

## Chapter 1. Introduction.

### 1.1 Purpose and focus.

The purpose of this study is to contribute to a growing body of literature on transparency in public life. By taking as its starting point Bentham's much quoted maxim '*The more strictly we are watched, the better we behave*', the study investigates the transparency processes designed to act as a surety against maladministration.

Locating a study of transparency in an explicitly EU context reflects the European Union's (EU's) current and future challenges and is particularly apposite in a period when the EU's role is in a state of flux as a result of the ongoing economic crisis. Clearly, however, the systematic promotion of transparency as a means of enhancing good governance is not a recent innovation introduced in response to the financial crisis. Nor is it associated primarily with the EU or its member states (MSs). Indeed, transparency has long been used as a tool of political conditionality by institutions such as the *International Monetary Fund* (IMF) and *World Bank* (Sørensen, 1993). To illustrate, Cottarelli and Giannini (1997) show that, since 1980, the IMF has used transparency as a proxy measure for macro-economic stability, and steadily increased the requirement placed on recipient countries to demonstrate a commitment to enhanced transparency as a condition of financial assistance (Cottarelli & Giannini, 1997, p.18). Non-Bretton Woods global institutions and Non-Governmental Organisations (NGOs) also act as strong advocates of transparency, with the *United Nations* (UN) citing it as one of the founding principles of public administration (Armstrong, 2005) and *Transparency International* (TI) promoting it as one of its core values (TI, 2015).

Beyond its widespread use in statements of values or principles, transparency is frequently linked to associated terms such as 'integrity' and 'democracy'. The website of the *International Foundation for Electoral Systems* (IFES), for example, makes frequent reference to the organisation's global work promoting the '...transparency, integrity and legitimacy of the electoral process' (IFES, 2015), whilst the *Organisation for Economic Cooperation and Development* (OECD), runs a specific campaign under the banner 'Promoting Greater Integrity and Transparency in Political Finance' (OECD, 2015). Here, then, the advocacy of international organisations (IO) demonstrates that the transparency issue is not primarily associated with the EU or the MSs, rather that it has a global reach.

Whilst it is the case that IOs consistently advocate transparency, it should be noted that this advocacy also operates within and between states, with transparency advocacy groups sometimes creating formal or informal networks. To illustrate this point, campaigns promoting greater lobbying transparency - a totemic issue for some EU societal groups - are actually a feature in many states,

with the US based organisation *Opening Parliament* listing 140 anti-lobbying groups operating in 75 countries (Opening Parliament, 2015). So, chapter four's analysis of the tactics used by a Brussels-based societal group in its campaign for greater transparency of the EU lobbying process is just an EU example of a much wider global trend.

That notwithstanding, this thesis analyses the transparency of expertise in EU policy-making, and its focus is therefore inevitably EU-centric. Furthermore, whilst it is recognised that questions around the transparency of the expertise used by policy-makers have engaged commentators since the introduction of the European Coal and Steel Community<sup>1</sup>, the inductive nature of this thesis means that - inevitably - the economic crisis acted as a backdrop for the research. This crisis has highlighted the fundamental tension between collective decision making which operates at the EU level and the political accountability for that decision making which operates in the MSs. This tension, long considered by scholars and politicians in terms of a 'democratic deficit' (Marquand, 1979; Moravcsik, 2002; Follesdal & Hix, 2006; Corbett, Jacobs & Shackleton, 2011; Egeberg, Gornitzka & Trondal, 2014), has rarely been so stark, nor had such profound consequences, as in the austerity measures imposed on a number of the more economically disadvantaged members of the Eurozone including Cyprus, Spain and Portugal.

Since the economic downturn of 2007, identifying appropriate policies to deal with the debt crisis has become a priority for both the EU and the MSs. The single currency constrains the ability of members of the Eurozone to act independently in monetary policy as they have no control over interest rates, for example. Clearly, identifying a set of responses appropriate for - currently nineteen - different economies is hugely challenging, not least because there is no real precedent to guide either politicians or policy makers. Furthermore, with the EU's complex economic interdependence of Eurozone and non-Eurozone EU states, the impact on international trade alone demonstrates that the implications of the economic crisis extend well beyond the EU itself.

Whilst this may go some way to explaining the tendency of the EU to allow expertise to shape its response to the crisis, the measures taken seem likely to exacerbate, rather than address, the EU's supposed 'democratic deficit'. To illustrate, one response to the crisis was to replace elected representatives by troika-approved appointees in Italy and Greece. Whilst this raises interesting questions about the scope and nature of democracy, it also invites EU researchers to reflect on a number of the more tightly defined issues concerning the tension between the use of expertise by

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<sup>1</sup> See, for example, Walter Hallstein's rhetorical question: 'Who are the so-called 'technocrats'? Are they all powerful behind the scenes?' (Hallstein, 1972, p.56).

policy makers and democratic legitimacy (Schmidt, 2013) and raises clear questions about political accountability.

For this study, this is much more than a theoretical debate. Commentators note that the tangible outcomes of the austerity measures adopted in Greece - cuts in benefits, a reduction in the minimum wage, a massive rise in unemployment and increases in poverty-related diseases - have coincided with the growth of a visceral opposition to Northern Europe in general, and Germany in particular (Matsaganis, 2012). This has evidently caused a cleavage in mainstream Greek politics, with the harsh austerity measures driving support for *Golden Dawn*, the far right anti-immigration party (Ellinas, 2013; Bistis, 2013) and, more recently, leading to electoral victory for *Syriza*, a left wing coalition party with a vehemently anti-austerity, anti-Troika message, which came close to winning an outright majority in January 2015.

Neither are the consequences of the austerity measures confined to those MSs where democratically elected governments were replaced by non-elected technocratic appointees. In late 2012, fuelled by austerity measures that combined tax increases with cuts in salaries, pensions and social services, a series of general strikes in Spain and Portugal led to serious violence. Mirroring the effect in Greece, this period of austerity has also seen an increase in popular support for the far right, with the anti-immigration *Plataforma per Catalunya* making significant gains in local elections on the back of strong xenophobic rhetoric (Faine, 2012). However, the links between the austerity measures and the apparent resurgence of the far right are not straightforward, with extreme parties benefitting from a shift away from support for mainstream parties through a 'bubbling up of subterranean politics' (Kaldor & Selchow, 2013).

Thus, this study into the transparency of expertise in EU policy making is both timely and relevant. The research has been conducted during a period of flux for the EU, when its institutional authority derives from its use of expertise as 'legitimacy cover' (Field, 2013), and the normal processes of democratic accountability open to electorates can apparently be suspended or overwritten by representatives of IOs. The thesis analyses the transparency measures employed to facilitate the visibility of the policy-making process. With its EU context, it focuses on those institutions most clearly involved in this. In broad terms, the project analyses the transparency of policy-making from the perspective of those involved in formulating policy at the EU institutions. Specifically, it compares transparency at the European Commission and the European Parliament (EP) at both institutional and actor levels of analysis and traces the expert advice used in the policy processes in order to determine the extent to which the EU's stated commitment to transparency of policy-making is achieved.

## 1.2 Links to existing literature.

This study adds to a growing body of literature around participatory approaches to decision making and specifically within the rather narrower field which relates to the degree to which expert advice to policy makers is - or should be - transparent and accountable (Majone, 2000; Follesdal & Hix, 2006). It links the apparently separate issues of transparency - often presented through a normative frame as a pre-requisite for good (or, at least, modern) governance - and expertise, a quality that - by definition - can only be assessed and understood by a specialised group.

Whilst there is an established body of scholarship concerning the role of committees in EU policy-making, this has chiefly focussed on comitology committees (Wessels, 1998; Egeberg, Schaefer & Trondal, 2003; Blom-Hansen & Brandsma, 2009; Norgaard, Nedergaard & Blom-Hansen, 2014); Council working groups (Fouilleux, Maillard & Smith, 2005; Heims, 2013); high level Commission groups (Stephenson, 2010) or the role of committees in EU governance (Christiansen & Kirchner, 2000; Christiansen & Larsson, 2007; Heard-Lauréote, 2010 ). Similarly, work specifically looking at the perceptions of the actors involved has tended to focus on Commission officials (Trondal, 2007; Hooghe 2012), elected representatives (Finke, 2012; Whitaker, 2014), members of Interest Groups (Naurin, 2007; Kohler-Koch, 2010) or agency staff (Makhashvilli & Stephenson, 2013). Until recently, research focussing specifically on Commission expert groups (EGs) had been extremely limited in scope, with most literature predating important post-Lisbon changes in the institutional structure of policy making. However, a number of recent publications point to a new recognition of the importance of these groups, although these have examined them in terms of their relationship to broader questions of governance (Metz, 2013) or of representation (Chalmers, 2014). To date, little research has looked within the EGs and none has focussed in particular on understanding the experience and motivations of the individual expert advisers. This study makes a timely contribution towards filling that void.

