nexus between Administration, Expertise, and Society

Societal groups can interact with the executive branch of government in a number of ways, both in the preparation and implementation of policies. National executive bureaucracies vary in how open and pluralistic they are in their contacts with society and how institutionalised these interactions are. There are considerable variations in the rules and norms that regulate this link (Lascoumes & Le Galès, 2003). As the relationship between society and public administration is a perennial and contested issue in the social sciences (Rothstein, 2012a), the conceptualisations of this relationship are as varied as its empirical manifestations across time and systems. This diversity is also reflected in the scholarship on the role of interest groups and civil society in European politics and governance. The institutionalisation of the European political space (Stone Sweet, Fligstein, & Sandholtz, 2001) brought interest groups, once mainly organised within nation-states, to the European level as they established trans-

national networks and associations with representatives in Brussels. As the Commission consolidated its position as the executive centre in the EU, it became a sought-after access point for interest groups more broadly and other societal actors. It also actively promoted the establishment of European level organisations and associations. Interest groups adjusted to the multi-arena policy making stemming from the Europeanisation of public policy in many sectors (Richardson, 2000). As pointed to by Mazey and Richardson (2001), the Commission came to be seen as entertaining "promiscuous relationships" with societal actors, and it became a type of administration where such actors are "pressing against an open door". Strong arguments were made for seeing the European level system of interest intermediation as a system of pluralist lobbying (Andersen & Eliassen, 1995), but with a bias. The EU as a system of governance was seen to privilege mobile capital interests over diffuse and general societal interests, that is, favouring "businessmen's Europe" (see Pollack, 1997 for a critical examination of this argument).

The main body of research on societal actors in the EU has employed an interest groups politics perspective, taking the interest organisations as the unit of analysis and studying access and strategies for how to influence the EU policy process (Beyers et al., 2008). This article takes executive politics and a public administration perspective as the starting point, shifting the analytical attention to the systematic study of the role of public administration in the formulation and execution of political programmes, and the organisational factors that structure life in political-administrative institutions (Lodge & Wegrich, 2012), including its interaction with non-government organisations.

According to such a perspective, a key to understanding bureaucratic behaviours, including their openness towards their environment, lies in how an administrative organisation is structured (Simon, 1976[1945]). Public officials do not only look "upward" along the organisational hierarchy and political leadership for guidance and decision making premises. Bureaucratic organisations as open systems can also be expected to seek predictable and regularised relationships with their task environments. Such a conception of executive organisations postulates an interactive relationship between societal actors and public administration. But it does not see bureaucracies as environmentally determined, that is, executives are not the derivative of social forces and agencies prone to be "captured" by the societal actors with whom bureaucracies interact. Rather, public agencies as institutions have a basis for independent action and capacity to manage their relations to external constituents (March & Olsen, 1989).

Why would executive organisations engage with societal actors? Bureaucracies can, based on an instrumental logic, connect and open up for societal participation to satisfy, or satisfice (Simon, 1976[1945]), its information needs and for channelling knowledge and information to the appropriate decision-points. Bureaucracies with limited in-house capacity operating in shifting and complicated environments have to rely on external information. Including societal actors is part of their search for information, a search that can be both supply and demand driven (March, 1994), and an essential part of what bureaucracies do. The Commission is no different in this respect from other executive organisations—it might even be *more* dependent on drawing on outside policy advice and capacity for implementation than national administrations given the nature of the European administrative space. Interest groups carry information that are access goods in their interaction with the Commission (Bouwen, 2004)[1]. The Commission's officials can be expected to be particularly interested in cultivating a relationship with corporate actors and organised interest groups as providers of factual information in complex policy areas (Broscheid & Coen, 2007; Coen, 1997). In addition, we know from the study of interest group strategies that interest groups and civil society organisations at the EU level are professionalising, which also involves emphasising their qualities as expertise organisations (Saurugger, 2006). Private sector actors may, for instance, possess a type of professional and technical know-how stemming from everyday interaction with sectors of society—a kind of hands-on knowledge that bureaucracies at national or supranational level do not have. Consequently, accessing societal actors' expertise is a likely rationale for the Commission to include such organisations into the policy process.

Societal actors will also have political information, that is, information about sectoral organisations' and grass root preferences. Such preferences could be important for the fate of the Commission's proposals at veto-points in the inter-institutional process of decision making in the EU and for anticipating possible mobilisation of societal actors through media or other means. Furthermore, the inclusion of societal actors into policy making and implementing EU policies can increase the likelihood that such policies are accepted and complied with by affected parties. In this way including societal actors into expert venues can be a way for bureaucracies to monitor and interpret their technical and political environments.

A second set of rationales for societal inclusion concerns bureaucracies as legitimacy seeking organisations acting according to a logic of appropriateness. We know that bureaucratic behaviour is guided by multiple

[1] Note that Bouwen's argument refers to the logic of lobbying of business interest in the Commission and the European Parliament within the context of the internal market. The society interests that can be activated as participants in the Commission expert groups are much broader.

norms that reflect different perceptions of what public administration is. Concerns for political loyalty and administrative effectiveness (public administration as an instrument for political leadership), neutrality and professional standards in bureaucratic action ("responsible administration") blend and collide with each other and with concerns for "affected parties" and the sectors it is set to serve ("responsive administration") (Egeberg, 1999). As we have pointed to already, the authority and legitimacy of a bureaucracy can also be derived from its ability to be responsive to socio-economic interest groups, beyond the instrumental value of including "society" in the formulation and execution of policy. Consequently, there is a potential tension here between the inclusion based on concerns for interest representation and one based on concerns for drawing on a specialised knowledge that such actors bring to the table.

We can expect that in the case of the Commission how such concerns are mixed and balanced will affect the propensity to include societal actors in expert venues. The Commission does not have formal, clear and precise obligations to consult societal actors in general (de Vlieger & Tanasescu, 2011). Yet, according to norms of a responsive public administration, the Commission is expected to be sensitive to principles of inclusiveness and balanced representation of expertise and interests in its composition of expert groups. If the latter is indeed an active norm in administrative behaviour in the Commission we will expect to see the following patterns. Firstly, inclusion of societal actors in expert venues would be a general feature of the Commission. Secondly, and in line with the notion of pluralistic corporatism, the information system would recognise the need to balance information from different interests in society, especially with respect to the economic cleavage lines (employers versus employees and producers versus consumers). Hence, the Commission can be expected to use a heterogeneity principle in the composition of its expert group system in order to signal balanced representation and avoid allegations of favouritism and "corporate capture".

In sum, establishing and maintaining manageable relationships with organised interest groups, corporate actors, civil society association, etc., would be important for a bureaucracy seeking to secure a stable environment, to enhance its political effectiveness towards other EU institutions (Mazey & Richardson, 2001), but also for acting according to norms of good, societally responsive administrative behaviour.

However, an executive politics perspective also recognises that bureaucracies are not monolithic structures. Variation in organisational properties within bureaucracies and the environments within which they operate affects their actions, including how they interact with societal actors. Hence, we have to pay attention to possible variations in patterns of societal participation in expert venues and how such variations can be accounted for.

### *2.1. Division of Competencies across Levels of Government*

The Commission is positioned in a multi-level political-administrative order and has varying bases for acting independently from member states. This is defined by the distribution of legal competences across levels of government. Legal competences are a basic parameter for the Commission's autonomy of action, and are also a part of the formal structure that varies between the policy domains within which the Commission operates. In some areas the EU holds exclusive competences, in others competences are shared, and in some areas the competences of the EU are more limited and primarily related to supporting and supplementing the national level. Given the propensity of the Commission to build up a transnational civil society in tandem with delegation of power to the supranational level (see above), we expect that the Commission is more likely to include societal actors in areas where the Commission has a strong Treaty basis for independent action thereby underlining its autonomy from member states. In order to test the significance of legal competences for societal inclusion we attributed the competences distribution in the Treaties to the various policy areas: 1 = supporting/complementary, 2 = coordinating, 3 = shared, 4 = exclusive[2].

### *2.2. Bureaucratic Specialisation and Tasks*

The principle of specialisation is the second fundamental organisational property of the Commission—a striking feature of the Commission's administrative apparatus and the portfolio allocation to each Commissioner is that they are arranged along sectoral lines (Egeberg, 2006). From the study of public administration at the national level and several observations on the Commission as a multi-organisation, we can expect to find strong sectorally segmented interaction patterns between the DGs and specialised societal groups. The internal organisation of the Commission affects its interaction with outside constituents. We could, for instance, expect to see DGs dealing with the regulation of the internal market to include business actors more than DGs that relate to other sectors of society. With the data that are available

[2] Coding legal competences is difficult. We have used the allocation of competences as they are presented in the treaties. For instance, fishery policy is coded as a policy field where the EU holds exclusive EU competences (value 4), whereas in the field of education and culture the EU holds supporting competences (value 1). Note that the coding has been done regarding policy themes, and not the DG, since a single DG can be involved in policy areas with different legal competences.

to us we cannot examine this in full, but we probe this expectation by looking at overall patterns of participation in expert groups and which DGs that tend to include societal actors in their expert venues.

Bureaucratic organisation also involves the specification of tasks. We can assume that *type of primary task* of the DG is relevant for their external contact patterns, including their propensity to include societal actors as experts. We assume that internal services departments will not be prone to seek information from outside experts in the same way as DGs involved in specialised sectors of society. We expect that DGs managing the EU's spending programmes and those DGs that develop new legislation are more likely to include the targets of policies in the policy making process compared to DGs that are primarily charged with regulation and enforcement of existing EU law. The latter departments would be more reluctant to potentially compromise their neutrality in the exercise of their tasks. For investigating these expectations we examine a simple frequency distribution of societal inclusion in expert groups according to types of DGs and include this variable in our multivariate model. For categorisation of type of task and coding of DGs we rely on Kassim et al. (2013, pp. 20, 25-26), who use the following categories: internal services/support, external relations of the EU, legislative (producing new legislation) regulatory/enforcement (upkeep and enforcement of *acquis communautaire*/comitology), research, and spending (management of EU's spending programmes).

Tasks of the administration also vary in the course of a policy process. A standard mode of describing decision making in political systems is to separate the policy-making process into various stages, from agenda setting, policy formulation, decision stage, to implementation and evaluation (Lasswell, 1956). Although studies of actual decision making show that there is often no natural sequence nor clear distinction between the different stages and that these stages are simplifications (Jann & Wegrich, 2007), separating between policy stages is still analytically helpful for grasping the relationship between administrative task structure and the Commission's inclusion of societal actors. The "stages heuristic" can capture variation in type of actors that participate throughout the policy process (Parag, 2008). This can tell us what type of policy tasks that prompts the Commission to seek such actors' involvement, and what roles the administration assigns to such actors in the policy process. In order to test this relationship we use data on the tasks specified for each expert group. We distinguish between the following tasks: groups that assist the Commission in the preparation of legislation or in policy definition ("Assist in preparation"), suggesting a more technically and specific policy shaping task for expert consultations; groups that provide expertise to the Commission when drafting or implementing measures before the Commission submits these draft measures to a comitology committee ("draft implementation"), which is also a highly specialised task; groups that coordinate with member states and promote the exchange of views between actors ("exchange of view- coordination"), which indicates a more loose "forum" function for expert involvement; and groups that monitor the development of national policies and the enforcement of EU policies ("monitoring"), where experts are engaged as watchdogs for the Commission.

### *2.3. Institutionalisation and Bureaucratic Traditions*

We can expect bureaucratic traditions for handling policy areas at the European level to affect the openness of the Commission towards societal actors. Some policy fields have been subjected to European governance for a longer period of time than others. According to institutional theory (March & Olsen, 1995) we could expect that over time, processes of institutionalisation, routinisation, and development of shared experiences, understandings and meanings, might reduce the number of disputes and uncertainties in developing policy and implementing them. Consequently, the Commission can be assumed to have more discretion in older policy fields than in more recent additions to EU executive politics. Hence, in the older fields there is less need to consult with external actors.

The alternative expectation to consider is that also the mode of consultation/interaction in itself, that is, repeated, long-term interaction between the Commission administration and societal groups, becomes routinised and institutionalised. In areas where the Commission is less of an "adolescent bureaucracy" including societal actors may have become a standard operating procedure for processing policy issues (Mazey & Richardson, 2005). This effect could also be reinforced by formalising the consultative arrangements. If this is indeed a mechanism, we should expect to see more societal inclusion in expert venues that are formal and permanent. Testing these expectations in depth will require qualitative data that our sources do not provide, yet as an approximation we use the variable "portfolio age" based on data on year for the creation of DG portfolios, as measured by Broscheid and Coen (2007), and variables measuring formalisation of Commission's expert groups (expert groups characteristics: formal versus informal and permanent versus temporary).

### *2.4. DG Environmental Pressure*

Different DGs face varying types of uncertainties and operate in different task environments. An environmental factor with particular relevance for societal participation is the density of interest groups in a policy area that operate at the European level. Social actors recognise expert groups as an important policy venue,

and they can use such organised links to further their interests (Peters, 1995) and to legitimise activities vis-à-vis their own constituency and membership. Business associations target the Commission working level most frequently in their efforts to influence EU decision making (Eising, 2007; Kriesi, Tresch, & Jochum, 2007). In some policy areas the interest group activity is dense, while in other areas there is a much lower interest group activity (Broscheid & Coen, 2007; Mazey & Richardson, 2001). In some areas expertise is to a large extent monopolised by national governments. In these areas the Commission will have less available relevant expertise from societal actors to draw on and also faces less pressure for participation from organised interest groups. This we can expect will influence the Commission's propensity to open up for societal participation. Based on this argument one can expect to see more inclusion of societal actors in expert groups in policy areas where there is a high density of interest groups. In order to examine this relationship we use data from the Coneccs data basis[3], indicating the number of interest groups operating at the EU level in relation to various DGs.

