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Holding the European Commission to account: the promise of delegated acts

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Abstract
This article focuses on a new type of rules that the European Union may adopt: delegated legislation. Although this instrument may be new, it follows from a long-standing controversy over the means by which the European Parliament can hold the European Commission to account when it adopts executive rules. On the basis of interviews and documentary evidence, this article aims to test to what degree the new system delivers on its promise of stronger accountability. Although the new system is still in its infancy, the article concludes that formal rules, internal norms and practices are already indicative of stronger legislative control. However, capacity issues within the European Parliament, as well as a lack of public transparency, may well prove to be detrimental when the number of delegated acts increases.

Points for practitioners

This article assesses the degree to which the European Parliament is equipped to hold the European Commission to account when it adopts delegated legislation. Current accountability systems and practices are still in their infancy, but there are already clear signs of stronger legislative control over the European Commission. However, capacity issues within the European Parliament and a lack of transparency of delegated legislation will jeopardize accountability as the number of delegated acts increases.

Keywords
accountability, delegation, European Parliament, European Union

Introduction

Most European Union (EU) rules are not adopted by the European Parliament (EP) or the Council of Ministers (the Council), but by the European Commission

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(the Commission) – an executive institution (Brandsma, 2013: 22; Héritier et al., 2013: 2; Van Schendelen, 2010: 69–71). As such, this is not particularly unusual. All Western democratic systems extensively delegate rule-making capacities to the executive in order to issue detailed rules supplementing or implementing legislation. The question of how to control those delegated powers, however, has always been controversial in the EU. Ever since the first European policies took effect in the early 1960 s, the member states have been reluctant to delegate extensive powers to the Commission. In order to subject the Commission to member state control, they took care to design a committee system consisting of member state experts equipped with veto powers over individual measures. This system is known as the comitology system, and currently includes over 250 committees dealing with often highly specialist matters (Blom-Hansen, 2011).

The EP has always been dissatisfied with the comitology system because it hollows out its function as an accountability forum for the Commission. The system did not provide for any role for the EP, which particularly escalated after the introduction of co-decision. In particular, the EP feared that the comitology system would enable the member states and the Commission to sneak all sorts of politically relevant measures into a myriad of tiny, little executive decisions, outside parliamentary control (Bradley, 1997: 231–235). This also included changing annexes to legislation – matters that can be decided through executive acts in the EU system. Certain control powers over these specific matters were introduced in 2006 as an interim solution under the so-called 'regulatory procedure with scrutiny' (Council Decision 2006/512/EC), but they have never been extensive (Schusterschitz and Kotz, 2007).

The Lisbon Treaty sought to end the controversies on control by introducing a distinction between delegated acts and implementing acts. Implementing acts are defined as rules adopted by the Commission that establish uniform conditions for implementing legally binding EU acts (Article 291, Treaty on the Functioning of the European Union). The contents of delegated acts are potentially more politically controversial. Under this regime, the legislators can delegate well-defined powers to the Commission to issue rules that amend or supplement non-essential elements of legislation (i.e. measures of general scope, but not part of the core text of the legislative act itself). For the adoption of such rules, the Commission is held to account by the EP and the Council instead of the traditional committees of member state representatives (Article 290, Treaty on the Functioning of the European Union).

This begs the question as to what degree the EP de facto holds delegated decision-making to account. On the one hand, we could expect the EP to allocate significant resources to this task because the EP has fought tooth and nail over the past five decades to acquire rights similar to those of the member states. On the other hand, we might also expect the EP to only marginally adapt its internal procedures to its newly acquired control rights. Parliaments generally devote more attention to issuing new legislation than to controlling delegated powers, and the EP is no exception (Maurer, 2007). Earlier research on the EP's use of

its control powers after the limited 2006 reform shows a fragmented picture. The EP did, in fact, use its limited powers in order to hold Commission decision-making to account, but certainly not to their full potential (Brandsma, 2012; Kaeding and Hardacre, 2013; Neuhold, 2008). Now that the EP has finally secured the control rights that it so bitterly fought for by means of the Lisbon Treaty, how does it use its newly acquired powers?

After briefly defining 'accountability' as the key concept of this study, the next section identifies in more detail the differences between the pre-Lisbon comitology system and the post-Lisbon system of delegated acts. It spells out the EP's powers and performance as an accountability forum under the pre-Lisbon regime, and how the rules of the game have changed in a formal sense. Thereafter, on the basis of interviews with EP administrators and documentary evidence, the article shows that the delegated acts system has considerably strengthened accountability towards the EP. It has been equipped with extensive veto powers, meaning that the Commission has a stronger interest than before in avoiding parliamentary vetoes. This has resulted in stronger EP involvement in the preparation of delegated acts, partly at political level.