Although there is a broader literature on Brussels-based lobbyists and societal actors, this has tended to concentrate on the methods these groups use to gain access to policy-makers. In particular, recent research in this area has focussed on the Commission and EP's Joint Transparency Register (JTR) (Greenwood, 2011; Greenwood & Dregger, 2013). However, the JTR places the onus of registration on those wishing to gain access to Members of the European Parliament (MEPs). This thesis takes a different angle in seeking to understand the rationale for MEPs granting access to lobbyists and the role of lobbyists and interest group representatives as central actors in the policy process.

To date, there has been little or no institutional comparison of the policy process at the Commission and EP, nor has any analysis of the transparency of expertise at these institutions been undertaken<sup>2</sup>. Yet both the Commission and the EP increasingly regard transparency as a prerequisite for reducing the democratic deficit, improving accountability and - in turn - furthering citizen engagement. By comparing these two bodies through institutional, actor and process lenses, this study makes a contribution to knowledge by enhancing our understanding of the role of expertise in EU policy-making and the challenges that this poses for those who view transparency as a mechanism for engendering legitimacy.

### 1.3 Research approach.

With its empirical focus, this thesis seeks to understand the key issues around the transparency of EU policy-making as these are understood by the actors involved. From the outset, therefore, the thesis adopted an inductive research approach, allowing the direction of the research to respond as appropriate. The initial data gathering involved analysis of the transcripts of speeches and of key transparency documents. Following this, 63 semi-structured interviews were undertaken with actors involved in the EU policy process. Participants were drawn from sixteen MSs and included MEPs, Commission and EP officials, Commission expert advisers and representatives of NGOs, public affairs bodies and journalists.

### 1.4 Conceptual framework.

This study approaches its subject area by questioning the common interpretation of Bentham's dictum, *'The more strictly we are watched, the better we behave'*<sup>3</sup>. Frequently employed by scholars to describe or question the function of transparency (Hood, 2006; Prat, 2006; Bannister & Connolly, 2012), the phrase - in its original form - was literal rather than metaphorical, employed by Bentham in explaining his design for a panopticon (Etzioni, 2010). This is a type of prison where the building is shaped to allow a guard the opportunity to oversee a number of prisoners, with each prisoner unaware of whether or when s/he was being observed. Although no prisons were built to Bentham's plan, the use of his quotation as a metaphor for transparency ensures that its legacy survives. Its use in this fashion is, however, flawed: it presupposes that actual observation ensures good behaviour whereas, in Bentham's design - and, it is argued, in his original meaning - it was potential observation that provided this assurance. This minor but crucial difference in the interpretation of Bentham's phrase is fundamental to the transparency puzzle: whether transparency - without scrutiny - succeeds.

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<sup>2</sup> But see Egeberg, Gorntizka & Trondal (2014) on interaction between these institutions.

<sup>3</sup> This is sometimes quoted as: 'The more closely we are watched, the better we behave'.

A variety of analytical and conceptual frames are available to explore 'the complex dynamics of transparency' (Meijer, 2012). Park and Blenkinsopp (2011), for example, characterise transparency as an independent variable in the corruption-trust relationship, whilst Curtin and Meijer (2006) portray it as a linking mechanism between policy making and input legitimacy. For this study, however, transparency is the dependent variable, and the policy making context the independent variable. However, this is problematic because, as chapter six shows, there are multiple transparencies. As a result, the transparency mechanisms vary with the context. To that end, Heald's (2006) work on 'varieties of transparency' is used as a conceptual framework throughout, as it clearly delineates the relevant aspects of transparency. For example, Heald's distinction between 'Transparency in Real Time' and 'Retrospective Transparency' is useful to analyse a delay in the publication of time sensitive information (Heald, 2006, p.32). However, this is of no relevance to the analysis of an illegible entry on a public register, where his distinction between 'Nominal' and 'Effective' transparency and the related concept of a 'transparency illusion' are more appropriate (Heald, 2006, p.34).

#### 1.5 Research Question.

Collectively, the aims in 1.6 address the study's principal research question:

- How and why is the expert advice used in the EU's policy process made transparent?

#### 1.6 Research Aims.

Reflecting its three levels of analysis, this thesis has three main research aims, each linking to one of the initial suppositions [S1-3] discussed in section 1.7.

The first aim reflects the EU institutions' increasing use of online transparency tools to increase the visibility of EU processes. For (A1), the conceptualisation of effectiveness is addressed in chapter three, whilst chapter five's institutional comparison analyses the information published on two publicly accessible electronic registers: the European Parliament's (EP) register of MEPs' interests and the European Commission's register of expert groups. By comparing the content of these registers for accuracy and completeness of information, (A1) analyses whether institutional transparency is greater at the Commission or the EP.

- (A1). To determine the effectiveness of measures taken to increase institutional transparency at the EP and the European Commission [S1].

The second aim is rooted in the literature on interest group representation and, empirically, from the debate around the introduction of the JTR. This exposed some fundamental differences between transparency advocates, elected representatives and EU officials as to the nature and purpose of transparency. To address (A2), chapter six of the thesis analyses a series of elite interviews conducted with participants directly engaged in - or with a professional interest in - transparency, to explore how the purpose and scope of EU transparency is understood by different groups of actors.

- A2. To understand how transparency measures serve the interests of different groups of actors [S2].

The third aim examines the transparency of the provision of expertise in two distinct policy areas. Through analysis of a series of qualitative interviews with individual members of Commission expert groups, chapter seven examines the extent to which the official documentation concerning the appointment processes and procedures of expert group meetings reflects the experience of those appointed to these groups. In addition, this chapter provides the first analysis of the workings of the EGs from the perspective of those involved, and the first account of the motivation of those that apply for EG membership.

- A3. To analyse and explain variations in the transparency of the policy process [S3].

### 1.7 Initial suppositions.

The nature of inductive research is such that theory is developed *a posteriori*, deriving from the generalizable inferences drawn from observation (Bryman, 2008, p.11). However, this thesis' principal research question and its research aims were established at the outset, after a thorough review and analysis of earlier studies and of the relevant scholarship. From this, three initial suppositions were developed that informed the three levels of analysis and guided the research direction. These suppositions are discussed below and each is linked to one of the thesis' research aims [A1-3].

By analysing transparency from both institutional and actor perspectives, the study addresses a transparency puzzle. In essence, this involves the distinction between actual and potential scrutiny. For potential scrutiny, the trust building mechanism operates through the opportunity to scrutinise rather than through the scrutiny itself. In reality, citizens may choose to exercise this scrutiny process through an informed and well-resourced proxy, and thus the development of trust is reliant

not merely on the provision of information but on such information being 'unfiltered': presented fully and impartially. This thesis posits that transparency is a necessary but not sufficient condition to ensure compliance with the transparency regulations and that actual compliance with these regulations comes about through a system of oversight. However, initial research seemed to point towards a low level of EU oversight. This was captured in the thesis' first initial supposition:

- (S1) That whilst measures intended to increase the transparency of the EU's policy-making process have been introduced at the EU institutions, the lack of a robust and independent scrutiny process reduces the effectiveness of such measures [A1].