## 3. Data and Methods

The analysis is based on data from a database of the Commission expert groups (Gornitzka & Sverdrup, 2011). Formally, an expert group is a consultative entity comprising external experts advising the Commission and our database provides information on key properties of these groups (N = 1236). When constructing the database we used information from the Commission's register of expert groups from January 2007. The database includes all formal and informal groups registered as active at the time[4][5]. Defining and categorising societal actors is not a straightforward and uncontroversial matter (Beyers et al., 2008). In fact, major political controversy has arisen over this issue—especially whether strong corporate interests have been included guised as expert group members acting in their "personal capacity" (see e.g. Nielsen, 2015)[6]. For the purpose of the analysis presented in this article we use the following broad categories of organisations that are recorded in the registry as members of expert groups: "Enterprises and industry" for organisations representing business interests and for-profit organisations, "Social partners" for organisations representing the interests of European employers and workers (trade unions), "non-governmental organisations—NGOs" for non-profit organisations of general or single societal interests, "consumers" for organisations representing consumer interests, and "practitioners" to cover professional associations. Operationalisations and additional data sources for independent variables used in the analyses are presented and discussed in the theoretical section.

We run three different analyses of societal actors in expert groups. First, we examine the configuration of participants in expert groups. For this purpose we use a simple bivariate correlation analysis. When we examine the organisational factors that affect the inclusion of societal actors in expert groups we use a simple frequency distribution according to the DGs and types of DGs, and a multivariate linear regression model with the participation of societal actors as dependent variable and the expert group as the unit of analysis. The multivariate model used here (Table 5, Table 6 and Appendix) is an elaboration from the Gornitzka and Sverdrup (2011) multivariate model and adds theoretically relevant independent variables to the model by including types of tasks/policy stage and institutionalization of expert venue as variables. This model is also used with different types of societal actors as dependent variables.

The dependent variables are binary codes (participation of a type of actor in an expert group = 1 versus non-participation = 0), hence logistic regression rather than ordinary least square (OLS) is the preferred method. However, as the two methods produce very similar results when the distribution of the dependent variable is not too skewed (about .25/.75) and as OLS coefficients are much more readily interpreted (Christophersen, 2006; Hellevik, 2009; Pohlman & Leitner, 2003), OLS regression is used for the main model (Table 5). Logistic regression is used for analysis reported in Table 6 and the Appendix.

Some clarifications regarding expert groups are in order. The composition of the group reflects the choices made by the Commission, most of them at the level of DGs and their units. As pointed to earlier, interaction between societal actors and the EU executive bodies does not take place via such expert venues alone—and we make no attempt here to cover the full spectre of societal involvement and the Commission's modes of consultation. The focus here is solely on the expert groups in the Commission. When examining patterns of participation, we should also keep in mind that those actors that are included as experts in such groups do not necessarily become influential. Recent research on the influence of expert groups point to how expert groups vary in their influence on the Commission posi-

[3] Consultation, the European Commission and Civil Society (Coneccs) was the Commission's database of civil society organisations active at the EU level. We use data from 2007. http://ec.europa.eu/civil_society/coneccs/index.html

[4] Independent experts assisting the Commission in evaluating proposals and monitor projects in the implementation of activities in the area of research and technological development are *not* included.

[5] We know that the number of expert groups registered has dropped since 2007 and that some of high end users of expert groups have in absolute terms cut considerably in the number of groups they operate (Hartlapp, Metz, & Rauh, 2014, pp. 214-216), yet how these changes have affected the overall patterns of participation has so far not been documented.

[6] See e.g. https://euobserver.com/justice/127440

tions (Hartlapp et al., 2014). Our data do not allow us to follow up on the impact of such groups and the extent to which patterns of participation are related to the relative influence of the advice provided by the expert groups on policy making and implementation. Nor can we examine the dynamics and influence of actors *within* these groups. Roles might be blurred and participants might operate with mixed allegiances (Egeberg, Schaefer, & Trondal, 2003), e.g. in the case of societal actors, the role of representing particular interests might be blended with an expert-oriented, epistemic role, or it might be moulded by within-group socialisation and deliberations. Consequently, we cannot make claims about the actual behaviour *within* the expert group system nor the effect that such participation has on the policy content. The type of quantitative analysis of patterns of participation that we conduct here does allow us to make claims about the access of types of actors in the EU's expert venues and this we argue is important for flows of information in EU policy making.

## 4. Societal Actors in the Commission's Expert Venues—The Findings

About 500 expert groups (40 per cent) feature societal actors of different sorts (Table 1, see also Gornitzka and Sverdrup 2011). Since taking part in expert groups represents a more organised kind of interaction between societal actors and the EU executive than bilateral and interest group initiated lobbying, this pattern of participation indicates that the Commission frequently involves societal actors fairly closely in its specialised policy making venues. This could be both the expression of the instrumental value that DGs attach to interacting with societal actors, and a reflection of the norms of openness and inclusion of affected parties, corporate actors and civil society into ordinary policy making at DG unit level/the Commission's administrative level.

These data also uncover that among the societal actors, groups representing business and enterprise are the most frequent participants in the Commission expert groups (present in 29 per cent of the groups), ranking far above the presence of NGOs (Table 1). This might seem to support the idea that the Commission gives privileged access and attention to business/industry expertise, interests and views, indicating a business bias of the Commission's interaction patterns. On the other hand in absolute numbers the presence of NGOs and organisations representing consumer interests is not negligible. And taken together NGOs, consumer and professional organisations are present in more in 28 per cent of the expert groups, that is, they are as frequently included as the businesses/enterprises. Furthermore, these results have to been seen in relation to the pattern of participation of national ministries and agencies: the overall participation of societal actors is in relative terms dwarfed by the dominance of national executives as experts in this type of venue (see Gornitzka and Sverdrup 2011).

Judging from the frequency distribution (Table 1), the presence of social partners and unions (12 per cent of the expert groups) indicates that the expert group system is not primarily a site for traditional corporatist arrangements where the executive meets with peak associations for employees and employers. Hence, the way that the Commission has developed and is using its expert group system is more akin to an organised neo-pluralist system of interaction between the executive and social actors.

Patterns of co-participation (Table 2) also support such a conclusion—there are strong correlations between the participation of different kinds of societal actors. A principle of heterogeneity also seems to be practiced by Commission DGs in the way committees are composed. The presence of business in an expert group is to some degree balanced by participation from consumer organisations, NGOs and/or social partners/unions.

From Table 3, we see that participation from all societal actors, with the exception of professional organisations/practitioners, is negatively correlated with participation from national ministries, especially in the case of consumer organisations and business/industry. That is, when national executives close to the political apex at the national level interact with the Commission in the expert groups, societal actors are to some extent excluded from participating. There is no such negative relationship found for groups where national agencies participate—societal actor and agency participation is not significantly correlated. Scientists on the other hand tend to participate together with societal actors, with the exception of consumer organisations. Hence, we can conclude that DG units bring together a mixed set of societal actors and scientists in venues *separate* from the expert groups that bring DG units in interaction with member states' ministries.

**Table 1.** Number and Type of Societal Actors Participating in European Commission Expert Groups. 2007. N = 1236.

| Type of societal actors | N | Percentage of all expert groups |
|---|---|---|
| Enterprises and industry | 352 | 29 |
| Social partners/ unions | 146 | 12 |
| NGOs | 207 | 17 |
| Consumer organisations | 96 | 8 |
| Practitioners | 156 | 13 |
| *All types of societal actors* | *498* | *40* |

Source: Own data, see also Gornitzka and Sverdrup (2011, p. 55).

**Table 2.** Co-participation of types of societal actors in European Commission wxpert groups 2007. Bivariate Correlations Pearson's R. N = 1236.

| | Social partners/ Unions | NGOs | Consumer organisations |
|---|---|---|---|
| Social partners/ Unions | 1 | | |
| NGOs | .36** | 1 | |
| Consumer organisations | .46** | .38** | 1 |
| Enterprises and industry | .35** | .39** | .40** |

Note: ** Correlation is significant at the 0.01 level (2-tailed).

**Table 3.** Co-particiation of societal actors, scientists, National Ministries and agencies. Bivariate Correlations Pearson's R. N = 1236.

| | Scientists | National administrations/ ministries | Competent national authorities/ agencies |
|---|---|---|---|
| Social partners/ Unions | .06* | -.11** | -.02 |
| NGOs | .17** | -.09** | .04 |
| Consumer organisations | -.01 | -.21** | -.09** |
| Enterprises and Industry | .22** | -.19** | -.04 |
| Practitioners | .22** | .03 | .00 |

Notes: ** Correlation is significant at the 0.01 level (2-tailed); * Correlation is significant at the 0.05 level (2-tailed). Source: Own data.

### *4.1. Variation according to Commission DGs*

Figure 1 maps the distribution of the number of expert groups that include societal actors and relates it to the total number of expert groups per DG. Most DGs that dispose over a set of expert groups also organise groups where societal actors participate. Yet, as expected, there is strong variation across policy areas when it comes to degree of societal actors' participation. In absolute numbers the DGs for Research & Development, Environment, as well as DG Enterprise, organise most of the expert groups where societal actors participate. Relatively speaking, also DG Education & Culture and DG for Agriculture are open to societal involvement, as these DGs also include such actors into a majority of their expert groups. We see also that the DGs that have spending the EU budget (distributive/redistributive policy fields) as its core task organise the biggest share of the groups where societal actors are included as experts (Table 4).

We also note that only two of the DGs that are high end users of expert groups in their policy making seem to exclude societal actors—this is the case for policy making for taxation and customs, and for the production of EU statistics. Already from this overview we see that the Commission does not approach the inclusion of societal actors according to one overall "logic". On the whole there are few obvious common characteristics to the DGs that are most open for interaction with industry/enterprise, NGOs or other societal actors through their use of expert groups. This underscores the need to identify underlying factors that can account for this variation.

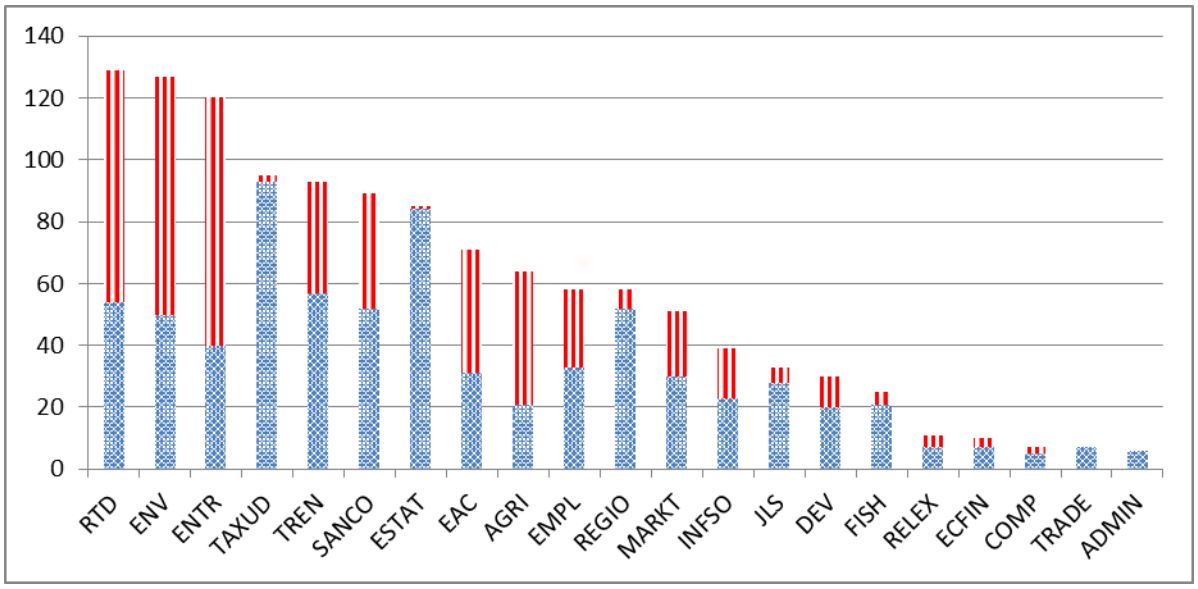


**Figure 1.** Number of European Commission expert groups with (in blue) and without (in red) participation of societal actors according to DG (2007). Only DGs with more than 5 expert groups included. Source: Own data.

