

EUSA Eighth Biennial International Conference

Nashville, Tennessee, March 27-29, 2003

Panel: The European Parliament in Evolution: Constitution Building and Legislative Profile

Elected Legislators and their Unelected Assistants in the European Parliament

Karlheinz Neunreither

University of Heidelberg

This paper will be published in a forthcoming special issue of the *Journal of Legislative Studies* on legislative assistance in the EU, edited by Roger Scully and Rinus Van Schendelen. Please refer to the printed version.

Elected Legislators and their Unelected Assistants in the European Parliament

ABSTRACT

This paper discusses, in the framework of a wider study on legislative assistance in all relevant EU institutions, the case of the European Parliament (EP). Looking at the legislative process in the EU, it is quite evident that we find within the EP, as compared to the Council and the Commission, the elected legislators. This direct legitimacy is one of the major assets of the community system. In exercising their legislative functions, the Members of the EP are assisted – as in most parliaments – by a number of internal services, and they have access to a large variety of external sources, not the least to sources based on specific interests, the so-called lobby. The paper examines the delicate relationship between those who act on the basis of a political mandate and those who influence their decisions.

1. The European Parliament as a legislator: an emerging function

If there are any elected legislators in the EU, they are certainly found in the European Parliament (EP). Here, the relationship between legislators and those who assist them is different from that in other EU institutions and touches core questions of the democratic system, above all of political representation. While exploring this issue we should keep in mind, however, that parliaments fulfil many different functions and legislation is just one of them.¹ As far as the EP is concerned, only over the last ten or fifteen years has its legislative role become its principal prerogative in the power sharing of the EU institutions: legislation was rather a late-comer for an institution which has its origins in the fifties. This time dimension is important, as we shall see.

But let us first look at the present: how legislation is handled within the EP, which procedures prevail, and which phases of the process are important. We will then briefly analyse the various services that the EP puts at the disposal of the MEPs, and what external sources should be considered. Finally, we propose to evaluate our findings and mention some windows of possible evolution.

2. How the EP legislates

The internal structures and procedures that shape the EP's participation in the legislative process are deeply rooted in its history. In the early days of the ECSC assembly (when legislation was not even mentioned and the treaty spoke only of 'supervisory powers' of the Parliament)² a system of standing committees was introduced and the function of a 'rapporteur' created. The basic concept, common to most continental parliaments, is that plenary debates and decisions should, as far as possible, be prepared by standing committees. One committee is the committee 'responsible' for a given matter, with other committees sometimes 'asked for an opinion'. Only the responsible committee presents its findings to the plenary, in the form of a report that includes a draft for a concluding plenary decision; the other committees are restricted to giving an opinion to the main committee, asking to take it into account in its report.

In this two-tier structure, the rapporteur is most important as the link between the preparatory stage of the committee and the final one of the plenary. Not only does he 'report' the findings of the committee to parliament as a whole, as the name indicates; he is responsible within the committee, from the very beginning, for a given subject. This is one of the outstanding functions in a parliament, though its importance varies, of course, with the salience of the subject. In the 'old', non-elected EP, committees voted on the whole report and the annexed draft resolution: this gave more weight to the written presentation by the rapporteur, but was very time consuming. After the Single Act in the 1980s, and the corresponding increase in legislation, things were changed: committees now vote just on a draft resolution, and the rapporteur adds an 'explanatory statement'. And legislative reports are now focused on the draft legislative text itself, which is the only one put to a vote. The legislative proposal may be accepted without changes or rejected as a whole, or (most commonly) it may be presented to the plenary in an amended form³. This concentration on the legislative text, and especially on amendments, has an impact, as we shall see, on the various phases of the procedure.

Before we approach the question how to become a rapporteur and how he or she chooses his or her assistance, it is useful to present some quantitative evidence: how many reports are discussed and which categories of reports come into focus? The following Table reports figures from the year 2001. Of primary interest are legislative reports, which result in a parliamentary decision in the form of a resolution; in addition there are non-legislative reports and other subjects which may also take the final form of a resolution or of a decision.

(Table about here)

In 2001 the EP plenary voted no less than 714 times on a final text, legislative or not. This equates to about 40 decisions or resolutions for an average part-session in Strasbourg or Brussels. This number alone underlines the fact that the EP has become a voting machine rather than an arena for discussion, especially if we keep in mind that usually numerous votes on amendments take place before a final text is established. As far as legislation is concerned, the large part of consultations (190) may astonish: here we have many agricultural reports, some of them important, but many quite routine. The 'opinion' given by the EP in this category is the original, weak form of Parliament's participation in legislation – the Council alone is responsible for the final decision and it can (and often does) disregard parliament's opinion. Next comes the co-decision procedure, the much more powerful prerogative, introduced by the Maastricht and improved by the Amsterdam treaty, where the EP is on equal footing with the Council. The procedure consists of a first reading (85 cases in 2001), generally a second one (51)⁴, and sometimes even a third one (22). These second and third readings are generally handled by the same rapporteurs as the first. The assent procedure – which resembles ratification in national parliaments – comes next (16). A separate chapter concerns the budget (22) where we find the annual general budget, possible additional ones and other budgetary questions. 'Other opinions' rank very high (112). This column covers mainly opinions on Commission reports or communications of different nature, including a number of pre-legislative documents.