The breadth of scholarship relating to the second research aim showed that transparency is used by different actors and groups to achieve different purposes. In order to reconcile these different purposes with this thesis' central research aim, the actor/group level of analysis is rooted in the notion of the EU having multiple transparencies, with individuals or groups employing enhancements in EU transparency for different purposes. In addition, the EU's own polling data shows that, despite significant enhancements in EU transparency, EU citizens' rather low level of trust in the EU and its institutions has not changed (Eurobarometer, 2014). Whilst it is recognised that transparency is one of numerous factors affecting citizen trust, this thesis explores how the tools introduced to enhance EU transparency are exploited by proxy groups to present a selective - sometimes negative - picture of the EU. This may, in its turn, have the effect of reducing, rather than increasing, the confidence of EU citizens in the institutions. This is captured in the thesis' second initial supposition:

- (S2) That the use of transparency tools introduced to enhance citizen confidence in the EU may be used by particular actors to undermine such confidence [A2].

The third supposition reflects engagement with the large body of academic literature that draws a distinction between technocracy and politics (Radaelli, 1999; Winzen, 2011), and of the overlap between these. In terms of expertise in policy-making, it seemed likely that in highly technical policy areas the public would be more willing to '...grant to experts a carefully circumscribed power to speak for them on matters requiring specialized judgement' (Jasanoff, 2003, p.158). The rationale for delegating consideration of technical issues to a small group of specialists is that these specialists alone have the knowledge to understand the subject area (Skogstadt, 2003; Schmidt, 2013). It seemed reasonable to infer, therefore, that there would be less public demand to scrutinise technical deliberations and, as such, little public pressure on the institutions to provide full

disclosure of the deliberative process through the transparency mechanisms. Thus this thesis' third initial supposition was:

- (S3) That where technical rather than political considerations shape the outcome, there is less transparency of the policy process [A3].

### 1.8 Definition of transparency.

This thesis analyses transparency from the perspective of EU policy-makers. As such, the definition will vary by actor and group. Chapter two shows that scholars and practitioners offer numerous definitions of transparency. The chapter considers a range of those used within the academic canon and by international organisations, before tailoring a definition that captures the specific aims of this thesis. Accordingly, for this thesis, the working definition of transparency is:

Public access to timely, complete and accurate information on the EU policy-making process.

### 1.9 Chapter breakdown.

Following this introduction, this thesis is divided into seven further chapters. These are briefly summarised below.

Chapter two analyses the state of the art by reviewing the literature in those areas directly relating to this study. Mobilising the scholarship around legitimacy and the democratic deficit, the chapter roots the study within an academic canon, whilst its engagement with the debates around transparency and openness apply the ideas specifically to the context of EU policy-making. The chapter explores the relationship between expertise and concepts such as legitimacy, democracy and accountability before relating this specifically to the use of expertise by the EU institutions. Whilst the literature relating specifically to Commission EGs is rather limited, the chapter explores the rationale for the establishment of EGs, and considers the role of interest groups and societal actors as sources of expertise.

Chapter three firstly explains and justifies the research design. It argues that the closed nature of expert advice creates a knowledge deficit loop, where initial lack of access prevents the researcher from knowing actors' views of the key transparency issues. These actors' views are central to this thesis, and guided its research direction. Thus the thesis adopts an inductive research approach. The next section explains how the term 'effectiveness' is conceptualised in the context of this thesis' 'multiple transparencies' model. The chapter then employs Faure's (1994) typology of comparative research design to explain and justify the selection of case studies, showing that the cases selected

differ in a limited but relevant number of variables only, rendering them strong cases for comparison. The chapter then describes the data collection techniques used at each level of analysis before the final section discusses the measures taken to address the foreseen and unforeseen ethical issues.

This fourth chapter traces the evolution of EU transparency since the 1986 Single European Act and shows that, whilst largely mirroring technological developments, it can also be understood as a linear process. It shows that increased openness was augmented by a series of abrupt responses to incidents of malfeasance - or perceived malfeasance - at both the Commission and EP. Applying Heald's 'varieties of transparency' model (2006, pp. 25-43), the chapter shows that the term has a number of meanings that, in practical application, should be understood differently. Whilst these 'multiple transparencies' are explored and analysed at the actor level in chapter six, at the institutional level there is no single means of comparing diverse transparency measures. Thus the chapter presents a typology for chapter five's comparison of the effectiveness of transparency at the Commission and EP.

Chapter five studies the effectiveness of the measures introduced to increase institutional transparency (A1) (S1). The chapter introduces the major mechanisms through which the EU institutions promote and facilitate greater transparency, including Europa - the EU information portal - and Europarl TV. The chapter discusses the institutional and external impetus for increased transparency and examines the various regulations and guidelines in place before conducting an audit of the Commission and EP's regulatory compliance. It compares the EP's electronic register of *MEPs' Declaration of Financial Interests* with the Commission's electronic *Register of EGs*. It shows that - in both - there are instances of non-compliance through inaccurate and incomplete entries, with a significant compliance variation between Commission Directorates General (DGs). Using data from interviews with the administrative staff responsible for the maintenance of these registers, the chapter shows that neither register is subject to a robust quality assurance (QA) system, with this QA process largely delegated to the checks and balances of public scrutiny. The chapter shows that, rather than this public scrutiny, oversight is instead exercised by a small cadre of transparency advocates: societal actors with a particular interest in scrutinising the activities of the EU institutions. A short section discusses the nature and types of groups undertaking this advocacy and introduces a brief case study showing how intervention by one such group led to changes in the composition of the EGs at DG Enterprise (DG ENTR), suggesting that their scrutiny can be effective. The chapter argues that such groups often have particular ideological positions and allocate their limited resources accordingly. As a result of this, and the lack of a robust and consistent system to ensure

accurate information is provided in the electronic registers, certain DGs and entire policy areas have no QA oversight at all.

The sixth chapter explores differing views concerning the purpose and scope of EU transparency, as it is understood by different groups/actors (A2) (S2). Drawing on data from a series of in-depth, qualitative interviews undertaken between 2011-2013 with participants engaged in the policy process, the chapter shows that transparency has multiple and often conflicting functions, and is considered to improve - variously - participation, legitimacy, accountability and trust. The interview findings show wide variation between groups' understanding of the rationale for greater transparency, and demonstrates its paradoxical nature: that although transparency is considered to lead to better decisions in principle, it is seen as impeding the quality of the advice on which these decisions are based in practice. Delineating the stated rationale for enhanced EU transparency by actor type, the chapter shows that - even within the institutions - there is little agreement concerning the benefits and disadvantages of greater transparency. Outside the institutions, some interest groups use the EU's transparency tools as a means of enhancing their corporate image, whilst some societal groups use the same tools to monitor and publicise the relationship between the corporate sector and certain DGs. Building on the findings of the institutional comparison, the chapter considers the nature of those groups acting as transparency advocates and provides a brief case study of the monitoring activities of one such societal group. The chapter argues that the selective nature of the group's scrutiny of the EU institutions is a consequence of both limited resources and ideological positioning. With this lack of capacity, the group focuses on monitoring the activities of only a few DGs, leaving other DGs and policy areas exempt from any scrutiny. Further, the group's often high-profile publicity presents a partial, ideologically driven and - arguably - somewhat negative picture of EU policy-making.

Chapter seven examines the work and experience of the expert advisors engaged in the policy process (A3) (S3). Conceptually rooted in the tension between scientific expertise and political accountability, care was taken to select cases that were of particular relevance in the context of the ongoing financial crisis and the related questions over the long term integrity of the Eurozone. The technical case - the amendment to *Regulation 1346/2000 on Cross-Border Insolvency* - was chosen because the review of this regulation had been advanced at short notice to address the increase in companies going into liquidation across the EU. The political case - the replacement for the *Erasmus* student mobility programme - was selected because it significantly broadened the scope of its legacy programme, with a much greater focus on cross-border vocational training programmes, reflecting the high and stubborn levels of youth unemployment in certain MSs. The comparison is in three

sections. The first takes the form of an audit of the publicly available information concerning the appointment processes and the conduct of the EG meetings in order to determine whether there is less transparency of the policy process in technical policy areas. The second and third sections mobilise data from a series of in-depth interviews with experts from both policy areas. This shows whether the public picture presented by the official data accurately reflects the experiences of those involved. In addition, it investigates the motivations of the expert members who freely give of their time to advise the Commission in formulating policy.

The concluding chapter summarises the thesis' main findings, showing that the thesis' three-level analysis breaks new ground and adds to the small but growing body of empirical data on EU transparency. Finally, and mindful of the limited resources available, the conclusion recommends that DG Secretariat General and the EP Secretariat introduce a series of specific and low cost measures to improve the transparency of the expertise in the EU policy-making process.