**Table 4.** Number of expert groups with participation from societal actors according to type of DG (Main Task of DG) N = 1236.

| Expert groups with participation from | Type of DGs—classified according to main task | | | | | | Total |
|---|---|---|---|---|---|---|---|
| | External Relations | Internal policy and services | Legislative | Regulation/ Enforcement | Research | Spending | |
| Societal actors (overall) | 14 | 8 | 143 | 112 | 3 | 218 | 498 |
| *% within societal actors* | *2,8%* | *1,6%* | *28,7%* | *22,5%* | *,6%* | *43,8%* | *100,0%* |
| NGOs | 11 | 1 | 84 | 55 | 3 | 53 | 207 |
| *% within NGO* | *5,3%* | *,5%* | *40,6%* | *26,6%* | *1,4%* | *25,6%* | *100,0%* |
| Social Partners/ Unions | 5 | 1 | 36 | 40 | 0 | 64 | 146 |
| *% within Social Partners/Unions* | *3,4%* | *,7%* | *24,7%* | *27,4%* | *,0%* | *43,8%* | *100,0%* |
| Industry/Enterprise | 6 | 3 | 87 | 81 | 3 | 172 | 352 |
| *% within Industry/Enterprise* | *1,7%* | *,9%* | *24,7%* | *23,0%* | *,9%* | *48,9%* | *100,0%* |
| Consumers | 0 | 0 | 18 | 53 | 0 | 25 | 96 |
| *% within Consumers* | *,0%* | *,0%* | *18,8%* | *55,2%* | *,0%* | *26,0%* | *100,0%* |
| Practitioners | 7 | 6 | 47 | 44 | 0 | 52 | 156 |
| *% within Practitioners* | *4,5%* | *3,8%* | *30,1%* | *28,2%* | *,0%* | *33,3%* | *100,0%* |

Source: Own data.

**Table 5.** Regression analysis of inclusion of societal actors in Commission expert groups. OLS regression. N = 1127.

| Model | Unstandardized Coefficients | | Standardized Coefficients | Sig. |
|---|---|---|---|---|
| | B | Std. Error | Beta | |
| (Constant) | ,053 | ,079 | | |
| *Legal competences in policy area* | ,015 | ,017 | ,029 | Not sign |
| *DG main task (Spending=1, Else=0)* | ,118 | ,033 | ,115 | *** |
| *Policy cycle* | | | | |
| - Assist in policy preparation | ,079 | ,034 | ,078 | * |
| - Coordinate/exchange views | -,032 | ,034 | -,032 | Not sign |
| - Draft implementation | ,025 | ,041 | ,019 | Not sign |
| - Monitoring national level | -,083 | ,044 | -,054 | Not sign |
| *Formal (1) /informal (0) group* | ,006 | ,035 | ,005 | Not sign |
| *Permanent (1) /temporary (0) group* | ,024 | ,032 | ,024 | Not sign |
| *Policy Age* | ,001 | ,001 | ,034 | Not sign |
| *DG unit environment* - Number of interest groups | ,002 | ,000 | ,268 | *** |
| *Adjusted $R^2$= .10* | | | | |

Notes: * significant at 0.05 level; ** significant at 0.01 level; *** significant at 0.005 level; Source: Own data.

### *4.2. Factors Affecting Inclusion of Societal Actors in Expert Group System*

Our multivariate analyses (Table 5), in which the explanatory value of the different predictors is assessed simultaneously, show that overall our expectations concerning the impact of organisational factors on patterns of inclusion are only partially supported. External pressures that DG units face is the single most important factor that can explain why some DG units incorporate societal actors as experts in the policy process—executive units seem to respond to pressure for participation and the availability of expertise from organised societal interests in their task environment[7]. The more organised interest groups there are in a DG's policy domain, the more it opens up for participation of societal actors in the policy process. We find this link for all types of societal actor participation (see Table 6).This ties in with Chalmers' (2013) findings on how interest groups characteristics (resources and European orientation) affect the number of seats interest organisations get in Commission expert groups (Chalmers, 2013). Yet, our findings do not neces-

[7] These findings are consistent with Gornitzka and Sverdrup (2011) who find similar effect of this variable as well as no significant effects of portfolio age and legal competences.

sarily imply that the Commission's interaction with society is environmentally *determined.* Nor does the fact that interest group density DGs face in their task environment is a significant factor accounting for variation in patterns of participation give us reason to believe that the overall patterns of participation are the consequence of "agency capture" by strong corporate actors.

Our findings show that also characteristics on the side of the executive are factors that affect patterns of inclusion. As expected, spending DGs are more inclusive than DGs with other tasks, also when controlled for other factors. DG units also seem to deem the expertise of societal groups as more relevant and legitimate in the preparatory stage than in the implementing stages of the policy process (weak, but statistically significant effect). Yet, the considerable diversity in the use of societal actors in expert groups within the different parts of the Commission is far from being fully accounted for by this multivariate model. Moreover, when we unpack the category "societal actors" some differences in the "logic of inclusion" of DGs come to the fore (Table 6).

Firstly, although formal legal parameters for the Commission's autonomy in general do not affect its propensity for interacting with societal actors in its expert group system (Table 5), DGs more often include *business and consumer organisations* in policy areas where the Commission has a stronger basis for independent action than in areas where EU competences are low. This supports the idea that both sides of the market (suppliers and consumers) are part of a transnational expertise structure that the Commission as a responsive and responsible executive can draw on in areas that form the core of the EU's competences. However, for DG units' openness towards social partners/unions and NGOs there are no significant effects of formal competences when controlling for other factors. Hence, we could argue that the DGs' behaviour does not seem to go in the direction of reproducing corporatist arrangements with unions and employer organisation in areas where the EU has taken over the competences from the member states.

Secondly, the DGs' type of task has a relatively strong effect on inclusion of private sector actors and NGOs—but in different ways: NGOs are *less* likely to be included in expert venues for DGs with distributive tasks than for other DGs, whereas industry and enterprises are more likely to be included. As the simple distribution displayed in Table 4 underlines, NGOs are present in expert groups for DGs that produce new EU legislation.

This brings us to a third relevant finding on the complex relationship between stages in the policy process and inclusion of societal actors. Overall it is clear that DGs differentiate between social partners versus private sector actors according to what kind of role they assign to expert groups. Social partners are brought into these venues for assisting the Commission in monitoring implementation and developments at the national level. DGs tend to *exclude* both business and professional associations from this type of expertise function. The latter two groups are significantly more likely to be included when the Commission wants assistance in preparing policies (Table 6). Commission DGs include social partners also in groups that have a more general function facilitating the "exchange of views", and less specialised expert venues. So the inclusion of business actors is not ubiquitous, but clustered around some stages of the policy process over others. For NGOs' participation there are no significant effects of this aspect of the Commission's task structure.

**Table 6.** Summary of main findings—Regression analysis of various societal actors to commission expert groups: Social Partners/Unions; Industry/enterprise; Consumers; NGOs. Logistic regression*. N = 1127.

| Model | Social partners Unions | Industry/ Enterprise | Consumers | NGOs | Practitioners |
|---|---|---|---|---|---|
| *Legal competences in policy area* | / | POS | POS | / | / |
| *DG main task (spending=1, else=0)* | / | POS | / | NEG | / |
| *Policy cycle* | | | | | |
| - Assist in policy preparation | / | POS | / | / | POS |
| - Coordinate/exchange views | POS | / | / | / | / |
| - Draft implementation | / | / | / | / | / |
| - Monitoring national level | POS | NEG | / | / | NEG |
| *Formal (1) / informal (0) group* | POS | / | POS | POS | NEG |
| *Permanent(1) /temporary (0 group)* | / | / | POS | / | / |
| *Portfolio age* | POS | POS | POS | / | / |
| *DG unit environment* | | | | | |
| - Number of interest groups | POS | POS | POS | POS | POS |
| *Nagelkerke's pseudo $R^2$* | *.13* | *.19* | *.24* | *.10* | *.07* |

Notes: / = Not significant; POS = positive coefficients, significant; NEG = negative coefficients, significant; * See Appendix for full results from regression analyses. Source: Own data.

Fourthly, the extent to which the Commission opens up for societal actor participation varies systematically according to the institutionalisation and the maturity of the DGs. When controlling for the effect of the other variables, the DGs operating in mature portfolios where the Commission has a long history are more likely to include social partners, business, and consumer organisations than DGs with responsibilities in more recent additions to the Commission's portfolios. Thus far we can conclude that a DG unit's "coming of age" matters for its external links to some of the societal actors, but not for all. The institutionalisation of the expert group itself also has significant effect: unlike scientists that tend more often to appear in informal groups (Gornitzka and Sverdrup 2010), the participation of societal actors is anchored in *formal* settings. There are two exceptions to this main pattern—for business inclusion this variable is not significant whereas practitioners/professional associations are less likely to be included in expert venues that are formalised.

## 5. Conclusions

The analysis of patterns of participation in the Commission's expert groups portrays the Commission as an open executive that has established an extensive ad-hoc organisation for policy making and implementation. This system includes societal actors to a large extent—such actors took part in almost 500 groups and committees (40 per cent of all expert groups). It seems that this mode of interaction has become a standard operating procedure for the European executive to involve societal actors in the policy process along with other modes of consultation (Greenwood 2011). The pattern of inclusion of societal actors we find is consistent with the Commission acting as a *responsive* and *responsible* executive that opens up its expert venues to interest organisations' specialised knowledge and expertise as well as to a heterogeneous set of societal interests.

Within the set of societal actors that are included in the expert groups, business actors are as a single group the most prevalent. Seemingly these results lend support to the claim that European business has privileged access to EU governance sites and expert venues. However, this conclusion needs to be qualified based on our observations. Firstly, taken together, NGOs, and consumer and practitioners' organisations are included in the expert group system as frequently as businesses and enterprises. Secondly, as demonstrated in previous analysis (Gornitzka & Sverdrup, 2011), in the total system of expert groups, business actors are outnumbered by representatives from national ministries and agencies—national level executives are the Commission's prime interlocutor in this venue. More than a business bias the Commission has a "national executive bias"—the expert groups system is primarily (but not only) the "asteroid belt" of the EUs executive centre that links it to national administrations. Thirdly, we find that expert groups where societal actors participate are organised arenas for co-production and co-implementation of policy. Several types of societal actors—business and enterprise, social partners, consumer organisations, NGOs—interact with DG units within these multi-actor, ad-hoc venues, along with scientists and practitioners. These data of course cannot tells us whether there are other systematic biases, for instance according to interest group resources (Chalmers, 2013), in whom the Commission counts as experts. We have seen that DGs respond to the density of interest organisation in their policy environment. Still, the Commission's DG units themselves control the organisation and composition of their groups and the *overall* patterns of inclusion/exclusion of societal actors are partly consistent with a norm of participatory diversity and representation of heterogeneous interests and perspectives. As concerns "corporate capture" of expert venues what we do see is that business interests are within the group setting more often than not matched and mixed with other non-governmental actors.

The second major pattern is the variegated ways in which the Commission interacts with European societal actors through the use of expert groups. There is a striking heterogeneity in the way that societal involvement in the Commission's expert groups is clustered around certain policy fields. We have also seen that the political organisation that DG units are faced with in their portfolio environment affects their propensity to include societal actors as experts—the denser a policy domain is populated with interest groups at the EU level, the more the DGs are likely to open up for their participation.

The multivariate analysis shows that executive administrative units' varying competences, task structures, and level of institutionalisation are relevant determinants of societal inclusion, but these organisational factors matter in different ways for different types of actors. This suggests that there are systematic differences in the logic underlying the DGs' interaction with societal groups in this particular organised setting and that such actors play varying roles in the executive politics of the EU through their participation in the expert groups. An observable indication is the way that the Commission's task structure matters as a conditioning factor—business actors tend to be included as experts by the DGs in the preparatory stage and for drafting implementing measures, and excluded from monitoring policy implementation. Social partners, on the other hand, are deemed as relevant and legitimate experts and likely to be included in monitoring implementation. Our analysis also shows that the maturity of the Commission's DGs is important for how it interacts with its environment. The more mature portfolios will tend to include social partners, business and consumer organisations.

At the level of expert groups we also see the effects of institutionalisation: our findings support the view that the Commission has institutionalised its involvement with social partners, consumer organisations, and NGOs. The role of such actors in the policy process is formally anchored and seems to be sustained by bureaucratic norms, practices, and routines in some parts of the Commission. The Commission as the core executive is thus selectively open for societal involvement in its expert groups system. However, this bureaucratic openness is not erratic but patterned, clustered, and conditioned by structural factors that affect how the Commission as a multi-organisation operates.

**Acknowledgements**

This article has been presented at panels at the ECPR General Conference September 2014 in Glasgow and National Conference in Political Science, January 2015 in Oslo. We are grateful for the valuable comments from panel participants and in particular from Rune Dahl Fitjar.

**Conflict of Interests**

The authors declare no conflict of interests.

**References**

Andersen, S. S., & Eliassen, K. A. (1995). EU lobbying: The new research agenda. *European Journal of Political Research, 27*(4), 427-441. doi: 10.1111/j.1475-6765.1995.tb00478.x

Beyers, J., Eising, R., & Maloney, W. (2008). Researching interest group politics in Europe and elsewhere: Much we study, little we know? *West European Politics*, *31*(6), 1103-1128. doi: 10.1080/01402380802370443

Bouwen, P. (2004). The logic of access to the European Parliament: Business lobbying in the committee on economic and monetary affairs. *Journal of Common Market Studies, 42*(3), 473-496.

Broscheid, A., & Coen, D. (2007). Lobbying activity and fora creation in the EU: Empirically exploring the nature of the policy good. *Journal of European Public Policy, 14*(3), 346-365.

Chalmers, A. W. (2013). Getting a seat at the table: Capital, capture and expert groups in the european union. *West European Politics, 37*(5), 976-992. doi: 10.1080/01402382.2013.852832

Christophersen, K.-A. (2006). *Databehandling og statistisk analyse med SPSS*. Oslo: Unipub.

Coen, D. (1997). The evolution of the large firm as a political actor in the European Union. *Journal of European Public Policy, 4*(1), 91-108.