The rest is non-legislative and therefore of no direct concern to our subject. It is interesting to note, however, how much the possibility of 'own-initiative' reports has been reduced via strict internal rules – only 52 were presented in the year under review⁵. Before the dramatic increase of legislative work in the late eighties, these reports were more numerous than any other category. Outstanding contributions like the Spinelli draft constitution of 1984 were presented under this category, which has now become quite marginal. On the other hands, urgent questions (91) which are directly introduced by the political groups and do not have to

pass any filtering by a committee, are given considerable space. Some of these questions, hastily prepared, are only presented to catch the interest of the media.

As we have seen, only the committee responsible can present a report to the plenary. How is this workload allocated? The EP's website reports figures for adopted reports by committee for any given period. If we just take the first half of the present legislative period (July 1999 - end 2001) we find a heavy load for the Committee on the environment, public health and consumer policy (144 reports for this period), followed by the Committee for industry, external trade, research and energy (86), the Committee on citizens' freedoms and rights, justice and home affairs (83), and the Committee on regional policy, transport and tourism (80). At the lower end of the scale are the Committee on women's rights and equal opportunities (17) or the one on petitions (10). Even if we take into account the differences in size ranging from 69 members for the Committee on foreign affairs, human rights, common security and defence policy (74 reports) to the Committee on petitions (28 members, 10 reports), or the Committee on budgetary control (21 members, but 44 reports), it is evident that the chance for an individual MEP to become a rapporteur during a legislative period varies considerably from committee to committee.

3. Parliamentary procedures: stages of a legislative proposal

Before we take a closer look at parliamentary assistance, it is useful to identify the various stages taken by legislation in the EP: responsibilities are split up between the President, the Conference of Presidents, the committee responsible, possibly other committees asked for an opinion, political groups, and the plenary. Since the European Commission holds the monopoly to initiate legislation, each draft directive or regulation takes the form of a Commission proposal that is sent to the EP at the same time as to the Council. With the reception of such a document, the formal internal procedure within the EP begins. The President selects one of the permanent Committees as responsible, and possibly one or more others are asked for an opinion. But how does the President know which committee is the most concerned? First, there is a list of competencies for each committee, annexed to the internal rules, which gives in most cases sufficient indication. Previous legislation in the same matters may constitute an additional guideline. But even so, some drafts cover different policy areas and it is sometimes a matter of political judgement how to decide. Conflicts between committees are not impossible, and if they cannot be settled by the Conference of Presidents, the EP plenary must decide.

Once the legislative draft has been allocated a committee, further steps are required before actual legislative work can start. Formal necessities are verification of the legal basis, of respect of the rules of subsidiarity and proportionality, and of human rights. More practically, the committee has to decide which procedure to follow: the normal one, which consists in the appointment of a rapporteur and production of a report, or a simplified one. To reduce the workload of plenary, Parliament has experimented with several schemes. The most radical one was that a subject be dealt with by the committee alone and not be submitted to plenary at all. Some national parliaments, like the Italian one, apply this procedure regularly. In the EP, however, this solution has not been popular. The most obvious reason is that the EP, which is composed from MEPs from more than 100 national or sometimes regional parties, is much more heterogeneous than any national assembly and deliberation in the plenary is easier to follow than a decision in one of the 17 committees where a national party might not be represented. As a consequence, this option was deleted in the last modification of the EP's Rules of Procedure (Provisional edition of July 2002). But less radical solutions are

maintained: The committee responsible may decide, after a first internal discussion, that the legislative proposal be approved without amendments. This saves not only time but has an additional advantage: no rapporteur need be appointed by the committee, and the committee chair will undertake the formal presentation to plenary⁶.

If our committee responsible has decided to follow the normal procedure, the first major step will be to decide who among its members shall be the rapporteur.² The rapporteur is the central person in the handling of a legislative matter. As a rule, the rapporteur is only appointed when the respective proposal has been tabled. But there are a few exceptions. Committees may designate some of their members to follow closely matters listed in the current annual legislative program, even before draft legislation has been elaborated. Such a designation anticipates formal nomination as a rapporteur. Secondly, a new act of legislation may have been preceded by a Commission white book or similar document of general orientation. We have seen, when looking at the workload of the EP in 2001 that these documents constitute a considerable segment. In other words, the pre-legislative phase may influence the actual appointment of a rapporteur.

Political groups, however, are crucial at this stage. Their main interest is not to make sure that the best qualified committee member becomes rapporteur (which would be useful in order to counterbalance the tremendous expertise which has already gone in any legislative draft) but to get a fair share for themselves out of the total number of rapporteurships. To this end, various informal systems have been established to distribute the respective appointments among the groups. Such systems are operated by political group officials, under the more or less distant oversight of their respective 'co-ordinator'.³ Some of these systems just consist of a list of expected proposals, others weight them and give more points to important issues. The objective is always to get an agreed percentage for your own group. As one can easily imagine the actual proposal for appointment will be influenced by many factors, including the one of 'justice' – that is, to give a fair chance to all members, at least to the more active ones, to become a rapporteur.⁴

Such systems do not maximise the expertise of the average rapporteur – quite the contrary. So can we expect that a rapporteur has sufficient abilities, both as an expert and a political manager, in order to fulfil his role? For a number of reasons, the average rapporteur is not likely to be an expert on the subject for which he or she has been assigned. First his election as an MEP was, in most cases, not based on criteria linked to the subject; second his membership in a given committee will not always reflect his own preferences; and third the given subject is perhaps of minor interest for him within the policy range of his committee. But what about the second quality, that of a political manager? Here we come to the heart of the matter. We do not expect a national minister to be a professional in his field before he takes up office (though this would sometimes help). What we expect is that the minister not be dominated by the professional bureaucracy which surrounds him, and that he create a balance between expertise and his own political responsibility. In some national governments, the minister is assisted in this task by a political staff of his choice, his 'private office', or 'cabinet' in French; other governments do not have this tradition and the minister has to rely almost completely on the 'non-partisan' advice given by permanent staff.