The promise of delegated legislation

Accountability, as the central concept of this special issue, has been extensively conceptualized in the introductory article of this collection, and will therefore only be elaborated upon briefly at this point. A wide variety of definitions abound in the literature, but the definitions used in continental Europe share several important characteristics. On the basis of these family resemblances, Bovens (2010) concludes that these definitions collectively treat accountability as a mechanism through which public actors are linked to forums that enjoy some degree of power over the public actor. In line with the other contributions to this special issue, this study defines accountability as 'a relationship between an actor and a forum, in which the actor is obliged to explain and justify his conduct, the forum can pose questions and pass judgment, and the actor may face consequences' (Bovens, 2007: 450), which is a definition widely used in present-day studies of accountability.

In this study, the Commission and the EP are, respectively, the actor and the forum of interest. Bovens's definition of accountability has been operationalized by breaking it down into three core components: information, discussion and consequences (Brandsma and Schillemans, 2013). In the information phase of accountability, the actor merely provides information to the forum, for example, by sending documents. Interaction, in the true sense of the word, only starts in the discussion phase of accountability, in which the forum actively exchanges views with the actor it holds to account. Consequences, finally, may be imposed by the forum and may be sanctions or rewards.

From its inception in the early 1960 s, the comitology system included no rights for the EP with respect to any of these three elements of accountability: it simply was not meant to be an accountability forum at all. Comitology was an exclusive

member state affair: only member state policy experts could advise the Commission on draft executive measures, and vote on them. Up to the Lisbon Treaty reforms, the Commission had two options after a negative vote outcome: it could either drop the proposed measure or it could submit it to the Council for further consideration and another vote. This, however, rarely happened: only issues on which member states are notoriously divided (such as genetically modified organisms) tended to be forwarded to the Council.

The EP resorted to all sorts of means to put pressure on the Council to make it relinquish some of its powers, which ranged from selecting weak comitology procedures in legislative negotiations, to insisting on sunset clauses, or even freezing part of the community budget. As a result of this political pressure, the comitology system was revised in 1999 and the EP was recognized as an accountability forum, albeit with very limited and very weak powers (Council Decision 1999/468/EC; see also Bergström, 2005; Brandsma, 2013). It was to receive meeting agendas, draft measures, meeting summaries, vote results and attendance lists, but the only sanctioning power it acquired was close to being a dead letter: the right to adopt non-binding resolutions when the Commission exceeded its discretionary powers. Any sort of judgement on the content of executive measures was not in scope, and, moreover, the EP needed to pass such resolutions within just one month by means of an absolute majority in plenary. In practice, because of the political insignificance of such weak instruments for imposing consequences, the EP did not materially change its internal processes or devote any substantial attention to exercising this right (Brandsma, 2012; Lintner and Vaccari, 2009).

As the Constitutional Treaty failed and the institutions still wished to implement some of its elements, the comitology system was reformed again in 2006. An extra procedure was added that primarily served to oversee Commission measures that changed annexes to legislation, which was called the 'regulatory procedure with scrutiny' (Council Decision 2006/512/EC). Under this procedure, member state committees continued to deliberate and vote on such matters, but veto rights were added both for the Council and the EP after a positive committee vote (Bradley, 2008; Schusterschitz and Kotz, 2007). However, they were not full veto rights: vetoes could only be adopted if the content of the executive act was not compatible with the aim of the basic legislation, or if the principles of proportionality or subsidiarity were breached. Again, full content-oriented veto rights were not provided for.

As this system does allow for binding vetoes, the EP did change its internal procedures. It streamlined its document-handling processes, it appointed dedicated comitology administrators in its committees and it sought to make its members aware of the importance of comitology. Nevertheless, the number of vetoes adopted remained somewhat low – which could be indicative of agreement or of negligence, or of both (Brandsma, 2012; Kaeding and Hardacre, 2013).

The current system of delegated acts, newly included in the Lisbon Treaty and the prime focus of this article, should be seen as the successor to the regulatory procedure with scrutiny. Table 1 summarizes the differences between the formal

Table 1. Comparison between the regulatory procedure with scrutiny and delegated legislation

	Regulatory procedure with scrutiny	Delegated legislation
Legal basis	Decision 2006/512/EC	TFEU Article 290
Domain of application	Modification of non-essential elements of co-decision acts	Modification of, or supplements to, non-essential elements of a co-decision act
Voting rule in member state committees	QMV in favour needed, otherwise referral to Council	No vote – Commission presents its draft directly to EP and Council
Veto rights for Council and EP	Limited	Unlimited
Time limits for objection	3 months	To be specified in basic act (usually 2 months, extendable by another 2 months)
Revocation rights for Council and EP	None	Full
Voting rule for objection or revocation	Absolute majority of EP members, QMV in Council	Absolute majority of EP members, QMV in Council

Note: QMV: qualified majority vote; TFEU: Treaty on the Functioning of the European Union.
Sources: Council Decision 2006/512/EC and Article 290, Treaty on the Functioning of the European Union.

set-ups of the regulatory procedure with scrutiny and the delegated acts system. The family resemblance between the two systems is obvious. The committees of member state representatives casting their votes on draft acts have disappeared. In practice, however, those committees continue to exist as expert groups, which means that they are stripped of their formal voting rights (Brandsma and Blom-Hansen, 2012; Peers and Costa, 2012). Furthermore, limits on adopting a parliamentary veto have been lifted and the Council and the EP may decide to revoke delegated powers to the Commission. For this class of rules, the Commission in this system only needs to render account to the Council and the EP, both of which now enjoying full-blown scrutiny powers.