## Chapter 2. State of the art.

### 2.1 Introduction.

The purpose of this chapter is to examine and critique the scholarship that addresses the relationship between transparency, accountability and legitimacy in general, and of the relationship between the transparency and expertise at the European institutions in particular. The chapter is divided into sections, although this is chiefly in order to manage a wide body of literature. It is recognised that, when applied, the relevance of the various bodies of scholarship overlap. The chapter proceeds as follows. Firstly, the transparency literature is reviewed and an initial working definition of the term 'transparency' provided. Sections linking transparency to a number of associated concepts such as legitimacy and democratic participation are then followed by a discussion of the tension between expertise and democracy. Finally, the chapter explores the use of expertise by the EU institutions in general, and of the Commission's use of EGs in particular.

### 2.2 Defining transparency.

Section 2.3 below shows that scholars and practitioners vary in their views as to the distinction between openness and transparency and explains that, in this thesis, the two terms are treated as synonyms. In meaning, too, academics and practitioners define transparency quite differently. This is scarcely surprising, however, simply because the term is used so broadly - an aspect covered in detail in chapter six. Nonetheless, given that the term is central to the thesis' subject matter, it was clearly necessary to have a working definition of transparency at the outset.

Broadly speaking, the academic definitions of transparency tend to focus on either its process or purpose, although with some degree of overlap. For the former, the emphasis is on the degree to which an organisation makes explicit information concerning aspects such as its decision-making processes, performance, procedures and so forth (Curtin & Meijer, 2006; Welch, Hinnant & Moon, 2005). Welch *et al*, for example, define transparency as '...the availability of information for navigating a large-scale social system' (2005, p. 378). For this thesis - with its emphasis on transparency as it is understood by those involved - this definition seems rather limiting. An alternative approach would be to define transparency in purposive terms. This reflects Bentham's view<sup>4</sup> and focuses on the exercise of discipline over institutions and office holders by making information about their performance public and thus deterring corrupt practices and poor

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<sup>4</sup> 'The more strictly we are watched, the better we behave'. Jeremy Bentham (in Etzioni, 2010).

performance (O' Neill, in Etzioni, 2010, p.393). This stress on countering malpractice is reflected in Hood's definition, for example, which refers to transparency as:

'government according to fixed and published rules, on the basis of information and procedures that are accessible to the public' (2001, p.701).

Although it is broader in meaning than that offered by Welch *et al*, for this thesis Hood's definition is also found wanting. Both share a focus on the 'top down' provision of information, but each neglects important elements such as its accessibility or the degree to which the information is provided in a usable form.

An alternative approach was to consider whether the definition offered by those involved in delivering transparency would be appropriate for this thesis. Here, too, the definitions initially seemed rather narrowly circumscribed. For example, the first report of the British *Committee on Standards in Public Life* simply refers to '...holders of public office [being] as open a possible about all the decisions and actions they take' (Nolan, 1995, p.14). However, the committee has since broadened the scope of this definition, with the most recent iteration published on the British Government website stating that:

'transparency isn't just about access to data, but also making sure that it is released in an open, reusable format' (HM Government, 2015).

Whilst the Committee's amended version is rather more useful for this thesis than the original, it fails to take into account aspects such as the timeliness of information. Neither is using the EU's definition appropriate, simply because there is no single EU definition of transparency. Rather, each institution explains the issue in its own context, with the Commission - for example - referring to it as:

'the right of citizens to know how European institutions prepare decisions, who participates in preparing them, who receives funding from the EU budget, and what documents are held or produced to prepare and adopt the legal acts' (European Commission, 2015e).

However, whilst this definition meets some of the transparency criteria considered in this thesis, it is both too long and too narrow in its scope. It has no mention of accuracy, for example. Clearly, therefore, it was necessary to tailor a definition of transparency that captures the specific aims of this thesis. Accordingly, this thesis defines transparency as:

Public access to timely, complete, usable and accurate information on the EU policy-making process.

### 2.3 The nature of transparency.

Much of the transparency discourse tends to focus on the structure of transparency measures - the means through which agent *A* is able to observe the activities of agent *B*, for example - whilst rather neglecting its agency. For this thesis, the accountability relationship between agent *A* and agent *B* is crucial, however, as without it the distinctions between transparency, scrutiny and surveillance are blurred.

Heald (2006) shows that, although seldom addressed in the literature, transparency operates in various directions. He conceptualises transparency as operating across both vertical and horizontal planes. Upwards vertical transparency refers to the capacity of a hierarchical superior to observe the actions of a subordinate whereas downwards vertical transparency relates to the ability for the 'ruled' to observe the conduct and behaviour of their 'rulers'. Although this terminology may seem somewhat old fashioned - a point acknowledged by Heald (2006, p.27) - the notion of vertical transparency is useful as it is essentially a principal/agent relationship in which the agent has the capacity to hold the principal to account.

On the horizontal plane, Heald distinguishes between 'outward' and 'inward' transparency. Outward transparency describes the capacity of an agent to observe what is happening outside an organisation, whilst inward transparency applies to the ability of an actor to observe the organisation from within. Interestingly, Heald argues that inward transparency 'has the connotation of surveillance and being watched by peers' (2006, P.28) and so poses a threat to individual privacy. However, whilst Heald's argument here is understood, it lacks nuance. For example, Heald relates 'inward transparency' to surveillance - he draws a parallel with the former East Germany - and casts 'downward transparency' in terms of accountability and the rights of the 'ruled' to observe the conduct of 'rulers'. But this distinction fails to consider that the different terms used in the debate around transparency may be used to promote or reflect ideological positions, a factor that chapter six of this thesis shows is fundamental to the issue. Put simply, what constitutes scrutiny for one person is surveillance for another, so the role of language in framing the terms of a sometimes emotive debate should not be neglected.

Although often used interchangeably, some scholars distinguish between 'openness' and 'transparency'. Larsson, for example, suggests that 'transparency extends beyond openness to embrace simplicity and comprehensibility' (1998, in Heald, 2006, p.26). Birkenshaw (2006, p.190) echoes this point, arguing that openness allows us to see government at work, whilst transparency embraces aspects of 'law-making and public processes with complexity and disorder [as] obstacles to

transparency'. However, whilst this shows that there is an academic debate around the distinction between these two terms, this debate adds little to this thesis' empirical focus. In that sense, the differences between the terms is largely a semantic one. This point is raised by Heald, who argues that, whilst each term is intended for a particular audience, increasingly, 'transparency has become the contemporary term of choice' (Heald, 2006, p.25). This thesis supports that view and so no distinction is drawn between transparency and openness, with the terms treated as synonyms.

#### 2.4 The nature of EU transparency.

Heald analyses transparency by means of a set of dichotomies in order to 'surmount the obstacles to clarity that are generated by the multitudinous appeals to transparency' (Heald, 2006, p.29). The first of these he labels as 'event versus process transparency', the former being measurable inputs or outputs whilst the later are procedural in nature. However, the criteria for this process transparency will not necessarily expose much detail. To draw on an empirical example relevant to EU policy-making, the Directive on *Misleading and Comparative Advertising* (2006/114/EC) is readily accessible on the European Commission website (European Commission, 2006b), thus meeting the 'event' transparency criteria. Likewise, the progress of the legislative process can be tracked which, it may be argued, indicates 'process' transparency. Nowhere, however, is the detailed negotiation that occurred at the pre-legislative phase shown, restricting process transparency.

Academics differ in the emphasis they place on various aspects of transparency. Drew and Nyerges (2004), for example, discuss transparency as a function of the 'completeness' - rather than simply the quantity - of information, whilst Mahler and Regan (2007) argue that the 'usability' of the information is the most important element. In the context of the electronic provision of information to the public, the work of both sets of scholars is essential for this thesis, with both usability and completeness used as criteria in chapter five's transparency audit. Organisations may exploit rapidly evolving information systems to render increasing amounts of data easily and swiftly accessible, but may do so to such a degree that this can overload those it purports to serve. In such cases the '...expected benefits [of transparency] do not materialize because the receptors have been disabled by overload' (Heald, 2006, p.41). Indeed, one study has suggested that the provision of too much information leads to a citizen becoming 'lost in hyperspace' (Perez, 2009, p.55). Here, a potential transparency user, unable to navigate the complex information systems to locate the sought information, simply gives up<sup>5</sup>. This thesis does not specifically analyse the density of

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<sup>5</sup> In Perez' study into the effect of information overload on political deliberation, for example, he argues that information is 'excessive' if it exceeds the cognitive and attentive capacities of the average citizen (Perez, 2009, p.55).

information, however, so neither Perez' nor this element of Heald's work is directly relevant, although the phenomenon they identify is recognised and their conclusions supported.