In most national parliaments, there is a clear distinction between rapporteurs who belong to the majority and those who are from the opposition. The first ones can largely rely on the expertise of the governmental apparatus; indeed they are usually expected to do so. The opposition, on the other hand, cannot count on comparable resources. The EP does not exist in a majoritarian system – there is no clear 'government' and 'opposition' in the EU.⁵ In other

words, an EP rapporteur can not count on the ‘majority bonus’ of expertise: he is, seen from the executive, always in a position of an outsider, of a ‘hidden opposition’. Hence the quality of his assistance is a key element of the legislative role of the EP.

4. Parliamentary assistance in the EP: a ‘non-partisan’ public service?

Parliamentary assistance within the EP can be of three types: assistance by one of the services of the EP itself, assistance by staff of a political group, or assistance by the MEP’s personal staff. The first of these categories was for many years clearly dominant and its position has only gradually changed since the mid-nineties. What are the reasons for this?

In liberal democracies, we find two archetypes of administrative systems: one is based on the idea of an impartial professional service, as far away as possible from political interference. The other is more linked to a certain conception of majority rule and allows those in power to replace adherents of other political orientations with their own followers. The first one is heavily rooted in European systems, while the second one, in the form of the ‘spoils’ system, is generally assumed to exist in the United States. As far as the EU is concerned, its administrative system was built according to French traditions and conceptions. The backbones of this system are recruitment on the basis of a general competition, high degree of tenure, and a broadly objective promotion system with a tendency to favour seniority over merit.

But establishing rules is one thing; to become a truly non-partisan and respected service quite another. A number of factors contributed to such a development. Before the first EP elections in 1979, the chamber was an unelected assembly composed of delegated members of the national parliaments who had to split their time between their original mandate and the EP (and in some cases also the Council of Europe). This provided for considerable independence of the secretariat during MEPs’ absence and for ‘desk officers’ to become experts on legislative files, with little chance for the members to acquire comparable knowledge. Direct elections doubled the size of the EP, with most MEPs now full-time. Gradually, the more active among them now had the chance not only to acquaint themselves with the difficult machinery which is the EU, but to become proficient in policy matters as well, mainly through their work in a committee of their choice. Budgetary questions were where such developments occurred first, but from the second half of the eighties on there was an increasing number of issues in other committees as well on which at least some MEPs had acquired considerable expertise.

During these years, the relative independence of the EP secretariat was strengthened by the security of tenure of its senior officers. As late as in the mid-nineties, out of nine A-1 posts (the highest bracket of the Secretary General and Director-Generals) no less than six had begun their career as junior officers in the EP back in the late fifties or early sixties. Due to the system of national balance, there was only limited direct competition or jealousy in this group.⁶ Careers tended to be rather slow – which had the advantage that people were integrated step by step into this evolving system and had time – except for newcomers following the various enlargements – to internalise the unwritten rules that are important in such a service. Certainly, there were deficiencies in this set-up, including a lack of mobility between services. But in general, and against the odds in a highly politicised environment, a kind of independent non-partisan service emerged.

Which parliamentary services can provide direct legislative assistance? There are three departments which can be singled out: DG II (committee secretariats), DG IV (studies), and the Legal Service. In addition, DG III (Information) is concerned marginally, since it is responsible for the drafting and distribution of summaries of meetings to the public.

The Legal Service is a late-comer in this game; it was created in the early nineties in order to increase the EP's capacities in judicial matters. Legislation is only a part of its activities. The service is composed of twenty-two 'A' grade staff and a team of legal linguistic revisers.⁷ After one deducts the time-consuming functions of representing the EP in lawsuits and similar matters, not very much is left for the Legal Service to provide specialised legislative assistance on peculiar subjects. So this service – in addition to the standard verification of legislative texts before their final signature - may be called in as an occasional help, but rarely provides substantial assistance for rapporteurs.

DG IV, by contrast, is an old-timer. Under various headings it has survived all kinds of restructuring plans. The secret of its survival may be that if you abolish it, you increase the weight of its immediate competitor, DG II, so much as to put out of balance the whole internal structure of the EP secretariat. Research and documentation are important fields, and the EP would have gained considerably if a convincing strategy had been developed for the development of this service. The Legislative Research Service of the US Congress was considered, by those who favoured evolution in this direction, as a possible model. Instead, for many years no far-reaching concepts were forwarded and many DG IV officials wasted time assisting committee meetings without having a real function. When finally, in the early nineties, plans for a comprehensive parliamentary documentation centre were forwarded, it proved to be too late. The necessary space in the new buildings in Brussels was reduced step by step, and MEPs now preferred to give priority to the new information technologies for their own direct use. Still, DG IV has about fifty 'A' grade officials, which could constitute a considerable work force for legislative assistance, especially where reports are linked with basic questions and where in-depth studies would be of help. But one gets the impression that this service tries to chase too many hares and to please too many customers which also leads to a dispersal of its financial means (€ 750 000 annually for external studies). Thus, direct assistance of rapporteurs is infrequent.⁸

This leaves us, as far as the EP's own services are concerned, with DG II, which provides secretariats for committees and delegations.⁹ The overall size of this service is not impressive – only about 10% of the EP's whole staff work there. But this includes about 150 A grade officials, which represents almost 40% of this category. Most of them work directly in the secretariat of a committee – which may vary in size from a maximum of 11 to a minimum of 3 grade A officials, taking into account both the membership of the committee and its workload. Thus, the largest committee (69 full members and about the same number of permanent substitutes, i.e. a total of presently 139) though not the most active one as far reports are concerned (74 reports in from mid 1999 to the end of 2001) has eight A grade officials, including a head of division, at its disposal, a relatively large, very active committee like the environment committee (144 reports), nine grade A officials, one of the smallest of the present seventeen standing committees, the one on petitions (40 members and permanent substitutes) with a low output of reports but an intensive workload due to the individual petitions to handle, 5 grade A officials. The Committee on women's rights and equal opportunities (66 members and permanent substitutes; 17 reports) is the most modest one, as far as staffing is concerned: only 3 A grade officials work there.