After entry into force of the Lisbon Treaty, the Council and the EP started including clauses on delegated legislation in numerous files, and up to the year 2014, this resulted in 209 delegated acts having been adopted by the Commission. Procedures of aligning the pre-Lisbon acquis to the delegated acts procedure have not been completed yet, so numerous more will follow. The EP and the Council have so far objected to one delegated act each: the Council vetoed a delegated act on the Galileo satellite system in December 2013, and the EP vetoed one on the food labelling of nanomaterials in March 2014.

The development of the rules governing the type of measures that are currently known as delegated acts are clearly indicative of strengthening parliamentary control. It makes sense to argue that the EP, after 50 years of fighting both the Council and the Commission tooth and nail, finally got what it wanted. In the present regime, it is on a par with the Council; both legislative institutions now enjoy the same control rights. Hence, one might expect that it holds the Commission to account to a much greater extent than before because it is now finally equipped to do so – at least when delegated legislation is concerned. However, on earlier occasions where the EP has seen its scrutiny powers extended, the degree to which these powers were, in fact, put into practice varies, in particular, between policy areas (Brandsma, 2012). The next section formulates two hypotheses on the degree to which the EP exercises its newly extended role as an accountability forum.

Theory and hypotheses

Previous research into the rules governing the comitology system has accumulated considerable evidence supporting a rationalist explanation of their development over time. A multitude of legal, as well as political science, studies clearly demonstrate that the Commission, the Council and the EP are well-aware of the fact that there are numerous further decisions to be made down the line as soon as legislation has passed. The comitology system was born in the early 1960 s in response to a demand by certain member states for control over the Commission (Bergström, 2005; Blom-Hansen, 2008). Changes to the set-up of the system can be explained by subsequent redresses in the balance of power between the EU institutions, most notably, the rise of the EP (Blom-Hansen, 2011; Bradley, 2008; Héritier, 2012). Inter-institutional disagreements over the development of the system, particularly

aspects concerning the control powers of the EP, are fought out so openly that it is, indeed, quite hard not to theorize the control question by means of rational choice institutionalism (Héritier et al., 2013: 128–129).

Accounts of the actual workings of the system, in turn, have primarily addressed the behaviour of the member state officials participating in the comitology committees, and primarily applied, or even tested, supranational-deliberative and intergovernmental-bargaining perspectives (Blom-Hansen and Brandsma, 2009; Egeberg et al., 2003; Joerges and Neyer, 1997; Pollack, 2003). While the behaviour of member state officials is not the key focus of this article, these studies indicate that in order to explain the actual workings of the system, it is more useful to focus on the effect of emerging social norms than on formal powers. In the committees, for instance, a spirit of expertise often prevails, in which the participants try to find technically superior solutions for common problems. Their formal powers, exemplified by the voting rules used in the committees and the corresponding bargaining power that this brings to individual participants, move to the background (Joerges and Neyer, 1997). Several studies into the workings of the EP also highlight that, in some cases, dominant social practices may matter more than formal rules in producing outputs. Such informal practices may eventually even become institutionalized, such as informal legislative bargaining in first reading, which has become increasingly proceduralized (Héritier, 2012).

The very few studies into the EP's actual scrutiny of comitology measures are somewhere in-between these extremes. On the one hand, these studies show that the presence or absence of formal powers does matter in distributing attention between issues, but, on the other hand, they disclose considerable differences between EP committees when it comes to political interest, as well as to administrative practices relating to scrutinizing decisions made in comitology committees (Brandsma, 2012; Kaeding and Hardacre, 2013).

On the basis of rational choice institutionalist accounts of the comitology system, one might therefore reasonably expect that the EP has modified its internal processes for handling delegated acts. It has been fighting tooth and nail in order to acquire full veto rights, and now that it has finally obtained them for delegated acts, it makes sense to expect that the EP receives more information and creates more opportunities for debate so that its new sanctioning rights can be effectively used. Furthermore, on the basis of sociological institutionalist accounts, it is expected that the EP's new rights to hold Commission decision-making to account become embedded in existing systems and existing practices of monitoring and sanctioning – those of the slightly weaker regulatory procedure with scrutiny. This leads to the following two hypotheses:

H1: For delegated acts, the EP obtains more information and creates more opportunities for debate than it used to under the regulatory procedure with scrutiny.
H2: For holding decision-making on delegated acts to account, the EP strongly models its systems and practices on its existing systems and practices for the regulatory procedure with scrutiny.