Coen, D. (1998). The European business interest and the nation state: Large-firm lobbying in the European Union and member states. *Journal of Public Policy, 18*(01), 75-100.

de Vlieger, P., & Tanasescu, I. (2011). Changing forms of interactions between the European Commission and interest groups: The case of religious lobbying. *Journal of European Integration, 34*(5), 447-463. doi: 10.1080/07036337.2011.595485

Egeberg, M. (1999). The impact of bureaucratic structure on policy making. *Public Administration, 77*(1), 155-170.

Egeberg, M. (2006). Balancing autonomy and accountability: Enduring tensions in the European Commission's development. In M. Egeberg (Ed.), *Multilevel union administration. The transformation of executive politics in Europe* (pp. 31-50). Houndmills: Palgrave MacMillan.

Egeberg, M., Schaefer, G. F., & Trondal, J. (2003). The many faces of EU committee governance. *West European Politics, 26*(3), 19-40.

Eising, R. (2007). Institutional context, organizational resources and strategic choices. *European Union Politics, 8*(3), 329-362.

Eising, R. (2008). Interest groups in EU policy-making. *Living Reviews in European Governance, 3*(4).

Gornitzka, Å., & Sverdrup, U. (2010). Enlightened decision making? The role of scientists in EU governance. *Politique Européenne, 32*(3).

Gornitzka, Å., & Sverdrup, U. (2011). Access of experts: Information and EU decision-making. *West European politics, 34*(1), 48-70.

Greenwood, J. (2007). Organized civil society and democratic legitimacy in the European Union. *British Journal of Political Science*, *37*(02), 333-357. doi: doi:10.1017/S0007123407000166

Greenwood, J. (2011). *Interest representation in the European Union*. Basingstoke: Palgrave Macmillan.

Hartlapp, M., Metz, J., & Rauh, C. (2014). *Which policy for Europe? Power and conflict inside the European Commission*. Oxford: Oxford University Press.

Hellevik, O. (2009). Linear versus logistic regression when the dependent variable is a dichotomy. *Qual Quant, 43*(1), 59-74.

Jann, W., & Wegrich, K. (2007). Theories of the policy cycle. In F. Fischer, G. J. Miller & M. Sidney (Eds.), *Handbook of public policy analysis: Theory, politics and methods* (pp. 43-62). Boca Ratoon, FL.: CRC Press.

Kassim, H., Peterson, J., Bauer, M. W., Connolly, S. J., Dehousse, R., Hooghe, L., & Thompson, A. (2013). *The European Commission of the twenty-first century*. Oxford: : Oxford University Press.

Kriesi, H., Tresch, A., & Jochum, M. (2007). Going public in the European Union—Action repertoires of Western European collective political actors. *Comparative Political Studies, 40*(1), 48-73.

Lascoumes, P., & Le Galès, P. (2003). Interests groups and public organisations in Europe. In B. G. Peters &

J. Pierre (Eds.), Handbook of public administration (pp. 322-331). Thousand Oaks: Sage. doi: DOI: 10.4135/978-1-84860-821-4.n25

Lasswell, H. D. (1956). *The decision process: Seven categories of functional analysis*. College Park, Maryland: University of Maryland Press.

Lodge, M., & Wegrich, K. (2012). Public administration and executive politics: Perennial questions in changing contexts. *Public Policy and Administration*, *27*(3), 212-229. doi:10.1177/0952076712438724

Lægreid, P., & Olsen, J. P. (1978). *Byråkrati og beslutninger: En studie av norske departement*. Bergen: Universitetsforlaget.

March, J. G. (1994). *A primer on decision making: How decisions happen*. New York: The Free Press.

March, J. G., & Olsen, J. P. (1989). *Rediscovering institutions: The organizational basis of politics*. New York: Free Press.

March, J. G., & Olsen, J. P. (1995). *Democratic governance*. New York: Free Press.

Mazey, S., & Richardson, J. (2001). Institutionalizing promiscuity: Commission-interest group relations in the European Union. In A. Stone Sweet, W. Sandholtz, & N. Fligstein (Eds.), *The institutionalization of Europe* (pp. 71-93). Oxford: Oxford University Press.

Mazey, S., & Richardson, J. (2005). Environmental groups and the EC: Challenges and opportunities. In A. Jordan (Ed.), *Environmental policy in the European Union* (2nd ed., pp. 106-121). London: Earthscan.

Nielsen, N. (2015). Top officials demand transparency on EU expert groups. *Euobserver.* Retrieved from https://euobserver.com

Olsen, J. P. (2006). Maybe it is time to rediscover bureaucracy. *Journal of Public Administration Research and Theory, 16*(1), 1-24. doi:10.1093/jopart/mui027

Parag, Y. (2008). Who governs the air we breathe? Lessons from Israel's industrialist covenant. *Journal of Environmental Policy & Planning, 10*(2), 133-152. doi:10.1080/15239080801928402

Peters, B. G. (1995). *The politics of bureaucracy*. New York: Longman Publishers USA.

Pohlman, J. T., & Leitner, D. W. (2003). A comparison of ordinary least squares and logistic regression. *The Ohio Journal of Science, 103*(5), 118-125.

Pollack, M. A. (1997). Representing diffuse interests in EC policy-making. *Journal of European Public Policy, 4*(4), 572-590. doi:10.1080/135017697344073

Rothstein, B. (2012a). Administration and society. In B. G. Peters & J. Pierre (Eds.), *The Sage handbook of public administration* (pp. 403-405). London: Sage.

Rothstein, B. (2012b). Political legitimacy for public administration. In B. G. Peters & J. Pierre (Eds.), *The Sage handbook of public administration* (2nd ed., pp. 407-419). London: Sage Publications.

Saurugger, S. (2006). The professionalisation of interest group representation: A legitimacy problem for civil society in the EU? In S. Smismans (Ed.), *Civil society and legitimate European governance* (pp. 260-276). Cheltenham: Edward Elgar.

Simon, H. A. (1976[1945]). *Administrative behavior: A study of decision-making processes in administrative organization* (3rd ed.). New York: Free Press.

Stone Sweet, A., Fligstein, N., & Sandholtz, W. (2001). The Institutionalization of European Space. In A. Stone Sweet, W. Sandholtz, & N. Fligstein (Eds.), *The institutionalization of Europe* (pp. 1-28). Oxford: Oxford University Press.

Wille, A. (2013). *The normalization of the European Commission. Politics and bureaucracy in the EU executive*. Oxford: Oxford University Press.

**About the Authors**

**Dr. Åse Gornitzka**

Åse Gornitzka is Professor at the Department of Political Science, University of Oslo, and Research Professor at Arena, Centre for European Studies, University of Oslo. She is also Adjunct Professor at the Department of Administration and Organization Theory, University of Bergen, and Editor-in-Chief of *Scandinavian Political Studies.* Her main fields of research include the role of organisational factors in EU governance, administrative integration and transformation in Europe, as well as the comparative study of national public reforms and change in public sector organisations.

**Dr. Ulf Sverdrup**

Ulf Sverdrup is the Director of the Norwegian Institute of International Affairs (NUPI). He holds a doctoral degree in Political Science from the University of Oslo. Before joining NUPI, he was a professor at the Norwegian Business School BI, and was also a Research professor at the ARENA, Centre for European Studies, University of Oslo. He has published extensively on various topics in international politics, with a particular emphasis on European governance and European integration. Sverdrup was the Head of the Secretariat for the Official Norwegian Europe Review (NOU 2012:2).

**Appendix.** Regression models of inclusion of societal actors in the European Commission's expert groups. Logistic regression.

A.1 Social partners and Unions

| N=1127 | B | S.E. | Sig. | Exp(B) Odds ratio |
|---|---|---|---|---|
| *Legal competences in policy area* | -,108 | ,111 | ,332 | ,898 |
| *DG main task (Spending=1, Else=0)* | ,006 | ,224 | ,979 | 1,006 |
| *Policy cycle* | | | | |
| - Assist in policy preparation | ,045 | ,220 | ,838 | 1,046 |
| - Coordinate/exchange views | ,833 | ,231 | ,000 | 2,300 |
| - Draft implementation | -,302 | ,284 | ,289 | ,740 |
| - Monitoring national level | ,595 | ,257 | ,020 | 1,814 |
| *Formal/informal group* | 1,186 | ,193 | ,000 | 3,274 |
| *Portfolio age* | ,028 | ,008 | ,001 | 1,028 |
| *DG unit environment* | | | | |
| - Number of interest groups | ,004 | ,002 | ,049 | 1,004 |
| *Constant* | -4,057 | ,546 | ,000 | ,017 |

A.2 Industry and Enterprise

| N=1127 | B | S.E. | Sig. | Exp(B) Odds ratio |
|---|---|---|---|---|
| *Legal competences in policy area* | ,466 | ,105 | ,000 | 1,593 |
| *DG main task (Spending=1, Else=0)* | 1,082 | ,171 | ,000 | 2,950 |
| *Policy cycle* | | | | |
| - Assist in policy preparation | ,566 | ,172 | ,001 | 1,761 |
| - Coordinate/exchange views | ,111 | ,171 | ,518 | 1,117 |
| - Draft implementation | ,180 | ,199 | ,367 | 1,197 |
| - Monitoring national level | -1,098 | ,258 | ,000 | ,333 |
| *Formal/informal group* | ,259 | ,157 | ,100 | 1,296 |
| *Portfolio age* | ,017 | ,006 | ,002 | 1,018 |
| *DG unit environment* | | | | |
| - Number of interest groups | ,011 | ,002 | ,000 | 1,011 |
| *Constant* | -4,582 | ,478 | ,000 | ,010 |

A.3 Consumer organisations

| N=1127 | B | S.E. | Sig. | Exp(B) Odds ratio |
|---|---|---|---|---|
| *Legal competences in policy area* | ,930 | ,177 | ,000 | 2,534 |
| *DG main task (Spending=1, Else=0)* | -,119 | ,337 | ,725 | ,888 |
| *Policy cycle* | | | | |
| - Assist in policy preparation | -,188 | ,286 | ,512 | ,829 |
| - Coordinate/exchange views | ,450 | ,299 | ,133 | 1,569 |
| - Draft implementation | ,056 | ,327 | ,865 | 1,057 |
| - Monitoring national level | -,902 | ,493 | ,067 | ,406 |
| *Permanent /temporary group* | 1,101 | ,252 | ,000 | 3,008 |
| *Formal/informal group* | ,599 | ,274 | ,029 | 1,821 |
| *Portfolio age* | ,018 | ,009 | ,046 | 1,018 |
| *DG unit environment* | | | | |
| - Number of interest groups | ,015 | ,003 | ,000 | 1,016 |
| *Constant* | -8,235 | ,838 | ,000 | ,000 |

A.4 Nongovernmental organisations

| N=1127 | B | S.E. | Sig. | Exp(B) Odds ratio |
|---|---|---|---|---|
| *Legal competences in policy area* | ,075 | ,104 | ,471 | 1,078 |
| *DG main task (Spending=1, Else=0)* | -,879 | ,219 | ,000 | ,415 |
| *Policy cycle* | | | | |
| - Assist in policy preparation | -,132 | ,191 | ,490 | ,876 |
| - Coordinate/exchange views | ,299 | ,192 | ,119 | 1,349 |
| - Draft implementation | ,166 | ,219 | ,447 | 1,181 |
| - Monitoring national level | ,183 | ,249 | ,461 | 1,201 |
| *Formal/informal group* | ,385 | ,176 | ,029 | 1,469 |
| *Portfolio age* | -,009 | ,006 | ,122 | ,991 |
| *DG unit environment* | | | | |
| - Number of interest groups | ,009 | ,002 | ,000 | 1,010 |
| *Constant* | -2,427 | ,453 | ,000 | ,088 |

A.5 Practitioners—professional associations

| N=1127 | B | S.E. | Sig. | Exp(B) Odds ratio |
|---|---|---|---|---|
| *Legal competences in policy area* | -,088 | ,114 | ,441 | ,916 |
| *DG main task (Spending=1, Else=0)* | -,195 | ,213 | ,360 | ,823 |
| *Policy cycle* | | | | |
| - Assist in policy preparation | ,667 | ,220 | ,002 | 1,947 |
| - Coordinate/exchange views | -,208 | ,215 | ,334 | ,812 |
| - Draft implementation | ,268 | ,254 | ,290 | 1,308 |
| - Monitoring national level | -,758 | ,349 | ,030 | ,469 |
| *Formal/informal group* | -,528 | ,232 | ,023 | ,590 |
| *Portfolio age* | ,008 | ,007 | ,272 | 1,008 |
| *DG unit environment* | | | | |
| - Number of interest groups | ,004 | ,002 | ,032 | 1,004 |
| *(Constant* | -2,312 | ,520 | ,000 | ,099 |

**Politics and Governance (ISSN: 2183-2463)**
**2015, Volume 3, Issue 1, Pages 166-178**
**Doi: 10.17645/pag.v3i1.124**

Article

# Variables and Challenges in Assessing EU Experts' Performance

Cathrine Holst and Silje H. Tørnblad *

ARENA—Centre for European Studies, University of Oslo, 0855 Oslo, Norway; E-Mails: cathrine.holst@arena.uio.no (C.H), s.h.tornblad@arena.uio.no (S.H.T.); Tel.: +47-95111916 (S.H.T)

* Corresponding author

Submitted: 17 June 2014 | In Revised Form: 5 November 2014 | Accepted: 24 November 2014 | Published: 31 March 2015

**Abstract**
Expert advice in political processes is supposed to improve decisions. If expertise fails in this function, a legitimacy problem occurs: granting political power to experts may be defensible, but only on the grounds that it contributes to enlightening political processes and facilitate problem-solving. The paper provides a theoretical exploration of four variables that are key when assessing the epistemic quality of expert deliberations: the degree to which these deliberations are 1) informed by technical expertise, 2) regulated by epistemically optimal respect and inclusion norms, 3) focused on politically relevant and applicable knowledge, and 4) approaching questions involving moral judgment and standard setting competently. Previous research on the European Commission's use of expert advice has more or less overlooked the question of experts' epistemic performance, and this paper discusses the possible reasons for this in light of well-known methodological challenges in studies of elite behaviour; access and bias problems. A discussion of the merits and limitations of different available data on the Commission experts shows that the biggest obstacle in the study of experts' epistemic performance is rather the problem of epistemic asymmetry, i.e. of how researchers as non-experts can assess the epistemic quality of experts' contributions and behaviour. The paper offers, finally, a set of strategies to get research going despite this problem.