DG II has become the pivotal element in providing legislative assistance within the EP. Since most DG II officials – with the exception of a few internal horizontal units,¹⁰ and the services concerned with interparliamentary relations – are attached directly to a committee secretariat, this implies that the actual legislative assistance takes place there. The internal structure of DG II is largely non-hierarchical. The Director General assumes overall co-ordination, the role of the directors has always been vague, so direct management is provided by the head of division of a committee. If the latter is clever – and they usually are – he can shield himself to a large deal from hierarchical influence by hiding behind his parliamentary authorities. This may lead to self-centredness of a head of division who knows that committee chairmen usually defend – rightly or wrongly – their own secretariat. In any case, all attempts of internal reforms by creating mobile ‘tasks forces’ within DG II, which would have reduced the staff assigned directly to committees, have failed. A functional repartition between DG II and DG IV to the same effect was not realised either, due to jealousy between services.

Legislative assistance in this sector follows practices that have developed over the years. When a rapporteur is appointed he or she can freely choose which assistant, if any, he or she would like to have. A minimum, one would assume, is to have one contact person within the committee secretariat for matters of procedure and timing, including respect for delays for translation, etc. But many rapporteurs wish to have someone who gives them advice, assists them in contacts with the Commission, and, possibly, helps in drafting the report, or even drafts it for them. This person must be competent and trustworthy. Competence can be checked. Often, the rapporteur will have seen this official assist other rapporteurs and will have had some feedback from them. Trust is a much more critical notion. The MEP has political opinions but he has a political mandate, while the official, though formally in a non-partisan public service, generally has also personal political preferences. To put it crudely: how does one, as a rapporteur, trust someone who may have a political orientation very different from your own?

This is part of the general question concerning the relationship between a professional career civil service and political mandate holders. A national minister has, in most systems of government, little choice but to co-operate with senior officials of his ministry. In the EP, the rapporteur selects his assistants himself, and he can choose between various options – some of which are more expert-orientated and non-partisan than others. If he co-operates closely with someone from the committee’s secretariat he opts for professionalism assuming that possible personal differences of political opinions will not hamper loyal services.

In other words, if the committee secretariats succeed in creating this impression and are generally acknowledged as competent and non-partisan, this proves the existence of a public service model in the EP. But how often does the principal assistance for a rapporteur come from within the secretariat? There are no official figures available. In the early nineties, in connection with discussions which service should get additional staffing, DG II conducted an internal study and asked all secretariats how many parliamentary reports were assisted, beyond technical and procedural questions, from somebody of their team. The surprising result was well above 80%.¹¹ The rest was split up between DG IV and external help, including MEPs’ own personal staff. The political group secretariats were completely marginalised.

There are no more recent figures available. Insiders agree that direct assistance via the committee secretariats has decreased over the last decade. A rough guess for the main legislative committees might see their involvement now at about 50%. Several factors contribute to this evolution, including the increased availability of documentation and

background material, especially via electronic means, and the more focused action of interest groups that have appeared on the scene as voluntary legislative assistants. But still, if we take the above figures – with all necessary caution – as a guide, they would indicate that a habit of co-operation between rapporteurs and officials within committee secretariats has emerged which is quite astonishing in view of the different political cultures involved.

The question might be asked who influences whom in this co-operation. This is difficult to say. One could assume that there should be an input from both sides, perhaps one more political, the other more administrative-procedural. Many scenarios are possible. For example, the rapporteur may have strong personal feelings about the subject while the staff person is likely to have a tendency to keep in mind how the committee might react to the draft report. In any case, this co-operation does not take place in isolation: the Commission will follow very closely what happens to their proposal, the rapporteur will be in touch with his political friends in the committee and the group staff, external interests may be forwarded and so on. As a result, the co-operation between staff person and politician is often more a common learning process influenced by a wider arena than anything else.

5. Political assistance: parliamentary groups and private staff

Before turning to external forms of legislative assistance, let us briefly look at the two remaining internal sectors: the political group secretariats and the individual secretariats of MEPs. Each political group of the EP has the right to establish a secretariat, which is funded like the rest of the groups' expenses out of the general budget of the Parliament.¹² Together with other privileges, the chance to have a secretariat has upheld the predominant role of the groups in the EP: something that has sometimes resulted in the formation of rather heterogeneous or 'technical' groups. In the beginning, with rather reduced staffing – in the category of 'temporary' officials,¹³ a somewhat lower status than that of a permanent official – organisational tasks prevailed, but with the growing importance of legislation, these secretariats began to follow more closely what happened in the committees. Above all, the activities of their own members during the committee deliberations needed to be co-ordinated and possible amendments, in the name of their political group after adoption of a report in the committee and before its final discussion and vote in the plenary, prepared.