Table 2. Documents on the EP's role as an accountability forum

Document	Reference in text
Framework Agreement on relations between the European Parliament and the European Commission, OJ 2010 L304/47	European Parliament and Commission (2010)
European Parliament Rules of Procedure, 7th Parliamentary Term	European Parliament (2010)
Common Understanding on practical arrangements applicable to delegations of legislative power under Article 290 of the Treaty on the Functioning of the European Union, 3 March 2011	European Parliament and Council (2011)
Report on follow-up on the delegation of legislative powers and control by Member States of the Commission's exercise of implementing powers, 4 December 2013, PE510.803v02-00	European Parliament (2013)

Data and methods

This study uses two types of data sources. First, it uses documentary evidence to investigate how the EP implements the delegated act system that was introduced by the Lisbon Treaty. All official documents on procedures governing delegated legislation produced or co-produced by the EP after entry into force of the Lisbon Treaty were traced and analysed. These documents are listed in Table 2.

Second, six practitioners have been interviewed. This includes one person who was involved in the coming about of all but the first document, as well as five EP administrators who are working in the secretariats of its committees. They were interviewed because, as the analysis demonstrates, the scrutiny of delegated acts has been organized in a way that places them in a pivotal position. The number of five administrators seems rather small, but it must be remembered that the EP only has 20 committees, and most of the delegated acts adopted after Lisbon are allocated to only a few committees. The five selected administrators are working for the committees that deal with relatively many delegated acts. Together with the documentary evidence, the interviews provide a reliable indication of the degree to which, and the modes in which, the EP holds present-day delegated decision-making to account.

Accountability for delegated decision-making: information, discussion and consequences

Information: forwarding of documents

Ever since the regulatory procedure with scrutiny entered into force, the EP has been using an internal document-handling system to forward comitology agendas,

meeting summaries and draft measures to the secretariats of the EP committees. The committee secretariats subsequently inform the Members of the European Parliament (MEPs) in their committees, either by forwarding all individual documents (including deadlines for objection) or by sending newsletters at regular intervals, including information on a number of recently forwarded measures (European Parliament, 2013).

The document-handling system for delegated acts works similarly. Technically, the system that is used differs, but in the end, the information arrives in the same e-mailbox of the EP's committee secretariats as where comitology measures end up (Respondents 2 and 5). The number of documents related to delegated acts, however, is a lot bigger. The Commission and the EP agreed that for delegated acts, the latter no longer only receives agendas, meeting summaries, vote results (if any) and draft measures, but *all* documents that are made available to the member states' experts (European Parliament and Commission, 2010: 55).

This agreement has two effects. The first effect is that the EP is kept in the loop and, hence, on equal footing with the member states in the Council, even when it chooses not to send participants to the expert group meetings. The second effect is that it can use this information to anticipate whether the wheels for preparing an objection should be set in motion, which is very helpful given the still quite tight deadlines in the EP.

Modes of informing MEPs have remained unchanged compared to the pre-Lisbon situation. The EP administrators either forward all incoming documents or pre-digest some information and send newsletters to the MEPs. In one EP committee where the secretariat forwards all individual documents, the non-filtering is controversial:

> Some political groups almost attack the secretariat for not informing them properly.... If we have to explain or describe what it is about, we lose time. And on the other hand, if we just forward the information ... then the members don't read it, or they feel flooded with information.... This is the political tension we have. Some groups say: 'You should warn us if there is something in there which we could not like.' And we say: 'The liberals don't like this, the greens don't like that, please assess yourself.' (Respondent 4)

Multiple respondents mention the EP's reliance on signals from lobby groups (Respondents 3 and 5). As argued elsewhere, it would be helpful for actors outside the EU institutions to have access to draft measures and meeting summaries – not just to better equip them to pursue their own objectives before delegated acts are finalized, but also to aid the accountability processes within the EP (Brandsma et al., 2008; Peers and Costa, 2012). However, draft delegated acts are not public – not even when they are submitted to the Council and the EP for scrutiny. A document register for expert groups preparing delegated acts does exist as a part of the Commission's general document register. Information on delegated acts, and, in particular, the actual measures involved, only becomes public when

the time for scrutiny by the legislator has elapsed, and the final measure has been formally adopted (Respondent 1). Thus, the EP may well perceive this system as being transparent, but because the EP, in part, relies on outside actors to inform it of potentially veto-worthy cases to whom this information is unavailable, the system is hardly transparent in practice.