**Keywords**
epistemic quality; EU expertise; European Commission; expert deliberation; deliberative democracy; legitimacy

**Issue**
This article is part of the special issue "The Role of Expert Knowledge in EU Executive Institutions", edited by Professor Åse Gornitzka (University of Oslo, Norway) and Dr. Cathrine Holst (University of Oslo, Norway).



## 1. Introduction

Several institutions in contemporary democracies, from central banks to supreme courts, operate on the assumption that extensive delegation of decision-making power to experts is appropriate and legitimate, and decision-making in parliaments by cabinets and other executive institutions is based routinely on expert advice. Citizens tend to accept decision-making on these terms as legitimate and place considerable trust in procedures and institutions that privilege experts and expert opinions. When they do so, this is closely connected to the belief that delegating decisions to relevant experts or relying on their advice will contribute to improving decisions; expertise is supposed to be the "filter" that secures the "truth-sensitivity" of policies and legislation (Christiano, 2012). Correspondingly, if expertise fails in this function, a legitimacy problem occurs: giving political power to experts may be defensible, but only on the grounds that it contributes to enlightening political processes and improved problem-solving (see also Martí, 2006).

If we care about the legitimacy of political institutions, it should therefore be a research priority to investigate experts' epistemic performance. This applies no less in studies of the European Union (EU): the EU's

non-majoritarian institutions, with the European Commission at the forefront, have used knowledge and expertise as sources of legitimacy in the absence of a direct electoral mandate (Moodie, 2011; Trondal, 2001). In addition to in-house expertise, the Commission now routinely consults external experts to assist in the formulation and implementation of policy (Schaefer, 2002). This is reflected in the establishment and formalisation of an expert group system currently consisting of more than fifteen hundred groups (Gornitzka & Sverdrup, 2008; Metz, 2013). It would seem a natural ambition for researchers to investigate how these experts perform, given what the use of expertise in political processes is supposed to be good for, and the particular urgency for non-majoritarian institutions such as the Commission to show real problem-solving abilities.

This raises the methodological question of how expert behaviour and performance can most properly be studied. This paper focuses on a key factor in assessments of experts' contribution to political processes, namely the epistemic quality of their deliberations. On the basis of relevant literature, the paper identifies a set of variables that seem vital given this focus, and also discusses the real possibilities of studying epistemic performance variables like these in the concrete context of the European Commission's expert group system. A review of previous research shows that the question of the epistemic performance of the members of these groups has thus far been peculiarly overlooked. The paper lists the different data that is available if we want to study what Commission experts do, and discusses the merits and limitations of this data in light of well-known methodological challenges in studies of elite behaviour; the access problem and the bias problem. However, the bigger obstacle seems to be the problem of epistemic asymmetry: due to their lack of expertise, non-experts cannot assess the epistemic quality of experts' judgments and justifications directly. Future research and methodological discussions must focus more consistently on ways to get around this problem, since knowledge of whether EU experts behave as they ought to is paramount for the evaluation of EU institutions' legitimacy. The paper ends by suggesting some paths towards this research objective.

The following section of the paper clarifies the concept of an epistemic dimension of democratic legitimacy and deliberation, introduces the idea of deliberative systems and the normative role of expertise arrangements within such systems, and identifies some problems with existing studies and approaches, given our specific focus on experts' cognitive performance in political processes. The third section elaborates on four central variables in any assessment of the epistemic quality of expert deliberations, namely the degree to which they are 1) informed by technical expertise, 2) regulated by epistemically optimal respect and inclusion norms, 3) focused on politically relevant and applicable knowledge, and 4) approaching questions involving moral judgment and standard setting competently. The elaboration is theoretical and focuses on connecting the variables to the idea of truth-sensitive deliberations in democratic political contexts. The fourth section shows how existing literature on the Commission's expert groups has paid little attention to the question of how these experts perform, and discusses the possibility of studying the epistemic quality of expert deliberation in light of access and bias problems, the problem of epistemic asymmetry, and the specific task of studying experts' deliberations, given available data. The final section concludes and proposes some strategies for future research.

## 2. Political Legitimacy and Expert Performance in Deliberative Systems

To be a desirable form of rule, democracy must have procedures with "truth-tracking" or "truth-sensitive" qualities that contribute to improving decisions (Christiano, 2012; Goodin, 2003; see also Estlund 1992, 1993, 1997, 2008); a normative defence of democracy must refer to the intrinsic moral value of democratic procedures (Lafont, 2006; Martí, 2006; Peter, 2007, 2011), but also to democracy's instrumental value and how it is a form of rule that contributes to better outcomes. Mansbridge and Parkinson (2012, p. 11) have conceptualised this aspect of democracy as democracy's epistemic dimension or "function": "The *epistemic* function of a deliberative system is to produce preferences, opinions, and decisions that are appropriately informed by facts and logic and are the outcome of substantive and meaningful consideration of relevant reasons." This epistemic dimension comes in addition to what Mansbridge and Parkinson (2012, pp. 11-12) refer to as the respect dimension or "ethical function" ("to promote mutual respect among citizens") and the inclusion dimension or "democratic function" of democracy ("the inclusion of multiple and plural voices, interests, concerns, and claims").

The understanding of the epistemic dimension of democracy will vary with different normative conceptions of democracy. A central distinction can be drawn between aggregative and deliberative democracy (Peter, 2011). Aggregative democracy theory regards democracy as a particular way of aggregating citizens' individual preferences to a collective choice. The key aggregative mechanism is voting. Accordingly, central topics in studies and assessments of the epistemic dimension from an aggregative democracy perspective would be the role of "facts and logic" and considerations of "relevant reasons" in voters' belief and preference formation - as in literature on public ignorance - and factors influencing the quality of the aggregative decision outcomes - as in the literature on Condorcet's jury theorem (Estlund, 1994; Goodin, 2003; Talisse,

2004; Weinshall, 2003). Our point of departure in this paper, deliberative democracy, highlights rather "the importance of public discussions prior to a vote" (Peter, 2011, p. 31). Citizens' opinions and political will are not considered synonymous with their private preferences, but as the transformed outcomes of processes of argumentation and intersubjective scrutiny (Bohman & Rehg, 1997; Gutmann & Thompson, 2004). This raises the question of the epistemic quality of these processes.

The epistemic dimension will also be more important in some settings than in others. With Mansbridge and Parkinson (2012) we approach the political process as a "deliberative system" and the epistemic, ethical and democracy functions as system level functions. Hence, each body, arrangement or single procedure within this system does not need to perform equally on all functions. Rather, in such systems, there will be a division of labour between different parts of the system, where a low score (for example on inclusion in one sub-system, say a governmental system of expert advisors) can be compensated with higher score elsewhere (to follow the same example, by an inclusive parliament and civil society). Deliberative democracy theory would regard the epistemic dimension to also be significant outside expert settings (Estlund, 2008; Habermas, 1996; Landemore, 2011). However, given the division of labour within the overall deliberative system, and the contention that legitimate expertise is to serve as a cognitive quality ensuring "filter", the epistemic dimension of deliberation is key not least when assessing the legitimacy of expert arrangements. Arguably, granting extra political power to experts is defensible if, and only if, doing so contributes to better and more truth-sensitive decisions (see also Martí, 2006). To assess the epistemic quality of expert deliberation is thus decisive from a legitimacy perspective, and an obvious, pressing task for research.

The question we ask is what epistemic quality in expert deliberations would include. Our approach is thus procedural: we are looking for more specific epistemically relevant features of deliberative processes—variables we can reasonably assume correlate with high epistemic quality of decisions—and not outcome-oriented criteria meant to capture decision quality directly. We thus avoid the difficult question of what a "good outcome" is in this or that case. This is not to deny that we can have reasonable discussions about general standards of good outcomes (they must be in accordance with fair principles, the best available evidence, etc.). However, to analyse the Commission's expert group experts from an outcome perspective, we would need clear definitions of good and bad decisions in the myriad of cases these experts give advice on. In some cases where experts give projections of future events, researchers could check in retrospect whether experts were right (see for example Tetlock, 2005). However, the Commission's experts are engaged in a range of activities other than prediction-making, such as providing reviews of existing research, mapping national experiences, recommending regulatory standards and schemes, etc. Moreover, expert judgments, even if sound, may or may not result in good decisions in the end, depending on the behaviour of other political actors and policy-making bodies, as well as unpredictable incidents and developments. This makes the quality of end results of political processes in which experts have been involved an unreliable indicator of the involved experts' epistemic performance.

Our focus more specifically will be on to the extent to which expert discourse is 1) influenced by technical expertise, 2) regulated by epistemically optimal respect and inclusion norms, 3) focused on politically relevant and applicable knowledge, and 4) approaching questions involving moral judgment and standard setting competently. This is not an exhaustive list of relevant variables, but as we will elaborate more on in the next section, we hold these four to be essential: if expert deliberations are unaffected by expert knowledge, regulated by norms that are detrimental to knowledge-seeking, politically irrelevant and inapplicable, and approach non-factual, value-laden questions incompetently, there is reason to suspect that the epistemic quality of deliberations is poor and expert performance low.

Deliberative democracy literature includes several studies of deliberative qualities. Methods applied and overall focus vary from questionnaires measuring the experience of deliberators to single case studies connecting the amount and characteristics of deliberation to policy outcomes (for a review, see Neblo, 2007). The problem, in particular when we are assessing expert discourse, is the limited attention to our variables 1) and 2). An illustration of this is the branch of this literature which aims to measure deliberative qualities by applying quantitative coding schemes to transcripts of deliberation (notable and often cited contributions here include Bächtiger, Niemeyer, Neblo, Steenbergen, & Steiner, 2010; Steenbergen, Bächtiger, Spörndli, & Steiner, 2003; Stromer-Galley, 2007). First, these devices typically connect deliberative quality to explicit reason-giving. However, one could easily imagine high-quality expert deliberations taking place in a rather implicit fashion on the basis of common expert knowledge. In cases where non-expert deliberations would perhaps profit from explicit discourse to enlighten the subject, expert deliberations are already relatively enlightened and would rather improve by sidestepping some rounds of reason-giving and move on to deliberations on more sophisticated claims. Explicitness as an indicator of the epistemic quality of expert deliberations is thus dubious since the correlation with high expert knowledge influence on deliberations (i.e. variable 1) is possibly negative, and at least highly variable. Secondly, these coding devices do not distinguish clearly between the epistemic, respect and inclusion dimensions, and as far as they

do, they seem to focus more on respect and inclusion. It is, however, likely that these dimensions contribute in somewhat different directions, in that high scores for standard respect and inclusion variables such as participation and respect for the demands that are raised, are not necessarily epistemically optimal (our variable 2).

Compared with the literature on deliberative democracy, science and technology studies concentrate more specifically on expert behaviour and expertise institutionalisation (see for example Galison & Stump, 1996; Jasanoff, 1995, 2007, 2012; Latour, 1987, 2004). However, the focus is not really on our variables 1) and 2), since this branch of studies typically concentrates on how actual developments in the fields of knowledge, science and expertise (what is accepted as "scientific", scientific practice, the outcomes of controversies among scientists and experts etc.) are shaped by other factors than level of expertise and epistemic performance—such as historical path-dependencies, competition between incommensurable approaches and research programs, value-based disagreements, etc.

This contrasts with literature on the philosophy of science, with its continual discussions of epistemic parameters in science and similar knowledge and truth-seeking practices. A core concern in the philosophy of science canon from the logical positivists of the Vienna-circle, the "falsificationism" and "critical rationalism" of Karl Popper (1963) and onwards (for an introduction, see Rosenberg, 2011), is to identify more closely what it means for scientific knowledge to be "objective", "valid", "true", etc. Another strand of thought has its origins in classical sociology of knowledge and circles around the idea of a "scientific ethos" (for an influential articulation see Robert Merton's (1973) CUDOS-norms, "communalism, universalism, disinterestedness and organized scepticism"). These two traditions, together with ideas of the constitutive norms of "the community of inquirers", originate in part in the pragmatist tradition, from Charles Sanders Peirce to John Dewey (contrast here Apel, 1994; Haack, 1993 with Rorty, 1982, 1991). They also owe something to the liberal tradition, not least the works of John Stuart Mill, and are the backdrop of more recent philosophy of science contributions focused on spelling out criteria of good science. Such theories also link up to the notion of deliberation and theories of deliberative democracy (Kitcher, 2001, 2011; Longino, 2002, see also Anderson, 1995a, 1995b).