But in addition to this, the group secretariats tried repeatedly to undermine to some extent the independent position of the committee secretariats in order to be charged with the legislative assistance of 'their' rapporteurs. Since it can be quite time consuming and demand expert knowledge to draft a whole report, it was sometimes asked that the EP services – DG II or DG IV – should only provide a kind of background file which the responsible member of the group secretariat would then 'politicise'. All attempts of this kind failed. This was perhaps less a result of a strong opposition from within the EP secretariat, than of the preferences of rapporteurs and other senior MEPs themselves. In any case, the secretariats of the political groups, while increasing their role in co-ordination, have hitherto not played a significant direct role in overall assistance of rapporteurs.

The last internal category concerns the private staff of individual MEPs. Each MEP receives a secretarial allowance. He acts as an employer, and the EP services exercise only some oversight in order to make sure that this allowance is not used for other purposes. This staff may be based in Brussels or in the political centre of the respective MEP's activities at home, often his constituency. Some do pure secretarial work, others, including young trainees, have a college background and are handling political questions like speeches and could be involved more substantially for legislative assistance. There are a number of senior MEPs who use their

staff not for direct drafting of reports, but for related functions including the filtering of external sources and their possible impact on legislative proposals. This strengthens the position of a rapporteur while keeping the option of a close co-operation with internal EP services open.

6. Outside independent expertise: the case of STOA

A major problem the EP faces is how to obtain relevant information for its legislative work. The Commission is, of course, a prime source: it has drafted the original proposal and has, to that end, usually held extensive expert consultations. Interest groups may offer advice, and national governments may send memos to MEPs from their country. As a result, it is not so much advice *per se* that is lacking, but its independence. If all these possible sources have a tendency to be biased, is there a chance for the EP to have access to more objective and reliable advice?

Questions like this led to the establishment of a mechanism called STOA (Scientific and Technological Options Assessment), administratively attached to DG IV. Its role is to assist parliamentary committees, at their request, in performing their legislative tasks and similar activities, in as far as science and technology are primarily concerned. An annual work programme (budget: € 750 000, the same as for general DG IV studies) is established to this end by a parliamentary panel, assisted by a small group of officials. Outside contacts with research and other scientific facilities are channelled via an annual call for expressions of interest, followed by calls for tender for specific projects. Present studies include topical issues like 'A European Health Card' or 'Production capacity of renewable energies in the EU', but also general questions like 'Regional structures in applicant countries' where one might doubt whether additional studies are really needed. This last aspect indicates an inherent weakness of such programmes: interested MEPs can succeed in pushing through projects where an institute they know is particularly specialised and likely to be selected in the end. A rigid filtering process must therefore be applied.

Another difficulty consists in timing, which is important in relation to EU legislation. There are several authorisation procedures for contracts, the most complicated one via public tender (for amounts exceeding €100,000) taking about half a year. If you add the time for the realisation of the project, you are close to a total period of 12-18 months, which means research often takes too long to have an impact on current debates over legislation. Nevertheless, STOA is a necessary instrument for an institution like the EP. Improvements might be envisaged which could include speedier procedures and an increased complementarity with the research program of DG IV.

7. Hearings and similar events

A simple way for tapping external knowledge is to invite experts and to listen to what they have to say. EP committees discovered this instrument, which has a long tradition in some national parliaments, in the late eighties and became quite fond of it. But the Bureau of the EP, under the pretext of budgetary control, insisted on a centralised oversight based on annual programmes that limited unduly its practical use. Only when procedures were liberalised were hearings held more frequently. But it is not surprising that in a political institution like the EP, this new instrument became also the object of partisan quarrels: whom to invite became the central question, because you could in most cases guess which answers you would get.

The political groups, familiar with the techniques of power sharing, usually achieved a somewhat balanced invitation list. Nonetheless, after some time the attraction of hearings diminished. Experts often read lengthy statements instead of transmitting them in advance and just answering questions. Hearings were long, often two days, and became boring except for a handful of specialists. When procedural reforms were introduced, it was rather late, and hearings had lost much of their original attraction. During recent years, an additional difficulty has appeared: committees with a heavy legislative burden, which is increased by the trend towards countless votes on amendments, find that they lack the time for hearings. The committee of the environment, one of the first to be interested in hearings, has abandoned them altogether in favour of other models including smaller informal 'hearings' organised by the rapporteurs under the auspices of their political group, or by the groups themselves. As a result, the formula to bring expert advice directly into the EP has been maintained, but it has lost much of its original flair and has become an element in the struggle between political forces.

8. 'Gratuitous' outside help

While the internal structures of legislative assistance have not changed very much and have proven rather conservative, and while additional elements like STOA or hearings have had limited success, a considerably greater transformation has occurred during the last years in regard to the relations with representatives of all kinds of interest, from classical interest groups, NGOs, large enterprises, to national and regional governments, third countries and others. Here, the emergence of the EP not only as a legislator but also as an important actor in other EU activities has had its most dramatic effects. The EP was marginal to such actors until twelve or fifteen years ago, and interest representation has reacted to the evolution of its role only with a certain time lag.

In the growing literature on interest representation in the EU, the EP has been relatively neglected.¹⁴ We know that the volume and the intensity of contacts have grown considerably and that new varieties of interest representation can be observed. Some of these include MEPs who are linked with the Brussels office of large enterprises, or former MEPs who now make a living as 'consultants'. But these are only elements in a picture that needs to be completed. As far as legislation is concerned it would be interesting to know to what extent these groups have actually replaced other models of assistance. We can develop here only a preliminary hypothesis, requiring further investigation.