Information: expert groups

One of the most pronounced differences between the delegated acts system and the comitology system as it used to be is that the former no longer features a committee system in which member state civil servants always vote on proposed Commission measures. The Commission, however, thought of different means to keep the member states involved and make use of their input. Already before negotiations on the Common Understanding got under way, it committed itself to consulting member state experts before adopting delegated acts (Brandsma and Blom-Hansen, 2012). Effectively, this came down to stripping the existing comitology committees of their voting rights, and integrating them into the Commission's system of expert groups that is used for all sorts of consultations (cf. Gornitzka and Sverdrup, 2008). If there is a vote in the expert groups preparing delegated acts, it is at the Commission's own discretion, and without binding consequences.

For delegated acts, the formal committee system thus became informalized. The EP feared that this would allow the member states to gain a privileged position by informal means. For that matter, the EP made an informal agreement with the Commission in the 2010 Framework Agreement, which is an agreement on the working relationship between the Commission and the EP that is renewed every time a new Commission assumes office. In this agreement, the Commission and the EP agreed that the latter could send participants to any expert group meeting exclusive to member state civil servants (European Parliament and Commission, 2010). Since the Commission is free to consult anyone it wants to consult, the member states were not involved in the making of this agreement. The fact that the EP and the Commission already made arrangements for participation in the Framework Agreement did not affect the negotiations on the Common Understanding that were still running at that time, simply because the Framework Agreement had already been made (Respondent 6).

Nevertheless, the question of how to implement this informal agreement remained unresolved. More particularly, two issues were, and in part continue to be, at stake. The first is whether the Commission should actively invite the EP to its expert group meetings, or not. The Framework Agreement literally states that 'if so requested by Parliament, the Commission may also invite Parliament's experts' (European Parliament and Commission, 2010: 49), which means that the initiative lies with the EP. Even though agendas were agreed to be sent to the EP at the same time as they are sent to the national experts (European Parliament and Commission, 2010: 55), one EP administrator indicated that she needed to find out about scheduled meetings herself by relying on her good contacts in the

Commission (Respondent 2). In other issue areas, the Commission does actively invite EP experts to its expert group meetings (Respondents 1 and 3), while in yet another, the EP was asked to write application letters for every single expert group meeting, which was later replaced by a generic letter asking for access to all meetings (Respondent 4). However, as this respondent recalls, 'in the first meetings I just walked into the room and nobody complained' (Respondent 4). The invitations policy, thus, is strikingly different between policy areas, and the EP has, in fact, called for simplification of the procedure (European Parliament, 2013).

The second unresolved issue refers to the definition of a Parliament expert. The EP's own evaluation of the delegated acts system carefully avoids taking a position on this matter. It states that Parliament should be involved in the preparation of delegated acts, and calls on the Commission to keep the rapporteur of the file informed. It further recommends a standing rapporteur for delegated acts to be appointed in all committees, but this has proven controversial and is not being implemented across all committees (European Parliament, 2013). The degree and level of parliamentary participation in preparatory expert groups is thus left undefined.

However, a certain norm has emerged in the meantime. In most EP committees, it was quickly agreed that, in principle, expert groups are no place for MEPs to go (Respondents 1, 2, 3 and 4). Without appropriate advance mandating, there might be a risk that an MEP would defend a position that is not shared by a majority of MEPs (Respondent 2). However, then again, the issues at stake are too detailed to warrant extensive mandating – the point of delegating powers to the Commission is precisely to relieve the EP of dealing with technicalities (Respondent 5; European Parliament, 2013). On top of that, expert group meetings take a lot of time, often a full day, which no MEP would realistically survive (Respondents 1 and 4).

For all EP committees, it is the staff members of the committee secretariats who attend expert group meetings (Respondents 1, 2, 3, 4 and 5). The group of people they report back to differs between EP committees: it can be the chair and coordinators only (Respondent 1); it can be all rapporteurs and shadow rapporteurs previously involved in negotiating the original basic act (Respondent 3); but it can also be all members of the committee (Respondents 2 and 4). Sometimes assistants of MEPs join as well (Respondent 1), or up to three EP committee administrators might be sent (Respondent 2).

As the staff members of the EP lack a political mandate, they cannot and do not take a position on behalf of the EP. Instead, all of them only observe the expert group meetings and take notes, even though random occasions have occurred where the Commission actively invites EP observers to take the floor (Respondent 4). Hence, even though the recitals of delegated acts may state that EP experts have been consulted, in practice, this does not refer to consultation in the true sense of the word (Respondent 1).

The reason why EP committee administrators attend expert group meetings is to signal potential political problems well before the final delegated act is officially transmitted to the EP for scrutiny. Due to the short time limits for a veto after

transmission of a final delegated act, it is of vital importance for the EP to be involved upstream. However, even with the low number of delegated acts that have passed thus far, the EP already experiences a shortage of resources to follow up on all expert group meetings.

Sometimes, expert groups remain unattended, leaving the EP reliant on any information provided by lobby organizations (Respondent 5). In other cases, staff prioritize attending expert groups instead of an EP committee meeting organized on the same day (Respondent 4). Staff of other EP committees manage for the time being, but this may be different when the number of delegated acts increases (Respondents 1 and 2). However, in expert group meetings, the EP administrators sometimes face issues that are so technically complex that it is hard, if not impossible, to follow up on all the details (Respondents 3 and 4).