Nonetheless, despite this thesis not directly considering the lost in hyperspace/overload element of information provision, it is apparent that there may be a rather counter-intuitive relationship here: that greater transparency is achieved through the provision of less information but, crucially, only where this information is high quality and specific to the needs of the individual user. However, despite advances in technology, distinguishing between sought and extraneous information is beyond the capacity of an automated system such as Europa: the EU's electronic portal designed to be a 'one stop shop' for EU information.

Claiming to be 'one of the largest sources of information in the world' (Europa, 2015), the Europa portal contains over six million pages and receives nearly 15 million unique visits each month. This figure artificially inflates the level of citizen engagement as, unfortunately, the site captures data for unique visits, rather than unique visitors. As a result, each return visit to the site is counted separately (Europa, 2015). Thus, the 'headline figure' of 15 million visits per month may give an exaggerated impression of the public appetite for information about the EU. Nonetheless, the portal acts as a 'single access' information source which provides multiple links to the institutions and hosts other facilities such as Europarl TV, suggesting that the EU views it as the main conduit through which transparency is provided for EU citizens. Clearly, making such a large body of information available in the 24 official EU languages involves the outlay of significant resources. Chapter five's analysis of 'multiple transparencies' shows that, for Commission officials, the transparency provided through this provision of information is seen as a means of enhancing citizen participation in the EU. The next section considers the links between these two ideas.

## 2.5 Linking EU transparency to legitimacy.

Whilst it is possible to show that various regulatory devices bestow formal legitimacy to the EU in areas within its competence, this suggests that legitimacy is simply the capacity of an institution or individual to exercise authority. However, formal authority is neutered without public acceptance, so any purposeful discussion of legitimacy should factor this in.

A number of scholars have drawn a distinction between output and input legitimacy (Sharpf, 1999; Curtin & Meijer, 2006; Schmidt, 2013; Heard-Lauréote, 2010). For Sharpf, output legitimacy addresses the manner in which laws and regulations provide a mechanism through which institutions function as representatives. Input legitimacy, by contrast, is concerned with participation rather than representation. The distinction parallels that between participatory and

representative democracy echoing, as Schmidt observes, Lincoln's dictum of democracy requiring government by the people (*citizen participation*), of the people (*citizen representation*) and for the people (*governing effectiveness*) (Schmidt, 2010, p.3).

In the context of the relationship between legitimacy and EU citizens, output legitimacy refers to the acceptance of the EU through recognition of the benefits it provides, whereas input legitimacy relates to such acceptance through the (perceived) capacity of citizens to influence decision making. For this thesis, Schmidt's notion of throughput legitimacy provides a particularly useful conceptual lens. This links the representative (output) and participatory (input) understandings of legitimacy by assessing the efficiency and transparency of the decision-making process.

Heard-Lauréote (2010, p.21), describes a 'fundamentally tensile' relationship between legitimacy and effectiveness, arguing that legitimate structures and processes can be inefficient. This finds support in Holzhaecker's (2007) view that, whilst the legality of the EU decision-making machine is clearly detailed in treaties and laws, the complexity and opaque nature of the process renders it difficult for a citizen to understand the lines of accountability. He cites Risse and Klein's three component model in which *legality*, *transparency* and the *quality of decision-making* form the essential elements of throughput legitimacy. Again, in the context of the EU's relationship with its citizens, the Risse and Klein model renders the EU legitimate only if citizens accept its legal authority, and understand and have confidence in the process through which this authority is exercised. However, as chapters five and six of this thesis show, citizen participation remains low and is often exercised through proxy societal groups, suggesting - in Holzhaecker's terms - that the EU's complexity is an obstacle to its input legitimacy. Consequently, the Risse and Klein model is not relevant for this thesis, although it does raise broader questions around the tension between democratic accountability and the EU's use of expertise.

Kohler-Koch and Rittberger (2007) seek to conceptualise EU democracy by contrasting two understandings of the EU. The first, they suggest, is reflected in Majone's concept of the EU as a 'regulatory state'. But limiting the role of the EU to that of an economic and regulatory body requires that the associated policies - such as the removal of trade barriers - be depoliticised. For a regulatory state to succeed, decision-making power needs to be removed from the adversarial world of politics and should instead reside with independent regulatory agents. Here, then, there is no 'democratic deficit' as it is normally understood: the EU's decision making power is purely functional and is legitimate because it is exercised on behalf of democratically elected governments.

An alternative to this 'regulatory state' acknowledges that a democratic deficit inhabits the EU, although scholars differ on its causes and solutions. Dahl, for example, suggests that the EU's inherent democratic limitations render the democratic deficit problem 'virtually insurmountable' (in Kohler-Koch & Rittberger, 2007, p.210) although others find solutions, arguing that the EU's democratic process can be enhanced through improved citizen engagement and that this can be created through the provision of greater opportunities for political participation, influence and control.

For this thesis, Majone's view of the EU as a regulatory state has not been used, as it better lends itself to an institutional analysis of policy-making, rather than a micro level used in this thesis. However, Dahl's identification of the fundamental democratic tension is relevant, with chapter six of this thesis showing that this view is widely recognised by Commission officials, who cite participation as one of the chief benefits of transparency.

Greenwood sees the EU's institutional arrangements and practices as failing 'to conform to any one conception of democracy' (2007, p.344). He cites factors such as an absence of EU-wide political parties and a lack of electoral means of voting out a government as posing particular problems for those charged with increasing democratic legitimacy. This position is echoed in Schmidt's (2013) view that enhancing input legitimacy faces the barriers of thin communicative processes - a consequence of the lack of a common European language and media that means European public opinion is shaped within individual national frames. Again, Schmidt's views here are highly relevant for this thesis, where the national frame issue was often raised by Commission Officials as an explanation for the lack of support for the EU.

Kohler-Koch and Rittberger (2007) argue that the scholar's perspective on the democratic deficit argument reflects his or her view about the nature of the EU. They suggest, however, that this is only a partial explanation and that the linkages between legitimacy - whether defined as *input*, *output* or *social* - and democracy are complex and multi-faceted. Here, the argument is that democracy requires far more than a commitment to majority rule or popular sovereignty - these are features of democracy but do not, of course, define it - and that legitimacy derives from the individual autonomy of the citizen. Accordingly:

What democracy requires is a commitment towards realising a condition in which - negatively defined - people are not alienated from political decisions, and in which - positively defined - people are convinced that they are truly governing themselves (Kohler-Koch & Rittberger, 2007, p.253).

Such a characterisation implies that participation is necessary for the legitimacy of the democratic process and that democratic legitimacy is rooted in citizen participation. Clearly, however, seeking to enhance democratic legitimacy by demanding or requiring of citizens a level of participation denies them the autonomy that underpins the very democracy that it seeks to reinforce. Nonetheless, the EU's efforts to increase democratic legitimacy have consistently veered towards a version of 'imposed participation', a point implied by Kohler-Koch's observation that:

Though the trendy catchwords are 'civil society' and 'participatory', the debate did not originate in a bottom-up process but was initiated by those in power [as] an engineered discourse (Kohler-Koch & Rittberger, 2007, p.255).

Although Kohler-Koch's work looked specifically at citizen participation rather than expertise, it informs the suppositions made at the outset of this thesis. In particular, her notion that the Commission sometimes drifts towards a policy of 'imposed participation' seems to be reflected in this thesis' argument that the Commission uses expertise as 'legitimacy cover' (Field, 2013), with both participation and expertise used tactically by the Commission.