Our starting point is the changing character of legislation in the EP. Traditionally, as far as new subjects are concerned, an internal opinion was formed by discussions in the early stages of the procedure, possibly on the basis of pre-legislative documents. When the legislative draft arrived, a general debate took place at committee level, and those participating in it had a strategic advantage in view of the following discussions in their political group. Only after this general orientation during the committee stage was more precise action considered, mainly in the form of amendments to the Commission's proposal. Now the order has changed which is reflected in the EP's internal rules. The Commission's proposal is taken as a starting point, and the committee responsible examines whether it agrees to it, whether it wants to amend or reject it. Amendments become, in this trilogy, the most frequent outcome.¹⁵ There are serious complaints that quarrels about amendments have to a great extent replaced a truly parliamentary debate. Some committees have occasionally to deal with three to four hundred amendments on one proposal, a nightmare in itself. The committees involved in this resort

more and more to electronic voting and several meeting rooms in Brussels had to be equipped with the necessary installations.

This avalanche of detailed and very precise interventions does not have its predominate origin in the internal EP services; we can detect here the invisible hand of external interests. The members of the committee responsible – and we include here all members, from the chairman, the rapporteur, the shadow-rapporteurs for the various groups,¹⁶ the group coordinators, etc. – focus their interest on possible amendments, or on arguments to block them. This is a game, for which the EP's own services are not well equipped. On the other hand, if you have just a segmented interest to defend, it is easy for an outsider to formulate a few changes in a proposal under consideration. No in-depth background study is needed for this, and no general evaluation of the legislative initiative as a whole. Your amendment may even be contrary to the rest of the text; it will be then for the legislator to assure a minimum of coherence.

In this evolution, the committee secretariats run the danger of being reduced to mere notary's offices. They have to put amendments in an order for voting, help the chairman in the difficult task of seeing to it that no contradictory texts are adopted, and register the result for transmission to the plenary. This could lead to a substantial reduction of their classical role of trusted knowledgeable advisers to all members of the committee, above all to the chairman and the rapporteur. It may be that the success story of the EP, which was the origin of the outside interest, now turns against itself.

9. Recent proposals for reform

The EP has seen more radical changes in its role than any other EU institution. It has evolved from a small club of delegated national MPs, via a period of marked discrepancy between public mandate and a limited role, more recently into an ascendancy not only in legislation, but also in its standing vis-à-vis Commission and Council and public awareness in general. As far as legislation is concerned, these changes include an increase of contacts, both formal and informal, with the Commission and with the Council, mainly but not exclusively in the domain of co-decision procedures. More dramatically, the greater impact of the EP on EU decision-making has made the chamber subject to lobbying of all kinds,¹⁷ with definite effects on its internal use of time due to the resulting increase of amendments. An additional element consists in the largely increased flow of information. As a result, decision makers have to deal with a much more open choice, and to operate in a competitive market of information, much of it biased, as one can imagine.

In contrast to these fundamental modifications, the internal service structure of the EP has been largely untouched. We still have the basic concept of a non-partisan public service that provides assistance to all MEPs in the fulfilment of their respective functions. Inside this structure, the relationship between specific services – DG II, DG IV, etc. – and the group secretariats has also been stable, with a certain evolution of the private assistant sector. This does not exclude, however, that the importance of inside assistance has diminished and that the main danger might be a reduction of the capacity of the EP to steer the legislative process. Is the EP aware of this situation?

After many years of silence or superficial restructuring models, the Bureau of the EP asked one of its members, vice-president James Provan, to tackle the fundamentals of legislative assistance and to submit proposals for a thorough reform. Provan advocated in late 2001¹⁸ to

combine what he saw as the strength of the current system – namely a ‘belief in the value of high-quality non-partisan secretariat support’ – with increasing demands by members for ‘quality political support services accountable to themselves, and more immediate and responsive backup facilities’ (Provan, p.4). To this end, he suggested, the services of the EP should be reorganised, the roles of the political group secretariats in legislative assistance limited, and the staff of individual members considerably strengthened. This initiative was not endorsed by the Bureau which concentrated its efforts on the restructuring of internal services. Based on proposals by the Secretary-General, major decisions were taken in march 2003. As far as legislative assistance is concerned the main elements are the following:

- abolition of the present DG IV (studies)
- integration of the studies/research services of DG IV, including STOA, into DG II (committees and delegations)
- then splitting of this enlarged DG II in two directorates-general, one for internal policies, and a second one for external policies.

What is interesting in this decision is that the present DG IV research staff will not be attached directly to the committee secretariats, but that it will remain at the disposal of the directorates in order to form project teams for subjects to be defined by the committees. In addition, the budget for studies will follow this restructuring, and the item will be split up between committees. In a trial period, € 400,000 are already handed over for the current year to four committees most interested in the subject.

All this sounds interesting and could be promising if handled with skill. Obviously, at the present stage, some aspects need still clarification: If too much emphasis is put on the rapporteurs and their current needs, the medium and long-term planning of studies might suffer. In addition, if the new staff is based at the level of the directorates, in order to guarantee a certain flexibility and the possibility of thematic teams going beyond the competencies of individual committees – which is to be welcomed – then the allocation of funds directly to specific committees might be counter-productive. Finally the splitting up of the present coherent DG II in a large one for internal policies (covering no less than 15 out of the total of 17 permanent committees, in addition practically all temporary committees, plus the co-decision and budgetary procedures), and a rather minuscule one for external relations (with only two permanent committees, plus the rather marginal delegations) looks rather imbalanced and may create major difficulties of co-ordination. But nevertheless a new start is made and should be given a chance.