Thus, as regards the information dimension of accountability, the evidence supports both hypotheses. Much more information has become available under the delegated act scheme than under the previous regulatory procedure with scrutiny, but the information processes have remained the same. New, however, is the emergence of expert groups that EP administrators may attend as observers.

Discussion: politicization of accountability

The introduction of delegated acts brought about one change that goes beyond any of the agreements made between the Commission and the EP: preparatory meetings at political level. Now that the EP is no longer bound to a short, exhaustive list of reasons as to why it may object to certain measures, its behaviour has become more unpredictable to the Commission. The EP has a powerful weapon at hand to block the Commission as it may veto for no matter what reason. Therefore, the Commission and the EP increasingly interact at political level (European Parliament, 2013), both during and before the official period of scrutiny.

Respondents recall that for many delegated acts, Commission staff were invited to EP committee meetings in order to inform MEPs about delegated acts that were in preparation, and to exchange views about them (Respondents 1, 2 and 4). Those meetings are usually behind closed doors, with only the party group coordinators being present. The behaviour of the Commission during those encounters differs. The meetings may focus on informing the Parliament, with the Commission returning every time that there are new developments so as to make sure that the eventual delegated act passes without any problem (Respondent 1). Besides just providing information, the Commission may also frame the political game, for instance, by stating that if the eventual delegated act fails in the EP, the EP will get the blame rather than any credit, or by issuing statements (Respondent 2). Invitations to the EP committees come about after potential political problems are detected in the expert groups (Respondents 2 and 4) or as a matter of routine (Respondent 1), and the Commission may be re-invited until the EP is happy with the contents of a delegated act. One respondent succinctly summarized this by saying that ‘the nuclear option galvanizes them into action’ (Respondent 2).

Before a delegated act has been submitted and the scrutiny period has officially begun, Parliament has no power, but it can take influence (Respondent 4). However, the opposite seems to apply as well: as soon as the official scrutiny period has begun, the Parliament has power but no influence. As the institutions agreed on short time limits for actual scrutiny (see further later), the Commission has little time to fully appease Parliament, and Parliament has little time to rally a majority of members against a detailed and technical measure (Respondent 2). The problems associated with this particularly showed in a rare case where the Commission sent a controversial delegated act on the day before Christmas, with a parliamentary veto deadline of only one month. In this case, the Commission was immediately invited to the next EP committee meeting in January, but it could do nothing more than issue a statement in which it solemnly pledged never to behave like this again – which avoided an objection being pushed through (Respondents 2 and 3).

Interestingly, practices of inviting the Commission on the basis of observations in expert groups means that the EP secretariat is placed in the driving seat. In practice, it acts as the gatekeeper, and, at times, also as the agenda-setter. The EP committees can invite the Commission to its meetings after approval of the chair or the coordinators, but nonetheless on the secretariats' initiative. This is to make sure that the MEPs are fully informed (Respondent 1), but it is also indicative of some administrators assuming a more political role than others (cf. Dobbels and Neuhold, 2013).

Discussion: no coordination with the Council

The delegated act system includes that the Council and the EP jointly decide to delegate powers to the Commission, which can be controlled by each of the two institutions. Nevertheless, it would be wrong to assume that the Council and the EP join forces in scrutinizing the Commission. Respondents who were asked about this report that they do not even know how the Council deals with scrutinizing delegated acts (Respondents 2 and 5). One even added:

> Unless it is really problematic we do not have the capacity to follow who does what in the Council. Usually, if anything happens, my way of dealing with things is getting in touch with the Commission. They are the middleman. (Respondent 5)

Thus, working habits in the EP are not oriented towards the Council, which could be regarded as an ally when it comes to matters like these, but are internally oriented, as well as oriented to the Commission.

It would be speculative to provide a full explanation for this lack of cooperation. The fact is, however, that the EP has never been on equal footing with the Council before, and that both in the past and at present, when legislative matters are concerned, the Council and the EP hold conflicting views.

All in all, the findings on the discussion dimension of accountability only support the first hypothesis. The evidence shows that political discussions on delegated

acts take place relatively frequently. This was not the case for the regulatory procedure with scrutiny, and so it cannot be said that practices have been modelled on the old system in this regard. Only the lack of coordination with the Council has remained the same.

Consequences: time limits

Whereas the Treaty article on delegated acts mentions the Council's and the EP's veto powers, it does not specify the time limit before which any vetoes must be adopted. Therefore, the institutions need to settle this in legislative negotiations for each and every file. In order to ease negotiations on this recurring theme, the Council and EP informally agreed to standardize time limits by means of a Common Understanding (European Parliament and Council, 2011).