Although not advocating imposed participation, Kooiman and Jentoft (2009) mobilise the notion of 'meta governance' whereby the policy making process is shaped through the opportunity for public deliberation. They argue that, for participation to be meaningful, those who are affected by a policy must be involved in its implementation. Whilst this is understood, Kooiman and Jentoft do not explain the limits of this meta-governance, nor consider the tension between the participation of those affected by a policy and representative democracy.

Heinelt (2007) argues that 'participatory governance' has a value beyond legitimising the decision-making processes, in that it produces better results. He argues, for example, that:

Participation by individuals with a broad range of interests, if undertaken in an open and free way, allows all participants to offer reasons for their position which aids in the elimination of egoistic and illogical positions (Heinelt, 2007, p.220).

For Heinelt, the democratic deficit is 'essentially an accountability deficit' (2007, p.224), a position that appears to decouple representative and participatory democracy. Whilst this decoupling is conceptually useful, it is little help for this thesis, with its empirical focus. In reality the EU has numerous lines of accountability between the institutions, ostensibly providing both direct and indirect democratic legitimacy. As such, it is not a lack of accountability but its sheer complexity that is the problem. This 'fuzzy accountability' is one of the EU's defining factors, where the complexity of the institutional processes creates an impenetrable barrier to input legitimacy.

The priority given to the debate around input and output legitimacy leads to the neglect in another aspect: the sources of legitimacy. For this thesis, the EU has 'multiple legitimacies' and public acceptance of a decision is determined by different types. For example, the legitimacy of a government decision to determine the allocation of tax receipts and so prioritise spending on education over defence clearly derives from its political authority. In other areas, however, a government's formal authority to legislate comes from elsewhere. In areas such as same-sex marriage or presumed consent for organ donation, for example, a government's legitimacy to legislate emanates from its role in reflecting societal norms and values, so that legislation reflects public attitudes.

An aspect particularly relevant to this thesis is the way that a government might use expertise as 'legitimacy cover' (Field, 2013). In its response to a public health crisis such as HIV/Aids or an outbreak of foot and mouth disease, for example, a government's legitimacy - whilst formally rooted in its political authority - indirectly derives from its access to technical expertise. Through this expertise, a government can effectively outsource - and depoliticise - a problem. In terms of input legitimacy, this raises the question as to how participatory governance should be exercised in highly technical areas and how, where such issues are under consideration, '...participation by individuals with a broad range of interests...' (Heinelt, 2007) should be achieved: an area investigated in chapter seven.

From its earliest days, the EU has recognised that its use of expertise to assist the Commission with the shaping of policy presents a potential democratic shortfall, a point raised in Walter Hallstein's rhetorical question:

How influential are the 'experts'? Are the so-called 'technocrats' all-powerful behind the scenes? (Hallstein, 1972, p.56).

More recently, the Commission provided a set of guidelines on its collection and use of expertise. Although discussed in more detail elsewhere in this study, these guidelines acknowledge that:

A better-informed public increasingly questions the content and independence of the expert advice [and that it aimed to facilitate] the interplay between policy-makers, experts...and the public at large (European Commission, 2015b).

The document listed 'openness' as one of three 'core principles' governing the Commission's use of expert advice, stating that 'The Commission should be open in seeking and acting on advice from the experts'.<sup>6</sup> Nonetheless, despite this commitment to openness, the guidelines acknowledged that in certain circumstances 'too much openness could be detrimental to the quality of advice' whilst

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<sup>6</sup> The other core principles are 'Quality' and 'Effectiveness'.

adding that ‘it is important to be as transparent as possible about the reasons for not being open’ (European Commission, 2015b, p.10 - emphasis in original). Clearly, in this document, the Commission uses the term ‘openness’ and ‘transparency’ as synonyms, as does this thesis - a point discussed in section 2.3 above. Having considered the relationship between transparency and legitimacy, the next section explores the links between transparency and democratic participation.

## 2.6 Linking EU transparency to democratic participation.

It is apparent that both the ‘throughput’ and ‘input’ models of EU legitimacy discussed above suggest that an understanding of - and confidence in - the decision making process is a pre-requisite for citizen engagement. Thus, measures taken to increase transparency of EU decision-making can be considered as a method of enhancing this understanding and confidence, and providing a direct link between transparency and legitimacy. Indeed the 2006 Green Paper launching the European Transparency Initiative begins by stating that ‘The Commission believes that high standards of transparency are part of the legitimacy of any modern administration’ (European Commission, 2006a), a point reinforced by Vice President Siim Kallas’ remarks that ‘Transparency plays an enormous role in promoting a more citizen-friendly EU and therewith helps to increase public trust towards the institutions’ (Kallas, 2005).

It is telling that here there is a common discourse - that the language employed in both the Green Paper and Kallas’ public statements is similar and explicitly links transparency, rather than scrutiny, to input legitimacy. This distinction is central to this thesis and, as such, it makes frequent reference to Kallas’ linkage of transparency to both trust and legitimacy. Curtin and Mijer (2006) illustrate the second linkage at figure 2.1:

**Figure 2.1: Transparency and input legitimacy.**



From Curtin & Meijer, (2006), p.116.

Curtin and Meijer argue that, for the EU, transparency has evolved through two ages. The first, ‘dominated by the law, lawyers and bureaucrats’, was associated with a series of successful challenges by journalists resulting in the European Court of Justice (ECJ) swiftly creating a body of case law that tended to ‘interpret rather generously the scope of the legal provisions’ (Curtin &

Meijer, 2006, p.113). However, although granting the right for citizens to access documentation, in practical terms the ECJ rulings did little to increase genuine transparency for the majority of EU citizens. With no system in place for a citizen to identify the documents s/he may wish to access, the rulings disproportionately served the well-resourced and those groups familiar with EU processes. Chapter six shows that transparency can create perverse consequences. It shows that a mechanism intended to improve opportunities for public scrutiny is used almost exclusively by societal groups, some of which have an ideological incentive to depict a skewed picture of EU activity (S2). This rather inverts any supposed transparency benefits by undermining, rather than enhancing, citizen trust. This echoes the arguments of Curtin and Meijer who observed that, for the media, failure is more interesting than success as 'each imperfection, each transgression of rules and regulations, can be ruthlessly exposed...for commercial gain' (2006, p.118). Whilst Curtin and Meijer's work is relevant to this thesis in its entirety, this aspect is particularly relevant. As chapters five and six show, at both institutional and actor level, the transgressions of EU rules Curtin and Meijer discuss can be exploited and amplified by societal actors, often for ideological reasons.

Initially, then, the scrutiny facilitated through increased transparency threatened to undermine the EU's purpose of building citizen confidence and engagement. To some extent, this was addressed by the introduction of Regulation 1049 in 2001. As a precursor of later transparency measures, this explicitly gave EU citizens the right to request documents, and did so by emphasising the linkage that access to information has to enhancing public trust. The Regulation's introduction states that:

Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy (European Commission, 2015c - emphasis added).

Again, the language here links the enabling mechanism of openness to the development of enhanced (input) legitimacy. But granting a right to access documents is unlikely to encourage citizen participation, unless coupled with measures to allow citizens a means of knowing which documents they may wish to access. As chapter five shows, on this occasion the regulation was drafted to reflect this, with article 11 requiring the institutions to provide a publicly available electronic index of documents (EUR-Lex, 2001b).

For Curtin and Meijer (2006), this early incarnation of the electronic registers coincided with the shift of transparency from a legal to a political rationale where it became seen as a tool to provide more democratic policy making. In this, they argue, the Commission has taken the lead, citing as examples

its promotion of the development of more 'user friendly' databases and, in particular, its central role in the 2001 White Paper on Governance.

The White Paper stated that 'providing more information and more effective communication are a pre-condition for generating a sense of belonging to Europe' (European Commission, 2001a). For Curtin and Meijer, this provides further evidence that, for the EU, one of the functions of transparency is to improve public acceptance of the Union and that it is therefore closely related to legitimacy. In advancing this view, however, they note that transparency best serves 'those with the expertise, time and courage to wade through the masses of documents...to engage in a process...of scrutiny' (Curtis & Meijer, 2006, p.114). This thesis expands and develops Curtin and Meijer's position here by showing that it is the exercise of this scrutiny, rather than the transparency that facilitates it, that leads to public confidence and the social acceptance of the policy-making process (S1). This poses a potential paradox for those that link transparency to good governance, however, as the agent of scrutiny has space to affect public perception by choosing to exercise only selective or partial scrutiny and thus presenting a skewed picture (S2). Nonetheless, much of the discussion around transparency appears normative in nature and takes as its starting point an assumed association between transparency and good governance.