10. Conclusions: Legislation and political responsibility

Members of the EP have a political mandate that is based on general elections. They are more directly linked with the source of democratic legitimacy, the people, than members of the other institutions. This sharpens the contours of our key question: how to reconcile the responsible exercise of an electoral mandate with the necessity of preparing the legislative decision by different non-elected sources.

We have seen, that as far as the EP is concerned, that there are a number of elements that compose the overall picture. First, we have the internal services of the EP, which have grown over a period of more than forty years into a widely respected, non-partisan public service, considered by many as a ‘strong internal bureaucracy’. The utmost value of these services,

which should be strengthened, is that there are trusted. Once this trust destroyed it would be improbable that it could be rebuilt.

In addition, there are the secretariats of the political groups which have been, since their creation, a rather critical observer of this non-partisan service and would have liked to take over some of their more 'political' functions. Then we have the largely unused – in our context – work force of individual assistants. And finally, we have the outside world, which offers more and more advice and help, often in the form of legislative amendments, just to be signed and mailed.

The weak point in this conglomerate seems to be the area immediately close to the MEP, be he a rapporteur, shadow-rapporteur, any other member of the committee responsible, of one asked for an opinion, or just a MEP with a general interest in a specific piece of legislation. With all the trust and belief in a non-partisan service it can be assumed that many MEPs think that their capacity to evaluate extremely complex options should be strengthened in their immediate environment, i.e. in their own secretariat. Provan had taken up this point and suggested that each MEP should have at least one legislative assistant of grade A level. As we have seen, the Bureau, in March 2003, addressed only one of the pending questions, the restructuring of the various internal EP services. This is important, but it does not solve the dilemma of the amalgam of technical-administrative and political functions in legislative assistance. Quite a bit of the routine administration of a committee, from agenda-setting in a narrow sense, to the order of votes, or contacts with other institutions, involves political elements. On the other hand, the drafting of texts, their handling, their possible impact, can depend, to a large part, on expert knowledge which individual assistants will not acquire easily and on short notice. In other words, the legislative process is rather a continuum and cannot be clearly split up in various segments. This calls for close co-operation, based on mutual trust, of all concerned.

And whatever is done inside the EP does not resolve the handling of the increasing impact of external sources. Here the EP has to do some basic homework if it wants to avoid a further deterioration of both its committee and plenary system into an all-devouring voting machine. Of course, the EP is an open institution and should not lock its doors. But looking at the Commission, one gets the impression that there a relatively successful management of external resources takes place, while in the EP these resources make their presence felt in a somewhat chaotic and non-transparent way. There is certainly room for improvement which would not only help the EP in its internal organization and but would also increase the attractiveness of its plenary sessions and open committee meetings. The function of the legislator, mandated by the peoples composing the European Union, would be definitely strengthened.

Table:

EP Proceedings in 2001 – Resolutions and Decisions adopted

Part-session	Consultations (single reading)	Co-decision procedure			Assent	Other opinions	Budget questions	Own-initiative reports and resolutions (1)			Misc. (2)
		Readings						A	B	C	
		First	Second	Third							
January I	6	1	2			13	1	8	5	6	
January II	3	3		4		3		1	1		
February I	17	8	4	2		3		2	2	10	
February II	7	3				1	1	2			1
March	9	4	4	1		6		4	5	10	
April	11	5	2	1	1	4	13	1	6	8	
May I	5	2	1		1	1		2	1		4
May II	9	8	7	1	5	8	2	1	5	7	
May III	13	3		2		2		2	1		
June	22	10	5		1	4		2	1	9	
July	6	12	2	2		5	4	6	3	9	
September I	9	7			1	18		6	2	9	
September II	3			2		3		3			1
October I	9	1	2	2	1	16			4	9	1
October II	25	5	7			6	7	4	3		
November I	10	6	1	2		5		3	5	5	2
November II	10	5	1		1	2	1	1	3		
December I	16	2	13	3	5	12	3	4	6	9	1
December II											
Total	190	85	51	22	16	112	32	52	53	91	10

(1) This column includes: A: reports; B: Resolutions; C: Urgent subjects

(2) Miscellaneous decisions and resolutions

(Source: General Report on the Activities of the EU 2001, Chapter IX)

NOTES:gs

¹ Walter Bagehot was the first to examine parliamentary functions in a pragmatic way. (See W. Bagehot, *The English Constitution* (London: Fontana, 1963 [1867]). For him the support of the government by a parliamentary majority, not legislation, was the most important element. For a detailed research paper on the EP using a functional approach see: Andreas Maurer, *(Co-)Governing after Maastricht: The European Parliament's institutional performance 1994-1999*, (European Parliament Directorate-General for Research: Political Series, POLI 104/rev.EN, 10/99, 1999).

² In Jean Monnet's original institutional set-up, there were two executive bodies, the High Authority (later to become the Commission) and the Council, and two of supervision, the Assembly (now the EP) and the Court of Justice. As a consequence, the treaty of the European Coal and Steel Community (ECSC) only speaks of 'supervisory powers' (Art.20) for the EP, while the following EEC treaties, including Maastricht, only mention 'advisory and supervisory powers' (Art. 107). The Amsterdam Treaty, at least, should have stated explicitly that the EP was by now a legislator. But a more veiled form was chosen, that the EP exercises 'the powers conferred upon it by this Treaty' (Art. 189). The terms 'legislation' or 'co-decision' were also avoided and substituted by non-transparent language (Art.192 TEC).

³ The EP is an ‘amending’ legislative institution, not one that is likely to accept legislative proposals without changes or reject them. See figures in note 20.