Their previous experiences with applying the regulatory procedure with scrutiny guided the negotiations on this point. This former comitology procedure included a three-month time limit, during which the Council and the EP could formally express their opposition to a Commission measure. The EP, in particular, experienced difficulties in meeting this time limit (Bradley, 2008, Kaeding and Hardacre, 2013). Its internal procedures specify that resolutions can only be formally adopted in plenary after being prepared and adopted in committee. As plenary sessions take place only once per month, and because some committees have a relatively low workload and therefore also meet irregularly, a deadline of three months is rather tight.

The Commission, however, put forward during negotiations on the Common Understanding that the time limit should be reduced rather than extended. For all measures it proposes, the Commission faces some degree of uncertainty as to whether the proposed measures might be vetoed or not, while, in practice, nearly all proposed measures pass without any ado. Therefore, the Commission believed the existing three-month scrutiny period to be a source of unnecessary delay, hampering efficient policymaking. While negotiating the Common Understanding on delegated acts, the Commission insisted that the Council and the EP would indicate within only one month whether they were planning to use their veto powers, after which they could take another two months to finalize the process if necessary (Brandsma and Blom-Hansen, 2012). Effectively, this split in the three-month scrutiny period would mean that most measures would be held up not for three months, but only for one month.

In the end, the institutions agreed on an initial two-month scrutiny period, extendable by another two months, as a general rule (European Parliament and Council, 2011). Variations, such as one plus one month, or three plus three months, are used in some specific cases (Respondent 3). Still, even though most delegated acts pass without much ado, the initial period of two months is considered to be very short (European Parliament, 2013). Some matters can be very technical so that MEPs would really need to consult experts before they can assess whether or not to object, and 'by the time people react, it is too late' (Respondent 1). Since objections need to be prepared in committee before they can be tabled in plenary, members

effectively have between two and four weeks to decide whether they would prefer to initiate one (Respondents 1 and 5).

Even though the two-month extension can be requested by the chair of the according EP committee (European Parliament, 2010: Rule 87a), in practice, extensions are only used if a committee is already considering to object (Respondent 5). Thus, the EP committees deal with scrutinizing delegated acts in the initial period of two months, of which only the first couple of weeks can effectively be used for deliberations within the EP's committees. Thus, advance warnings that delegated acts are upcoming are particularly welcome (Respondents 1, 2 and 3).

There are cases where the Commission prefers to see an explicit non-objection from the Council and the EP already before the initial two-month time period elapses. The EP's Rules of Procedure do cater for such situations, but the according procedure is cumbersome. Early non-objections first need to pass the conference of committee chairs and the conference of presidents, after which they need to be announced in plenary (European Parliament, 2010: Rule 87a). It is much easier to let the initial two-month period elapse (Respondent 3). This is probably why the EP has issued a formal non-objection only once.

Occasions when the EP receives a delegated act by surprise are rare, but they do occur (Respondent 2). Two respondents recall one rare occasion of the creative usage of deadlines, which was already briefly mentioned earlier. In this case, the Commission sent a controversial delegated act the day before Christmas, while the time limit applying in this case was only one month. In the end, under severe time pressure, the committee decided not to oppose the measure, but let the Commission issue a statement in which some of its concerns were addressed (Respondents 2 and 3).

Despite the slight modification of procedures, the time limits for objections to delegated acts are inspired by the same logic as under the regulatory procedure with scrutiny. They are a careful balancing act between swift administrative action and facilitating political deliberation – if desired.

Conclusion

Even though the family resemblance between the former regulatory procedure with scrutiny and the newly introduced delegated acts system are obvious, the delegated acts system is more than just a replica of existing procedures. It has provided for stronger accountability towards the EP, both de jure and de facto. The very fact that the EP may now veto delegated acts for no matter what reason has politicized accountability for this type of measure. Also, its sending of staff members to the Commission's expert groups better equips it to detect potentially controversial measures, and to influence decision-making in the Commission before the delegated acts are finalized. As the Commission wants to avoid parliamentary vetoes, they interact more with the EP than they used to do under former procedures. Thus, for delegated acts, the EP is not a paper tiger. Its extensive veto powers and the adaptations of its work processes to facilitate scrutiny of delegated acts have made it a powerful accountability forum.

The first hypothesis – that the EP obtains more information and creates more opportunities for debate than it used to under the previous comitology system – can thus safely be accepted. However, the second hypothesis – that the EP models its systems and practices of scrutinizing delegated acts on its existing systems and practices with respect to comitology – cannot be. While it is certainly true that the document-handling system, as well as the modalities of informing MEPs, have generally remained the same, the delegated acts system comes with important extras: participation in expert groups and political debate between the Commission and the EP in its committees. It is these two novelties that significantly strengthen the accountability of the Commission towards the EP. More information is exchanged and more debate takes place than ever before. The delegated acts system may still be in its infancy, but there are already clear signs that it delivers on its promise of stronger legislative control over the Commission.