However, what is lacking even in these recent contributions is a proper understanding of how epistemic parameters and standards of good expert behaviour transform when we move from science to politics. This is reflected in the overlooking of our variables 3) and 4), the extent to which expert deliberations in political processes are focused on politically relevant and applicable knowledge and competent in its dealings with moral concerns and questions of standard setting. The approach of Philip Kitcher (2001, 2011) is illustrative. For our purposes, it is promising that Kitcher connects epistemic quality to collective practices of deliberation and to the fulfilment of norms and standards of such practices.[1] Furthermore, he denies that questions of values and norms are external to scientific practice (Kitcher, 2001, pp. 85-92, 2011). Defenders of standard ideas of value-freedom in science, from Max Weber and Karl Popper to contemporary defenders (see Haack, 1993, 2001), typically accept that research questions and applications of research should be "value-relevant" (Weber, 1949) and "significant" (Haack, 1993), but argue for a "pure" stage of theory testing, or "context of justification" (see Reichenbach, 1938), where ethical and political considerations have no role. Kitcher notes that already on this view, the scientific institution needs to be engaged by democratic deliberative processes, since value-laden questions of what to do research on and how to apply findings cannot be left solely to the scientists (Kitcher, 2001, pp. 117-146). This is even more so as the idea of "pure" theory-testing, fully distinguished from societal values and broader standard setting processes, cannot be upheld.[2]

Kitcher's conception of scientific inquiry as part of broader deliberative processes no doubt has affinities with the deliberative system conception of expert inquiries in political processes. However, even if he recognises that ethical and political considerations are an integral part of truth-seeking practices, he has relatively little to say about how to approach such considerations in an epistemically optimal way (our variable 4). Furthermore, good epistemic performance in science, even in Kitcher's account of a socially and politically embedded science, is not quite the same as good epistemic performance when operating as expert in political processes, since the latter hinges centrally on an orientation towards politically relevant and applicable knowledge (our variable 3). Also this falls outside the scope of Kitcher's discussions.

There is thus a need to supplement existing literature. The next section will elaborate on our four variables, relating them conceptually to the idea of expertise as a truth-facilitating filter in political processes in order to substantiate further why we believe they are central to assessments of expert deliberations' epistemic quality. Or to put it differently, if "(t)he epistemic function of a deliberative system is to produce preferences, opinions, and decisions that are appropriately informed by facts and logic and…relevant reasons" (Mansbridge & Parkinson, 2012, p. 11), what kind of expert deliberations would we need, given experts' particular task to fulfil this function?

[1] This distinguishes Kitcher's works from the philosophy of science branch that has attempted to demarcate science from non-science based on definitions of particular characteristics of propositions and theories.

[2] Kitcher delivers a set of more specific arguments that cannot be assessed here.

## 3. Assessing the Epistemic Quality of Expert Deliberations: Four Key Variables

### *3.1. Informed by Technical Expertise*

A first major requirement would be that those who are referred to or refer to themselves as experts are "real" experts and deliberate on the basis of their expertise. "Expertise" is both a comparative and a threshold concept: experts are those within a domain that "possess a substantial body of truths" and that "have more beliefs (or high degrees of belief) in true propositions and/or fewer beliefs in false propositions within that domain than most people do (or better than the vast majority of people do)" (Goldman, 2011, p. 15). Experts in short know a lot about something and more than most others do. The more particular substance of that "something" will vary immensely between domains—there are experts on nanotechnology, on labour market economics, on environmental regulation, on international trade law, etc. Also, institutional affiliation could very well vary: the Commission's expert group members are scientists, but also bureaucratic officials with relevant regulatory experience, stakeholder representatives and "counter expertise" (Gornitzka & Sverdrup, 2008, 2010). However, generally, experts relied on in policy and decision-making are expected to contribute with an extra, substantial set of "facts" (Mansbridge & Parkinson, 2012) or "truths" (Goldman, 2011) on state of affairs and effects of interventions. This is often referred to as "technical expertise" (Collins & Evans, 2002), and when experts are regarded as truth-facilitators in politics, this is intimately linked to the belief that their deliberations are informed relevantly by such expertise. Our variable 1) addresses whether this belief is empirically founded.

### *3.2. Regulated by Epistemically Optimal Respect and Inclusion Norms*

Secondly, for deliberations to be "informed by facts and logic" and "relevant reasons", it seems vital that they are regulated by the right kind of respect and inclusion norms. Respect and inclusion are also separate functions of democratic politics, both with independent normative value, but the idea of our variable 2) is to pinpoint the extent to which expert deliberations are regulated by respect and inclusion norms that are optimal for fulfilling the epistemic function.

Good epistemic practice implies a certain morality of respect and inclusion (e.g. Robert Merton's (1973) idea of a scientific ethos). A contemporary account is given by Helen Longino (2002, pp. 128-135) in her argument for why inequality in "cognitive authority" is compatible with equality in "intellectual authority": to include in conversation everyone with something reasonable and relevant to say, irrespective of their social and cultural background, and to assess arguments irrespective of who are pursuing them. As Longino notes, there is no need to impose this idea of equal intellectual authority and the norms of respect and inclusion that follow on good epistemic practice from the outside, as this norm set seems to be implied by what it means to perform such practices successfully.

The implicit morality of proper investigation may, in concrete cases, imply both "more inclusion" and "more respect". Historically, there are several examples of how groups which were previously excluded from this or that epistemic practice and regarded as *a priori* inferior, are at some point included in the practice and granted equal intellectual authority for independent moral reasons, but also because it serves truth-seeking and sound inquiries (Anderson, 1995a, 1995b). However, in other cases the result could in fact be "less inclusion" and "less respect": in epistemically optimal deliberations, people can very well end up with being excluded and dismissed if their arguments turn out to be wrong or irrelevant (Lafont, 2006; Martí, 2006).[3] This is why discourses are typically bounded and participation restricted in institutions where obtaining the truth is imperative (Alexander, 2005, pp. 128-130). Consider legal adjudications (set out to track "right" verdicts), but also science: "…professional journals refuse to publish claims that the editors believe are not properly substantiated, and faculties and laboratories refuse to employ those who hold what in the opinion of those faculties and laboratories are outlandish views" (Alexander, 2005, p. 128). It can, therefore, be a long way from the democratic ethos of inclusion and respect for all, in principle irrespective of their epistemic contribution, to the inclusion and respect structures that follows from epistemically optimal deliberations. It is, however, the latter which epistemically-oriented assessments of deliberations must strive to identify and assess, and that our variable 2 seeks to address.

### *3.3. Focused on Politically Relevant and Applicable Knowledge*

Thirdly, truth-seeking in science is often equated with truth-seeking proper. However, truth-seeking goes on in different institutional contexts, and even if truth-seeking practices have overlapping features across con-

[3] There is a tradition going back at least to John Stuart Mill which contends that a diversity of arguments and perspectives, pursuing investigations and discussions from as large a variety of relevant angles as possible, will facilitate better outcomes (see also Anderson (2006). Landemore (2011) connects this argument to more recent "wisdom of crowds research". This draws attention to how democratic inclusion may have instrumental merits. This point must however not be confused with an argument saying that the broadest possible participation always improves on outcomes (Mansbridge & Parkinson, 2012; Marti, 2006; Mutz 2006, 2013; Rothstein, 2011).

texts, what they include and imply may vary. More specifically, our variable 3 reflects the fact that the institutional goals of science and politics are distinct. Whereas the official institutional goal of science is to seek valid knowledge, "truth" and "objectivity", the ultimate goal of politics is to reach collectively binding decisions. Political decisions ought to be truth-sensitive and based on knowledge, "facts and logic" and "relevant reasons" (Mansbridge & Parkinson, 2012), but which reasons are relevant or which "truths" are "significant" (Haack, 1993) will be shaped and restrained by the fact that the truth-seeking is part of a decision-making process. The knowledge brought forward and relied on in the deliberations of democratic politics thus needs to be politically relevant and significant; it should reflect what is possible and desirable, given both relevant political actors' different preferences and assessments of what may be common political goals and norms, and what is feasible to implement in practice (as far as the issues in question raise questions of governmental implementation and regulation). From an epistemic point of view, this requirement applies to all deliberation in politics, and as far as experts are particularly assigned to optimise epistemic outputs, no less to expert deliberations; in *this* setting political considerations of relevance and applicability are not external (legitimate or illegitimate) curtailments, as when deliberations in science adapt to the institutional goals of politics, but rather an internal epistemic demand reflecting how politics is not science, but a distinct context of collective will-formation and decision-making.

### *3.4. Approaching Questions Involving Moral Judgment and Standard Setting Competently*

Finally, politics concerns technical issues, but also questions about what we ought to do. From an epistemic point of view, this raises the question of whether there can be such a thing as "moral expertise", expertise on issues of what ought to be done, in addition to what lies within the scope of technical expertise. Kitcher articulates a common view when answering "no" (see also the classical formulation by Dahl, 1989). In the domain of normative questions, we are all, he says, equally experts or non-experts, and "our ethical discussions are adequate to the extent that they reach the conclusions that would have resulted from an ideal deliberation under conditions of mutual engagement" (Kitcher, 2011, p. 51).

But what if a group of trained moral experts are able to track these "ideal" conclusions better than any non-ideal moral conversation including all, trained and untrained in moral thinking and argumentation? This possibility spurs Peter Singer (1972, p. 117) to conclude that "moral expertise would seem to be possible" in a certain sense: "[s]omeone familiar with moral concepts and with moral arguments, who has ample time to gather information and think about it, may reasonably be expected to reach a soundly based conclusion more often than someone who is unfamiliar with moral concepts and moral arguments and has little time". Similarly, John Broome (2012, p. 9) argues that there can be moral experts "of a sort", those who "are practiced in accurate reasoning" on moral questions, who "know the range of alternative moral ideas that are available", who "know how to subject those ideas to rational testing", who can "refute bad arguments" in this domain, and who have "a trained sensitivity to moral, issues".[4]

Accordingly, a fourth key variable in assessment of expert deliberations' epistemic quality is whether, and the extent to which, normative questions are approached competently. Arguments of democratic respect and inclusion speak in favour of leaving the moral issues that may occur in such deliberations to citizens or their representatives, and as suggested by Dahl, Kitcher and others, epistemic concerns lead in the same direction, as long as there is no moral expertise among the deliberators. However, as far such "sort of" expertise is available, the epistemic quality of expert deliberations would depend on whether and how it is used. Moral expertise could here refer to a special competence in conceptualising and elaborating the meaning of norms, values and ends involved, expiring the implications of pursuing this or that end or of defining this or that value in one way or another, exploring normative conflicts and the consequences of such conflicts, etc. We could, however, also think of moral experts that enter "the kingdom of ends" and discuss the justifiability of norms and political aims, and of different interpretations, priorities and the balancing of normative ideas and ideals. A "justice expert" may argue that this or that is the appropriate metric of distributive justice and then suggest a principle of just distribution, say of health care, or may tell us that this or that is the reasonable way to approach conflicts between rights.

## 4. The Epistemic Quality of Deliberation in European Commission Expert Groups: Do Researchers Investigate It—And Can They?

### *4.1. Existing Studies of European Commission Experts—Do They Evaluate Epistemic Performance?*

From a legitimacy perspective, it is, as we have argued, essential to investigate experts' epistemic performance and the quality of their deliberations—and we have now elaborated on a set of variables that seems decisive. Looking at the case of the European Commission's use of external expertise and the institutionalisation of a formalised expert group system—currently consisting

[4] Obviously, moral experts in this sense do not necessarily themselves act in morally superior ways.

of 1575 groups (European Commission, n. d.)—it seems that existing studies have only sporadically touched upon this issue.

One branch of previous research clearly relates to questions of legitimacy. Mark Rhinard (2002) is assessing "the democratic legitimacy" of the EU committee system, Commission expert groups included, and looks at whether decision-making is 1) transparent in terms of who makes the decisions and which societal issues are at stake; 2) deliberative, allowing "different conceptions of the public interest" into the process and giving them "a fair and thoughtful hearing"; and 3) accountable, meaning that citizens have control over the policy-making system. Julia Metz (2014) has a similar ambition, concentrating on expert groups and applying Fritz Scharpf's (1999) concept of output legitimacy, a legitimacy standard that "demands effective problem solving, but also policy solutions to be in the public interest" (Metz, 2014, p. 268). Metz goes on focusing on the latter aspect and argues that expert groups are not open enough to achieve a suitable balance between effectiveness and inclusiveness. Finally, Åse Gornitzka and Ulf Sverdrup (2010, p. 2) "map out the scale of involvement of scientists" in expert groups, and even if they do not explicitly "engage in any discussion of the appropriate level of scientific involvement" and "the potential democratic gains and losses of such involvement", they believe their study provides a crucial "factual basis" for such assessments.

A shared characteristic of these contributions is how they connect the legitimacy of the expert groups primarily to the extent of their democratic inclusiveness, not to the expert group members' epistemic performance. Rhinard (2002) and Metz (2014) both provide insights into aspects of how the experts deliberate, and, arguably, touches upon our variables 2, 3 and 4; whether and how "public interest" is included relates both to the political relevance and applicability of the deliberations, the level of competence in the handling of standard setting, and the question of epistemically optimal inclusion, whereas giving arguments "a thoughtful hearing" could be described as a truth-facilitating respect norm. The relevance here is, however, indirect and vague, as there is no question of a systematic focus of the epistemic merits of the expert group members' deliberations, and variable 1 is not addressed at all.