⁴ If the EP approves the proposal or amends it and the Council agrees to this, there is no second reading (in contrast to the procedure in most national parliaments).

⁵ In the form of an ‘own initiative report’, the EP may take up any subject which it wants to discuss (EP Rules of Procedure, Rule 163). This is part of the deliberative function, and there are no external restrictions to it. Within this broad category there is the limited case where the EP wants that the EU should legislate. It would then have to ask the Commission to take the formal initiative (Art. 192, par.2 TEC).

⁶ See EP Rule 158. An interesting variation consists in the possibility that the chairman or the rapporteur drafts amendments supposed to reflect the committee’s opinion and circulates them to members for their approval. If one-tenth of the members object, the report has to go back to the next committee meeting. If not, it is considered as having been adopted.

⁷ EP Rules of Procedure assume that there is only one rapporteur who must be a full or a permanent substitute member of the committee responsible. Occasionally, committees have had two rapporteurs for a important subject, like treaty revisions.

⁸ A ‘co-ordinator’ is an MEP who acts as a kind of ‘whip’ for a political group in a committee.

⁹ For an interesting analysis, see: Virginie Mamadouh and Tapio Raunio: ‘Allocating Reports in the European Parliament: How parties influence committee work’, EPRG Working Paper, No.7, (2002). <http://www.lse.ac.uk/Depts/eprg/working-papers.htm>.

¹⁰ This aspect is definitely neglected due to the mainstream approach concentrating on negotiation systems and similar notions. See: Karlheinz Neunreither: ‘Governance without Opposition: The Case of the EU’, *Government and Opposition* 33 (1998) 419-44.

¹¹ In international organisations with a formal or informal national quota system, mobbing tends to become vertical, not horizontal: you must remove superiors of your own nationality, not those of others, to be promoted. This would be an interesting subject for more detailed analysis.

¹² The EP does not publish its establishment plan, which is not an indication of transparency. So we have to rely on its internal telephone list (edition of July 2001) where only existing staff persons are listed, not vacant jobs. Only A grade staff are mentioned, which does not mean that the other categories (grade B, C, or D) contribute less to their service.

¹³ The author must acknowledge that he was Director-General of DG II for many years and that his views are certainly biased.

¹⁴ Interparliamentary Delegations assure relations with countries that are not EU members (this category includes ‘Joint Parliamentary Committees’ for relations with candidate countries, and ‘Parliamentary Cooperation Committees’). They do not take part in the legislative process – even where a closer co-ordination concerning reports on specific countries or areas would be useful – so are not dealt with here.

¹⁵ There are small units for legislative coordination, for conciliation and concertation procedures, relations with national parliaments, and other questions. In addition, temporary committees (at present 6 investigating matters linked with BSE, foot and mouth disease, human genetics, community transit, and the Echelon interception system) are staffed by ad-hoc secretariats.

¹⁶ Internal unpublished working document of DG II.

¹⁷ In the EP’s establishment plan for 2001, there were 3550 permanent posts (all for its own secretariat), and no less than 635 temporary posts (almost all of them, with a few exceptions, for the political groups). For more information, and a comprehensive presentation of the EP’s structures and working methods, the best source is still: Corbett, R., Jacobs, F. and Shackleton, M. *The European Parliament*. (John Harper, London. 4th edition 2000).

¹⁸ Members of the secretariats of the political groups are ‘temporary officials’ according to the EU staff rules. They do not have to pass a public recruitment procedure (though some political groups have recently introduced tests) and are hired by the chairman of the group with a strong influence by national delegations. In practice, job stability has been almost as high as in the regular services. On the other hand, promotions were more easily awarded. Occasionally, permanent officials are ‘seconded’ for a given time to a group secretariat. A few senior officials used this procedure to accelerate their career and to take up top positions on return. This double-switch practice does not improve the non-partisan image of the EP services, and James Provan (see note 23) has rightly criticised it.

¹⁹ Recent studies include: Bernhard Wessels: ‘European Parliament and Interest Groups’, in: R. Katz and B. Wessels (eds.) *The European Parliament, National Parliaments, and European Integration* (Oxford, Oxford University Press, 1999); on the question of regulation of lobbying in the EP, see T. Schaber ‘The Regulation of lobbying at the European Parliament: The quest for transparency’, in: P-H. Claeys, C. Gobin, I. Smets and P. Winand (eds) *Lobbying, Pluralism and European Integration* (Brussels, European Interuniversity Press, 1998), pp.208-221.

²⁰ In 2001, out of the 85 proposals under co-decision which were discussed by the EP in first reading (see table), no less than 73 were amended. Even in second reading, the EP amended the Council's common position in most cases: 34 out of 51. A similar ratio can be found in the consultation procedure: 113 proposals amended out of a total of 190.

²¹ The function of shadow-rapporteurs has become quite important during recent years. In some committees, they have regular meetings with the official rapporteur. In legislation where informal trilogue meetings with the Council and the Commission are common, especially in co-decision procedures, shadow-rapporteurs are sometimes invited together with the chairman and the rapporteur.

²² Modern parliamentary buildings generally include no space for a 'lobby' - every square meter must be used functionally. The new EP buildings in Strasbourg and Brussels are good examples. The vast space which used to be the lobby for all kinds of contacts has disappeared. Consequently, 'lobbying' has lost its semi-public character and has shifted into the privacy of individual members' offices or outside contacts.

²³ Working Document No.6 on Internal Reform: 'Legislative Assistance to Members - a Rethink (Revised version)'. Vice-President responsible: James Provan; 22 November 2001.