This is not to say that there are no unresolved issues. At present, the number of delegated acts is still relatively modest, and the EP seems capable of managing their scrutiny well and effectively. However, with ever-more new legislation being adopted, and existing legislation being brought into line with the provisions of the Lisbon Treaty, the delegated acts system will be applied ever-more often in future. The EP will increasingly face shortages in manpower when following up on all delegated acts produced by the Commission, and it will get increasingly difficult to exercise control. Then, the EP will need to rely on its relations with lobby organizations and civil society groups to a greater extent than it already does, and more transparency in the process of adopting delegated acts will be vital to keep the accountability system up and running. The current challenge for the EP is to avoid the delegated acts scrutiny system becoming a paper tiger in the near future.

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References

Bergström CF (2005) *Comitology – Delegation of Powers in the European Union and the Committee System*. Oxford: Oxford University Press.

Blom-Hansen J (2008) The origins of the EU comitology system: A case of informal agenda-setting by the Commission. *Journal of European Public Policy* 15(2): 208–226.

Blom-Hansen J (2011) *The EU Comitology System in Theory and Practice: Keeping an Eye on the Commission?* Houndmills: Palgrave Macmillan.

Blom-Hansen J and Brandsma GJ (2009) The EU comitology system: Intergovernmental bargaining and deliberative supranationalism? *Journal of Common Market Studies* 47(4): 719–740.

Bovens M (2007) Analysing and assessing accountability: A conceptual framework. *European Law Journal* 13(4): 447–468.

Bovens M (2010) Two concepts of accountability: Accountability as a virtue and as a mechanism. *West European Politics* 33(5): 946–967.

Bradley K (1997) The European Parliament and comitology: On the road to nowhere? *European Law Journal* 3(3): 230–254.

Bradley K (2008) Halfway house: The 2006 comitology reforms and the European Parliament. *West European Politics* 31(4): 837–854.

Brandsma GJ (2012) The effect of information on oversight: The European Parliament's response to increasing information on comitology decision-making. *International Review of Administrative Sciences* 78(1): 74–92.

Brandsma GJ (2013) *Controlling Comitology: Accountability in a Multi-level System*. Houndmills: Palgrave Macmillan.

Brandsma GJ and Blom-Hansen J (2012) Negotiating the post-Lisbon comitology system: Institutional battles over delegated decision-making. *Journal of Common Market Studies* 50(6): 939–957.

Brandsma GJ and Schillemans T (2013) The accountability cube: Measuring accountability. *Journal of Public Administration Research and Theory* 23(4): 953–975.

Brandsma GJ, Curtin D and Meijer A (2008) How transparent are EU 'Comitology' committees in practice? *European Law Journal* 14(6): 819–838.

Dobbels M and Neuhold C (2013) 'The roles bureaucrats play': The input of European Parliament (EP) administrators into the ordinary legislative procedure: A case study approach. *Journal of European Integration* 35(4): 375–390.

Egeberg M, Schäfer G and Trondal J (2003) The many faces of EU committee governance. *West European Politics* 26(3): 19–40.

Gornitzka Å and Sverdrup U (2008) Who consults? The configuration of expert groups in the European Union. *West European Politics* 31(4): 725–750.

Héritier A (2012) Institutional change in Europe: Co-decision and comitology transformed. *JCMS: Journal of Common Market Studies* 50(s1): 38–54.

Héritier A, Moury C, Bischoff CS, et al. (2013) *Changing Rules of Delegation: A Contest for Power in Comitology*. Oxford: Oxford University Press.

Joerges C and 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.

Kaeding M and Hardacre A (2013) The European Parliament and the future of comitology after Lisbon. *European Law Journal* 19(3): 382–403.

Lintner P and Vaccari B (2009) The European Parliament's right of scrutiny under comitology: A legal 'David' but a political 'Goliath'? In: Christiansen T, Oettel J and Vaccari B (eds) *21st Century Comitology: The Role of Implementing Committees in the Enlarged European Union*. Maastricht: EIPA.

Maurer A (2007) The European Parliament between policy-making and control. In: Kohler-Koch B and Rittberger B (eds) *Debating the Democratic Legitimacy of the European Union*. Plymouth: Rowman and Littlefield, pp. 75–101.

Neuhold C (2008) Taming the 'Trojan' Horse of comitology? Accountability issues of comitology and the role of the European Parliament. European Integration Online Papers, 12.

Peers S and Costa M (2012) Accountability for delegated and implementing acts after the Treaty of Lisbon. *European Law Journal* 18(3): 427–460.

Pollack MA (2003) Control mechanism or deliberative democracy? Two images of comitology. *Comparative Political Studies* 36(1/2): 125–155.

Schusterschitz G and Kotz S (2007) The comitology reform of 2006. *European Constitutional Law Review* 3(1): 68–90.
Van Schendelen MCPM (2010) *More Machiavelli in Brussels: The Art of Lobbying the EU*. Amsterdam: Amsterdam University Press.

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