Having explored some of the links between transparency and democratic participation, the chapter now considers the tension between greater participation and expertise.

## 2.7 The link between democratic participation and expertise.

Having examined some of the literature around transparency, EU legitimacy and participation, this section explores the links between the provision of expertise and democracy. If defined in strictly narrow terms, democracy can be seen as the exercise of an electoral mandate, and expertise as the provision of information, the value of which can only be assessed by peers. Considered in this sense, the relationship between democracy and expertise is somewhat unclear. If however, we recognise that expertise in public policy has a direct impact on citizens who should have the opportunity to be involved in the process - to exercise deliberative democracy - then the relationship between the two becomes more sharply defined. There remains a contradiction however, as - despite being affected by policies - most citizens lack the requisite level of expertise to contribute to the process, particularly in highly technical areas. For example, *The Advisory Group on the Free Movement of Workers (X01784)* is charged with 'coordinating the employment policies of the MSs at the union level...to increase the possibilities of free movement and employment' (European Commission, 2015f). Clearly, coordinating MSs' employment policies is a highly specialised activity, beyond the

capabilities of most citizens. Nonetheless, the outcome of the working of this group has a direct impact on these citizens - not least in the relationship between free movement and increased migration.

In the absence of the opportunity to exercise direct deliberative democracy, then, visibility of the 'tracking' of how decisions are made is a necessary condition for those decisions to be afforded legitimacy. For the purposes of this thesis, Libatore and Funtowicz (2003, p.149) capture the essence of the relationship between expertise and legitimacy thus:

Expertise has legitimacy when it is exercised in ways that make visible its contingent, negotiated character and other critical views are accepted.

As Libatore and Funtowicz suggest, it is the visibility that is crucial to legitimacy - a point echoed in Rhinard's work on the committee system in which he suggests that there is an inevitable trade-off between effectiveness and democratic politics:

On the one hand, a policy-making system must have the capacity to effectively solve problems requiring collective solutions. On the other hand, citizens must ultimately be able to exercise democratic control over the operation of that system (Rhinard, 2002, p. 186).

Dahl (1994) argued that transnational political systems such as the EU constitute a 'third transformation' of democracy: a shift from the city state to the national and now transnational states. Dahl argued that this third transformation does not represent an extension of democracy beyond the nation state, rather, in his terms, it acts as '*de facto* guardianship'. Accordingly:

The burden of proof should be placed squarely on the advocates to show that the trade-offs definitely support the values of a majority of its citizens (Dahl, 1994, p.34).

Rhinard offers a perspective on the committee system that assesses its democratic credentials by considering the extent to which European citizens should have a right over a governance system that influences their lives (2002, p.190).

Firstly, he argues, a system can only be considered democratic if its decision making process is intelligible (Rhinard, 2002, p. 190). Whilst this thesis shares that perspective, it develops Rhinard's argument as he does not explicitly state that the decision-making process should be intelligible to an ordinary EU citizen. This is a crucial point, given that the EU is hampered by byzantine institutional arrangements and convoluted decision-making mechanisms. However, this is not necessarily an issue specific to the EU, with citizens in MSs often unaware of the decision making process. In the UK, for example, the figure claiming to have 'no interest' or 'very little interest' in politics is consistently higher than 60 percent (Ipsos-MORI, 2014). But, with so little engagement with the

political process at both EU and MS level, Rhinard's view that a process can only be democratic if it is intelligible raises the question: intelligible to whom?

Secondly, Rhinard (2002) argues, differing conceptions of the public interest should be allowed into the policy-making process. For the EGs, these differing conceptions will be made manifest by opening up the process to a wide range of actors or groups representing different interests. How this should work in practical terms is less clear, however, as the policy areas are often highly technical. For example, *The EG for Policy Development and Implementation of CO2 from Road Vehicles (E02795)* is currently overwhelmingly represented by motor manufacturers, with only one environmental NGO in the group (European Commission, 2015g). Given this composition, it might well be argued that it should be open to a wider range of interests. However, in many policy areas - particularly highly technical ones - this is difficult. Expertise is - by definition - specialist, and is therefore more likely to be accessible in particular sectors or organisations.

Thirdly, Rhinard (2002) argues, citizens should exercise a degree of control over the policy-making system, with means through which officials may be held to account for their conduct. It is through this, Rhinard suggests, that support for the institutions grows because responsibility for failure is seen to lie with fallible - and removable - individuals, not with the institutions themselves. However, although Rhinard's work is used throughout this thesis, this element of it is problematic. Rhinard's use of the non-defined term 'control' conflates two elements of the transparency framework used in this thesis. In Rhinard's formulation, he sees control as a means of ensuring accountability. This neglects the control exercised by citizens through increased opportunities for participation. As chapter six of this thesis demonstrates, however, it is precisely the opportunities for increased citizen participation that the Commission representatives cite as the key function of transparency.

## 2.8 The legitimacy of expertise.

Having examined the literature concerning the relationship between democracy and expertise, this section considers the extent to which such expertise can be considered legitimate. Firstly, it examines this in terms of the Commission EGs before broadening the topic to look at the legitimacy of expertise provided by interest group representatives.

For van Schendelen (2002), the Commission derives two clear benefits from its use of EGs. Firstly, it gets access to high-quality labour at low cost; he assesses the average cost [in 2002] of an expert committee as about €40,000 per year, less than the cost of one [C-level] secretary of the Commission. Secondly, the Commission is able to use the group to establish a consensus - a

necessary component for the legitimacy and acceptance of public policy. In an earlier work, van Schendelen establishes a number of conditions necessary for an effective EU committee. It should firstly be composed of experts representing important organisations; secondly, it should be highly interactive and include the *Chef de dossier*<sup>7</sup> in its discussions. Thirdly, it should hold a strategic body - even a monopoly - of knowledge of the given field and finally, it will enjoy greater influence if the draft text is designed for delegated legislation. In terms of the interaction of members, van Schendelen suggests that this leads to a 'subtle shuttling of opinions during several meetings' (1998, p.30), and is frequently a result of informal discussions the night before a meeting; an issue of particular relevance to the case studies analysed in chapter seven.

For one of the EGs in the case studies, the majority - but not all - members travelled to Brussels the night before the meeting. For the other case this was not so, with most members travelling to Brussels on the morning of the meeting. For the first group, interviews showed that the informal discussion amongst the travellers during the evening before the meeting frequently led to members shifting their opinion prior to the formal meeting the next day. Clearly, then, the informal processes have some impact on shifting opinion and - by extension - on the policy process. Yet these informal discussions are, of course, not observable and are not captured by the transparency tools, increasing the necessity for the data that is provided on the formal meetings to be accurate and complete.

In reality, any of van Schendelen's (2002) four conditions may be found wanting. For example, an individual may lack expertise, the committee be under-resourced or the *rapporteur* have difficulty in securing consensus in the group. Nonetheless, the output of an expert committee is generally presented as a common position. Unsurprisingly, the *rapporteur* responsible for an EG seeks the best experts in a given policy field. However, van Schendelen (2002) shows that this process is the subject of intense lobbying by groups wishing to influence both the establishment and composition of the group. The *rapporteur* seeks representatives of major stakeholders providing specialised knowledge at very low cost. In return, membership of the group provides the opportunity to promote or block a legislative proposal. This process of influence operates in three stages. Firstly, the group should arrive at a common definition of the problem. Clearly, any policy problem can be observed differently and so arriving at an agreed definition is a product of negotiation and compromise. This is equally true for van Schendelen's second stage - arriving at a common definition of the optimum solution. The final step is the drafting of a piece of legislation. Van Schendelen suggests that, in reality, the group draft this text as they see fit and the *rapporteur* signs

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<sup>7</sup> For the Commission EGs, the formal title *Chef de dossier* is rarely used to describe the middle ranking official of the DG with functional responsibility for a particular brief. In most DGs, these officials are generally referred to as *rapporteur*.

it, although the case studies in chapter seven shows that this may not necessarily be so; rather the legislation drafted by the *rapporteur* who then seeks the agreement of the group. For the *rapporteur*, consensus building is key to ensuring that the legislative proceeds without undue impediment.