Another category of existing studies looks at knowledge utilisation and whether the Commission's use of expertise has a primarily problem-solving function or rather more strategic functions. Typically, such studies do not look specifically at expert group members and other experts' behaviour, but at how knowledge is perceived and utilised by the Commission for policy-making (see for example Boswell, 2008). There are also contributions including analyses of experts' perceptions and their role that shed some light on our research question, but this is not the main issue (Metz, 2013). A recent study systematically maps perceptions among scientists in expert groups of how the Commission employs scientific knowledge (Rimkute & Haverland, 2014), but our variable 1 - whether such knowledge influences the experts' own deliberations, and the general question of how the experts themselves perform - is not addressed.

There are in addition other single studies of the Commission's expert groups, such as Torbjörn Larsson and Jarle Trondal's (2006) investigation into the Commission's organisation of the agenda-setting of policy-making, including the role of experts and consultative groups, but the focus here is on how to explain organisational and institutional features, rather than on how groups and group members perform according to cognitive criteria. Another sociologically-oriented study analyses expert group members' social resources and overlapping career trajectories as constitutive for common experiences and aspirations (Robert, 2010), but is silent on how this may affect their performance as proper experts.

### *4.2. Why Not Check the Quality of Experts' Deliberation? Methodological and Other Interpretations*

We have to conclude that interest in our research question has thus far been highly limited; what we have found constitutes only a few studies with some indirect relevance for some of our variables. This (non-)finding could have several explanations. On some level, it may be an expression of relativist trends in the academic community, a belief that it is hard, even impossible, to distinguish better from worse, right from wrong, true from false. To study whether expert deliberations have epistimically optimal or even truth-facilitating characteristics, does presuppose some idea of "truth", or at least a notion of deliberation as having stronger or weaker epistemic merits, and if the latter is denied, studies of the kind we have been looking for here do not seem to make much sense. Alternatively, what we are witnessing reflects, not necessarily blatant relativism, but an attempt to remain politically neutral, and a sceptical attitude among researchers to utilising research in order to address questions of EU legitimacy and other such questions enmeshed in political controversy. But as the review above has showed, it is not really the case that those investigating the Commission's expert groups generally shy away from controversial issues or evaluative undertakings. What is missing is the particular evaluative undertaking of studying whether experts operate epistemically as they are supposed to.

Another reason could simply be that there still are so few studies on the Commission's expert groups; maybe the studies we are looking for are yet to come. However, so far, a research question that, from a legitimacy perspective at least, is highly urgent, has seem-

ingly been given no priority whatsoever. This adds, moreover, to similar trends in other branches of relevant research (see Section 2).

A third interpretation may be that there is something wrong with our legitimacy analysis and that the cognitive quality of experts' deliberations and performance is not such a decisive topic after all. That this is the case, is, however, hardly controversial; as indicated, the idea of expertise as a truth-facilitating "filter" is well-established in theoretical discussions of normative legitimacy. This more ideal role of expertise is also assumed in empirical literature, for example in standard outlines of the official problem-solving function of expertise, and indeed by the Commission itself when it spells out principles and guidelines for the proper organisation and use of expert advice (see for example European Commission, 2002, pp. 9-10; European Commission, 2010, p. 10).

Our focus will therefore be on a fourth interpretation, namely that there may be methodological challenges, or perceived methodological challenges that make our research question hard or even impossible to investigate. Methodological literature on how to study elite behaviour often focuses on two obstacles, the access problem and the bias problem (see for example Harvey, 2011; Ostrander, 1993). As members of the knowledge elite, experts can be hard to access. Time is a scare resource, and people in elite positions typically have a lot scheduled. Elites may also have an interest in turning down requests from researchers in cases where publicity could spur criticism. In cases where they have an interest in going public, they may have a range of channels for doing so, and do not need a researcher to speak up for them. The bias problem applies in studies of elites and none-elites alike, insofar as people are more interested in "looking good" than in providing the researcher with accurate information. However, an extra bias problem tends to occur in studies of elites, as elite informants typically perform above average as communicators and self-presenters, and are thus more effective in getting other people to buy into their world view. This is a challenge for research that aims not only to capture what elites say they do, but also what they actually do.

There are, however, additional methodological challenges. For one thing, our focus is specific; the question is not how expert group members behave and think in general, but how they deliberate. Not all data and methods are equally adequate for this purpose. More importantly, there is a key problem of epistemic asymmetry between experts and non-experts: non-experts often lack the ability to assess experts' arguments, explanations and judgments directly. This problem, referred to in social epistemology literature as "the layperson-expert problem" (Goldman, 2011), is often highlighted as an obstacle when citizens try to hold experts to democratic account, but is potentially also a grand obstacle when non-experts do research on experts, at least when the aim is, as in our case, to assess the experts' epistemic performance. It is hard to assess whether technical expertise, be it on medical technology, environmental law or agriculture, influence experts' deliberations (our variable 1), or whether a complex argument of distributive justice or moral responsibility is competently pursued (our variable 4) when the person making the assessment lacks this kind of technical and moral expertise. This or that may appear to be an "expert" contribution, but if you are a non-expert, how could you know?

In the next section, we will discuss the persuasiveness of these four methodological challenges when studying the epistemic performance of the Commission expert group experts. Is it likely that access and bias problems make researchers shy away from this line of research? Is the problem our specific focus on deliberation? Or is the key factor rather the deeper underlying problem of epistemic asymmetry?

### *4.3. Data Adequacy and Methodological Challenges*

There seem to be, roughly speaking, four ways to approach a study into the Commission's expert groups.[5] First, there is available background data on the groups in the Register of Commission Expert Groups, an online register of all groups that include information on policy area, responsible DG, mission/mandate, characteristics of individual members, etc. More background data, for example on the group members' careers, could be collected and systematised along similar lines. Secondly, there is the possibility of asking the experts themselves about their thinking and behaviour, interviewing them, or making surveys. Thirdly, there are public documents. Most of the groups publish meeting minutes or activity reports, and some produce also additional reports and policy documents. The Commission has also produced a set of documents on expertise and consultation policies, expert group guidelines, etc. (see European Commission, 2001, 2002a, 2002b, 2010a, 2010b), in addition to what may be of more specific policy documents with relevance for particular expert groups depending on mandate and policy field. Lastly, there is the opportunity to study the groups through observing their meetings.

A first obstacle may be our specific focus on deliberation. Experts could be asked in interviews or surveys about the qualities of their group deliberations, and background data could be used as a rough proxy for likely deliberative qualities, assuming for example that

[5] Experimental design has been important in establishing cognitive psychology findings on biases in how experts think (see for example Kahneman, 2011; Mercier, 2011). However, we are not interested in how experts think and interact in general, but in how a particular set of experts in EU policy-making behave.

groups dominated by scientists are more likely to have deliberations influenced by relevant technical expertise and epistemically optimal respect and inclusion norms. An indicator such as the latter would, however, be highly indirect, and potentially substantial variation in actual epistemic performance among the groups would be swept under the carpet. With regard to interviews and surveys, there is the possibility of low response rates, in addition to the bias problem: that this line of research tell us more about how Commission expert group members perceive their deliberations and want others to perceive them, than about how they actually deliberate. Observation of group meetings would be a more direct and seemingly safer way of capturing the latter; access problems could occur, but standard bias problems would more or less disappear. In addition, documentary sources, from minute meetings to reports and policy documents produced by the groups, would most likely contain potential relevant information on both knowledge basis (variable 1), norms of discussions and inquiry (variable 2), policy relevance (variable 3), and the qualities of normative argumentation (variable 4). Once more, there could, however, be problematic discrepancies between how deliberative qualities and epistemic performance are reported in various documents and the actual qualities of deliberations. The persuasiveness of bias problems would depend on the level of document quality and report accuracy.

Consequently, despite the well-known access and bias problems of elite studies and the specific focus on deliberation, the study of our four variables seem to be, if not a straightforward endeavour, within reach providing researchers utilise a combination of observation and documentary analysis. There is, however, the additional obstacle of epistemic asymmetry which seems to be pervasive across data and methods. Studies based on observation, for example, may eschew access and bias problems, and seem perfect when the study object is how experts deliberate, but the problem of how researchers of expert deliberation—who more often than not are non-experts in the domains where these experts are experts—can assess the epistemic quality of these experts' performance remains. The problem is perhaps most obvious in the cases of variable 1 and 4: it can be hard to distinguish sophisticated knowledge from what seems to be sophisticated, advanced competence from what is only seemingly advanced, unless you yourself are an expert. The very same difficulty will, however, also easily occur when non-experts try to assess whether the knowledge which experts rely on and produce through their deliberations is politically relevant and applicable (variable 3). To evaluate the political significance, adequacy and applicability of proposals and recommendations of what to do can be hard if you lack substantive insight in the knowledge basis of the proposals/recommendations in question and the normative issues involved. The same goes for the identification of epistemically optimal respect and inclusion norms (variable 2). To determine which deliberators and arguments belong in truth-facilitating deliberations on this or that topic, and who and what should be filtered out, will often require both substantive technical expert knowledge and extensive standard-setting competence.

As far as there are methodological obstacles holding investigators back, it seems, therefore, that the real problem and the elephant in the room is the problem of epistemic asymmetry. It figures not as a standard problem in methodological literature on elite research, but in studies of knowledge elites, at least when assessments of epistemic performance is involved, it seems to take effect at a very basic level.

## 5. Strategies for Research

The question is how to get research on experts' epistemic performance going under such conditions. In this paper we have explained why concerns of political institutions' legitimacy make it imperative for research to investigate experts' epistemic performance; we have focused on experts' deliberations; elaborated on four key variables; and discussed whether the lack of attention to our research question and these variables in existing research on the Commission's expert groups, can be due to unsurpassable methodological obstacles. Is it in effect impossible, or at least too difficult, to do the research we ideally ought to be doing? The last section's discussion of available data, their merits and limits, makes it clear that the layperson-expert problem is not only an accountability problem, but also a general methodological problem for research on how knowledge elites perform. Future research and methodological discussions should focus more consistently on how to get around it.

We end this paper, therefore, by sketching five strategies for further exploration in such discussions, with a focus on the first and fourth of our listed variables; as suggested in the previous section, if epistemic asymmetries make it hard to determine scores on 1 and 4, they are likely to complicate research on 2 and 3 as well.

The *first* strategy would be to increase one's expertise and competence in relevant domains. Harry Collins and Robert Evans (2007) distinguish between the ability to "contribute" in a domain of technical expertise ("contributory expertise"), and to have enough competence in this domain to be able to make sense of what its contributory experts are saying and doing ("interactional expertise"). In most cases the aim cannot be to diminish epistemic asymmetry: typically, high levels of interactional expertise will not abolish the layperson-expert problem, but it can very well reduce it. High levels of interactional

expertise in combination with training in normative reasoning can also contribute to increased moral competence and levels of moral expertise.

The *second* strategy is to reduce the problem of epistemic asymmetry by picking cases of expert deliberation where the initial asymmetry is low or limited, for example deliberations in domains that are close or not too far from one's own domain of expertise, or expert groups with mandates that are fairly non-technical, do not raise complex questions of standard-setting, etc. in order to increase the likelihood that one understands the substance of what is going on.

*Thirdly*, a negative approach could be taken and expert group discourse investigated through documents or by way of observation in search of what is certainly *not* expertise. Examples here would be exchanges of polite phrases or other trivial types of discussion without any substantive claims being made about the questions at hand, or deliberations that are off topic. Naturally, this strategy is helpful only in identifying expert deliberations that are clearly not expertise-based, and cannot be employed in harder cases to distinguish between the genuine expert and the amateur or quasi-expert dressing up as an "expert". However, in actual empirical studies it can be a relevant first step.

A *fourth* strategy is to look at facets of the deliberations that are likely to indicate epistemic quality and that even non-experts could assess. An example with relevance for variable 1 is explicit expressions of epistemic modesty, when deliberators draw attention to the limits of their expertise; where their competence ends, what is still unknown or uncertain, what other experts might disagree with, etc. An example with relevance for variable 4 is the extent to which deliberators make explicit attempts to distinguish between technical considerations and value-based assessments; singling out the latter to put them aside, deliberating on both, but separately, etc.

A *fifth* strategy would be to identify and investigate promising extra-deliberative indicators of deliberative quality. Background data could be searched through to single out experts with the right credentials and merits for the task. Questionnaires sent to expert group members or qualitative interviews consciously designed to minimise the bias problem could be used to trace epistemic attitudes. Document analysis in combination with interviews of relevant Commission officials could shed light on epistemic parameters in selection and recruitment procedures.

It should be noted that these strategies are not meant to be mutually exclusive. Rather, combining them could contribute to increased validity. The aim, moreover, has not been to provide research strategies that make epistemic asymmetry as methodological challenge in studies of knowledge elites vanish. We believe our approach is promising, but also that the challenge it addresses is persistent and specific cases could easily occur. Due to their lack of contributory expertise, non-expert researchers could misperceive their level of interactional expertise (i.e. the first strategy), assume that the initial epistemic asymmetry is more limited than it is (i.e. the second strategy), identify a sequence of non-trivial expert exchange as trivial phrases (i.e. the third strategy), etc. In the end, the ultimate test of the viability of our proposed strategies is the extent to which they may inspire high quality empirical research. Obviously, for this to happen, more detailed work on research questions, operationalisation and methodological design is needed.

**Acknowledgements**

Previous versions of this paper have been presented at a workshop at ARENA—Centre for European Studies, University of Oslo, June 2014, and at the workshop "Deliberation after consensus", Paris, 20–21 November 2014. We thank participants on these occasions and three anonymous reviewers for valuable comments.

**Conflict of Interests**

The authors declare no conflict of interests.

**References**

Alexander, L. (2005). *Is there a right of freedom of expression?* Cambridge, UK: Cambridge University Press.

Anderson, E. (1995a). The democratic university: The role of justice in knowledge production. In E. F. Paul, F. D. Miller, & J. Paul (Eds.), *The just society*. Cambridge: Cambridge University Press.

Anderson, E. (1995b). Knowledge, human interests, and objectivity in feminist epistemology. *Philosophical Topics*, *23*(2), 27-58.

Anderson, E. (2006). The epistemology of democracy. *Episteme, 3*(1–2), 8-22.

Apel, K. O. (1994). Sense-critical realism: A transcendental-pragmatic interpretation of C. S. Peirce's theory of reality and truth. In J. De Groot (Ed.), *Nature in American philosophy (Studies in philosophy and the history of philosophy)* (Vol. 42, pp. 37-52). Washington, DC: CUA Press.

Bächtiger, A., Niemeyer, S., Neblo, M., Steenbergen, M. R., & Steiner, J. (2010). Disentangling diversity in deliberative democracy: Competing theories, their blind spots and complementarities. *Journal of Political Philosophy*, *18*(1), 32-63.

Bohman, J., & Rehg, W. (1997). *Deliberative democracy: Essays on reason and politics*. Cambridge, MA: MIT press.

Boswell, C. (2008). The political functions of expert knowledge: Knowledge and legitimation in European Union immigration policy. *Journal of European*

*Public Policy*, *15*(4), 471-488.

Broome, J. (2012). *Climate matters: Ethics in a warming world (Norton global ethics series)*. New York, NY: WW Norton and Company.

Christiano, T. (2012). Rational deliberation among experts and citizens. In J. Mansbridge & J. R. Parkinson (Eds.), *Deliberative systems: Deliberative democracy at the large scale*. Cambridge: Cambridge University Press.

Collins, H. M., & Evans, R. (2002). The third wave of science studies of expertise and experience. *Social studies of science*, *32*(2), 235-296.

Collins, H. M., & Evans, R. (2007). *Rethinking Expertise*. Chicago: Chicago University Press.

Dahl, R. A. (1989). *Democracy and its Critics*. New Haven, CT: Yale University Press.

Estlund, D. (1992). Who's afraid of deliberative democracy-on the strategic/deliberative dichotomy in recent constitutional jurisprudence. *Texas Law Review*, *71*, 1437-1477.

Estlund, D. (1993). Making truth safe for democracy. In D. Copp, J. Hampton, & J. Roemer (Eds.), *The idea of democracy* (pp. 71-100). Cambridge: Cambridge University Press.

Estlund, D. (1994). Opinion leaders, independence, and Condorcet's jury theorem. *Theory and Decision*, *36*(2), 131-162.

Estlund, D. (1997). Beyond fairness and deliberation: The epistemic dimension of democratic authority. In J. Bohman, & W. Rehg (Eds.), *Deliberative democracy: Essays on reason and politics* (pp. 173-204). Cambridge, MA: MIT Press.

Estlund, D. (2008). *Democratic authority: A philosophical framework*. Princeton: Princeton University Press.

European Commission. (2001). *European governance—A white paper* (9289410612, 25.7.2001: COM(2001) 428 final). Brussels: European Commission.

European Commission. (n.d.). Register of Commission Expert Groups. Retrieved from http://ec.europa.eu/transparency/regexpert/index.cfm

European Commission. (2002a). *Communication from the Commission on the collection and use of expertise by the Commission: principles and guidelines—"Improving the knowledge base for better policies"* (11.12.2002: COM (2002) 713 final). Brussels: European Commission.

European Commission. (2002b). *Communication from the Commission. Towards a reinforced culture of consultation and dialogue—General principles and minimum standards for consultation of interested parties by the Commission* (11.12.2002: COM(2002) 704 final). Brussels: European Commission.

European Commission. (2010a). *Commission staff working document. Accompanying document to the communication from the President to the Commission—Framework For Commission Expert Groups: Horizontal rules and public register* (10.11.2010: SEC(2010) 1360 final). Brussels: European Commission.

European Commission. (2010b). *Communication from the President to the Commission—Framework for Commission expert groups: Horizontal rules and public register* (10.11.2010: C(2010)7649 final). Brussels: European Commission.

Galison, P., & Stump, D. J. (1996). *The disunity of science: Boundaries, contexts, and power*. Redwood City, CA: Stanford University Press.

Gesang (2010). Are moral philosophers moral experts? *Bioethics*, *24*(4), 153-159. Retrieved from http://plato.stanford.edu/archives/sum2014/entries/reichenbach

Goldman, A. I. (2011). Experts: Which ones should you trust? In A. Goldman & D. Whitcomb (Eds.), *Social Epistemology: Essential* Readings (pp. 109-135). Oxford, UK: Oxford University Press.

Goodin, R. E. (2003). *Reflective democracy*. Oxford, UK: Oxford University Press.

Gornitzka, Å., & Sverdrup, U. (2008). Who consults? The configuration of expert groups in the European Union. *West European Politics*, *31*(4), 725-750.

Gornitzka, Å., & Sverdrup, U. (2010). *Enlightened decision making. The role of scientists in EU governance* (ARENA Working Paper, Vol. 5/10). Oslo, Norway: ARENA.

Gutmann, A., & Thompson, D. (2004). *Why deliberative democracy?* Princeton: Princeton University Press.

Haack, S. (1993). *Evidence and inquiry: Towards reconstruction in epistemology*. Oxford: Blackwell.

Haack, S. (2001). *Manifesto of a passionate moderate: Unfashionable essays*. Chicago, IL: University of Chicago Press.

Habermas, J. (1996). *Between facts and norms*. Cambridge, MA: MIT Press.

Harvey, W. S. (2011) Strategies for conducting elite interviews. *Qualitative research*, *11*(4), 431-441.

Jasanoff, S. (1995). *Handbook of science and technology studies*. Thousand Oaks, CA: Sage.

Jasanoff, S. (2007). *Designs on nature: Science and democracy in Europe and the United States*. Princeton: Princeton University Press.

Jasanoff, S. (2012). *Science and public reason*. New York: Routledge.

Kahneman, D. (2011). *Thinking, fast and slow*. London: Penguin Books.

Kitcher, P. (2001). *Science, truth, and democracy*. Oxford, UK: Oxford University Press.

Kitcher, P. (2011). *Science in a democratic society*. New York, NY: Phrometeus Books.

Lafont, C. (2006). Is the ideal of deliberative democracy coherent? In S. Besson & J. L. Martí (Eds.), *Deliberative democracy and its discontents*. Hampshire, England: Ashgate Publishing ltd.

Landemore. (2011). *Democratic reason*. New Haven,

CT: Yale University Press.
Larsson, T., & Trondal, J. (2006). Agenda setting in the European Commission: How the European Commission structure and influence the EU agenda. In A. Türk (Ed.), *EU Administrative governance* (pp. 11-43). Cheltenham, UK: Edward Elgar Publishing.
Latour, B. (1987). *Science in practice*. Cambridge, MA: Harvard University Press.
Latour, B. (2004). *Politics of Nature*. Cambridge, MA: Harvard University Press.
Longino, H. E. (2002). *The fate of knowledge*. Princeton: Princeton University Press.
Mansbridge, J., & Parkinson, J. R. (Eds.) (2012). *Deliberative systems: Deliberative democracy at the large scale.* Cambridge, UK: Cambridge University Press.
Martí, J. L. (2006). The epistemic conception of deliberative democracy defended. Reasons, rightness and equal political autonomy. In S. Besson & J. L. Martí (Eds.), *Deliberative democracy and its discontents* (pp. 27-56). Hampshire, England: Ashgate Publishing ltd.
Mercier, H. (2011). When experts argue: Explaining the best and the worst of reasoning. *Argumentation*, *25*(3), 313-327.
Merton, R. K. (1973). The normative structure of science. In R. K. Merton & N. W. Storer (Eds.), *The sociology of science, theoretical and empirical investigations*. Chicago: The University of Chicago Press.
Metz, J. (2013). Expert groups in the European Union: A sui generis phenomenon? *Policy and* Society, *32*(3), 267-278.
Metz, J. (2014). EU Commission expert groups between inclusive and effective policy-making. In C. Holst (Ed.), *Expertise and democracy* (ARENA Report No 1/14, Vol. 1, p. 263-291). Oslo, Norway: ARENA.
Moodie, J. (2011). *The European Commission and European technology platforms: Managing knowledge and expertise in the development of European research and technology policy* (PhD thesis). University of Newcastle upon Tyne, UK.
Mutz, D. C. (2006). *Hearing the other side: Deliberative versus participatory democracy*. New York: Cambridge University Press.
Mutz, D. C. (2013). Reflections on hearing the other side, in theory and in practice. *Critical Review*, *25*(2), 260-276.
Neblo, M. A. (2007). Family disputes: Diversity in defining and measuring deliberation. *Swiss Political Science Review*, *13*(4), 527-557.
Ostrander, S. (1993). "Surely you're not in this just to be helpful". Access, rapport and interviews in three studies of elites. *Journal of Contemporary Ethnography*, *22*(1), 7-27.
Peter, F. (2007). Democratic legitimacy and proceduralist social epistemology. *Politics, Philosophy and* Economics, *6*(3), 329-353.
Peter, F. (2011). *Democratic legitimacy*. New York, NY: Routledge.
Popper, K. R. (1963). *Conjectures and refutations*. New York, NY: Routledge.
Reichenbach, H. (1938). *Experience and prediction: An analysis of the foundations and the structure of knowledge*. Chicago: The University of Chicago Press.
Rhinard, M. (2002). The democratic legitimacy of the European Union committee system. *Governance*, *15*(2), 185-210.
Rimkutė, D., & Haverland, M. (2014). How does the European Commission use scientific expertise? Results from a survey of scientific members of the Commission's expert committees. *Comparative European Politics.* doi: 10.1057/cep.2013.32
Robert, C. (2010). Who are the European experts? Profiles, trajectories and expert "careers" of the European Commission. *French Politics*, 8(3), 248-274.
Rorty, R. (1982). *Consequences of pragmatism: Essays, 1972–1980*. Minneapolis, MN: University of Minnesota Press.
Rorty, R. (1991). *Objectivity, relativism, and truth: Philosophical papers* (Vol. 1). Cambridge, UK: Cambridge University Press.
Rosenberg, A. (2011). *Philosophy of science: A contemporary introduction*. New York, NY: Routledge.
Rothstein, B. (2011). *The quality of government: Corruption, social trust, and inequality in international perspective*. Chicago, IL: Chicago University Press.
Schaefer, G. (2002). *Governance by Committee: The role of committees in European policy-making and policy implementation*. Luxembourg: European Communities.
Scharpf, F. W. (1999). *Governing in Europe: Effective and democratic?* Oxford, UK: Oxford University Press.
Singer, P. (1972). Moral experts. *Analysis*, *32*(4), 115-117.
Steenbergen, M. R., Bächtiger, A., Spörndli, M., & Steiner, J. (2003). Measuring political deliberation: A discourse quality index. *Comparative European Politics*, *1*(1), 21-48.
Stromer-Galley, J. (2007). Measuring deliberation's content: A coding scheme. *Journal of Public Deliberation*, *3*(1), Article 12.
Talisse, R. B. (2004). Does public ignorance defeat deliberative democracy? *Critical Review*, 16(4), 455-463.
Tetlock, P. (2005): *Expert political judgment: how good is it? How can we know?* Princeton, NJ: Princeton University Press.
Trondal, J. (2001). Is there any social constructivist-institutionalist divide? Unpacking social mechanisms affecting representational roles among EU decision-makers. *Journal of European Public Policy*, *8*(1), 1-23.
Weber, M. (1949). Objectivity. social science and social

policy. In E. Shils & H. Finch (Eds.), *The methodology of the social sciences* (pp. 49-112). New York: Free Press.

Weinshall, M. (2003). Means, ends, and public ignorance in Habermas's theory of democracy. *Critical Review*, *15*(1–2), 23-58.

**About the Authors**

**Dr. Cathrine Holst**

Cathrine Holst is a Senior Researcher at ARENA—Centre for European Studies, University of Oslo where she coordinates the project *Why not epistocracy?* (EPISTO). Holst's research interests are democratic theory, political epistemology, expertise politics, European studies, and gender studies. Recent publications are "Why democracy? On the relationship between gender democracy and gender equality in the EU", and "Jürgen Habermas on public reason and religion: Do religious citizen suffer an asymmetrical cognitive burden, and should they be compensated?" (with Anders Molander).

**Silje H. Tørnblad**

Silje H. Tørnblad is PhD Fellow and part of the EPISTO research group at ARENA—Centre for European Studies, University of Oslo. Her research interests include the democratic legitimacy of expert arrangements in the EU, EU institutions and European political economy. She obtained her MSc in European Political Economy from the London School of Economics and Political Science, and has previously worked for Cicero Centre for International Climate Research at the University of Oslo.