## 2.9 Expertise at the Commission.

This section discusses the somewhat sparse academic literature concerning the Commission EGs to show where these groups fit into the policy making process.

Numbering about 3500, the size of the European Commission's in-house research and statistical staff is 'smaller than the local government of Rotterdam and only two per-cent of the US federal government' (van Schendelen, 2002). This is relatively small for a body representing half a billion EU citizens (Vassalos, 2010), and the Commission augments these limited resources with EGs to enhance the knowledge base in the policy-making process.

Although considerable research has been undertaken into the work of Comitology Committees (Wessels, 1998; Egeberg, Schaefer & Trondal, 2003; Blom-Hansen & Brandsma, 2009; Norgaard, Nedergaard & Blom-Hansen, 2014) rather less analysis of the work of the EGs has been undertaken. Yet understanding how the important role they play affects, and is affected by, the composition of the groups is essential in developing our understanding of the policy making process. The importance of the EGs certainly appears not to have been lost on lobbyists and other interest groups, as evidenced by the promotional literature for the lobbyists training centre 'Brussels Academy', which states:

If you do not know about the 1,500 committees and groups assisting the EU in its decision-making process, then you are depriving yourself of a major lobbying tool...in other words, you are severely restricting your parameters of influence (Brussels Academy, 2013).

The following section shows how the EGs differ from the Comitology Committees and seeks to identify gaps in the academic literature to provide a clear research direction. The specific questions this section addresses are borrowed from Larsson's 2003 analysis of the use of EGs by the Commission. To date, this is the most detailed exposition of this under-researched policy area. Larsson (2003, p. 13) addressed three central questions:

- To what extent does the Commission establish EGs and of what type?
- How does the Commission control the work of the EGs?
- Why are they established and how do they affect the decision-making structure of the EU?

## 2.10 Defining an EG.

A number of scholars have noted that, within the EU, the overlap between European advisory groups, committees, working groups and working parties means that identifying an EG is far from easy (Larsson, 2003; Egeberg, Schaefer & Trondal, 2003). Whilst this confusion is an inevitable feature of 'the world of committees' (Larsson, 2003, p.27), the Commission adds to the confusion by applying different labels to describe similar bodies creating a plethora of taskforces, high-level groups, working groups, working parties and so forth. Nugent (2003, pp. 243-246) sought to create a classification system through which advisory committees were distinguished by role: consultative, expert and 'others'. Whilst this is useful for looking at the broad role of committees in the policy process, it does not support specific analysis of the EGs. It does not provide a means to classify the EGs according to function, for example, concealing the fact that some groups act solely in an advisory capacity whilst others are involved in implementation and monitoring. Consequently, Nugent's system is not used for this thesis. As a result, it is necessary to show how an EG *formally* differs from a Comitology Committee both in the manner in which it is established and its role.

## 2.11 Comitology committees and EGs.

Article 202 of the Treaty establishing the European Community provided for the Council to 'impose certain requirements' when delegating implementing powers to the Commission. The Comitology Committee system is one means through which this is achieved. Members are appointed by the MSs with the Comitology Committees mandated to represent the interests of the MSs. In terms solely of its formal remit, then, a Comitology Committee can be characterised as the means through which the Council scrutinises the Commission's exercise of its delegated powers. Its principal role is to offer formal opinions on the Commission's proposed legislation and, whilst it has no authority to amend or reject such proposals, article 290 of the Treaty on the Functioning of the European Union (TFEU) provides the authority for it to refer such proposals to Council which may, in turn, opt to revoke the delegation (European Commission, 2015b).

EGs, by contrast, are Commission entities. Defined as 'advisory bodies that assist the European Commission and its services in preparing legislative proposals and policy initiatives' (European Commission, 2015b), the Commission's explanation for its use of EG is expressed in the following terms:

The preparation and implementation of EU policies by the Commission rely increasingly on expert advice. The collection of expert knowledge is crucial to secure a sound knowledge base for better policies. The Commission maintains a high level of in-house expertise, but nevertheless the in-house capacity is limited in view of the breadth of expertise needed and the volume of normative activity of the Commission. As the knowledge required

becomes increasingly technical and highly specialised, the commission must call upon external specialists in their respective fields to feed their advice (European Commission, 2015b).

Whilst regulations allow a formal EG to be created by legislative act or through a written decision of the Commission, the majority are informal, created as a result of a DG initiative. The composition of the groups is determined by the Commission, with the selection of members usually delegated to the responsible Commission official.

#### 2.12 Numbers of EGs.

Although there is limited scholarship in this area, over time academics have sought to determine the number of EGs and to quantify the source of expertise within a given group or parent DG (Wessels, 1998; Larsson, 2003, Gornitzka & Sverdrup, 2008; Gornitzka & Sverdrup, 2011; Chalmers 2014). Clearly, comparing data drawn from differing sources is problematic, but it seems clear that the number of EGs has changed significantly over time. Wessels (1998) found that, in 1990, there were 602 EGs, a number that grew to 851 by 2000 (Larsson, 2003). In 2005, the Commission undertook to increase the transparency of the EGs through the publication of a Register of EGs (European Commission, 2015b) which, when published in 2007, contained 1237 entries (Gornitzka & Sverdrup, 2008, pp.733). However, a 2009 search by the *Alliance for Lobbying Transparency and Ethics Regulation* (ALTER-EU) revealed only 987 EGs; a significant reduction that, for a somewhat sceptical ALTER-EU, reversed a 40 year trend and ‘...coincided with the point where the Commission had to publish all the names of participants’ (Vassalos, 2010). However, Vassalos’ linkage of the decline in EG numbers to the publication of members’ names is unconvincing, given that there has been a steady decline since 2010, with research for this project showing only 781 active groups in March 2015.

#### 2.13 Rationale for the establishment of an EG.

In their 2008 study, Gornitzka and Sverdrup analysed the distribution of EGs across the various DGs in order to establish whether they acted as loose networks of individuals sharing a common area of expertise, or as well-established consultative bodies with clear and common procedures. Adopting a deductive approach, Gornitzka and Sverdrup established a series of hypotheses to test against data on the incidence of EGs across the DGs. These are summarised at figure 2.2 and discussed below, together with their relevance to this research project.

**Figure 2.2 - paired hypotheses for incidence of EGs in DGs.**

- |  |
|--|
| <p><i>H1.</i> Policy areas responsible for managing large sections of the budget would generate more EGs than those responsible for fewer budgetary resources.</p> <p><i>H2.</i> The greater the number of interest groups in a given policy area, the more the relevant DG will tend to create EGs.</p> |
| <hr/>  |
| <p><i>H3.</i> The more exclusive legal competence allocated to the EU, the more EGs.</p> <p><i>H4.</i> The smaller the internal administrative staff that the DG has, the more EGs it will establish.</p>  |

Adapted from Gorntitzka and Sverdrup, 2008, p.732.

Figure 2.2 pairs the hypotheses in order to show more clearly the distinction between them. The first pair implies that an EG is a policy task body whereas the second pair characterise it as an institutional entity.

*H1* - crudely summarised as 'follow the money' (Gorntizka & Sverdrup, 2008, p.729) - assumes that the number of EGs rises in direct proportion to the size of a policy area's budget. The logic underpinning *H1* is that those DGs or services responsible for the distribution of large resources have a greater need for information. An EG is well placed to provide such information and so, in this situation, there is a greater likelihood that one will be established. This relationship between a DG's budget and the establishment of an EG is directly relevant to the research undertaken in this thesis, but with one important difference. In this project's analysis of process transparency, size of budget is used as an indicator of a policy area's political salience. This is covered in depth in chapter seven.

*H2* - which could be portrayed as 'follow the crowd' - is based on an assumed relationship between those policy areas which attract the greatest number of interest groups and the numbers of EGs involved. The premise here is that an EG is established in order to manage the information flow and thus reduce the demands placed on the Commission by national organisations and interest groups. A number of studies exploring the relationship between EGs and EU lobbyists support this 'supply side' position (Mahoney, 2004; Coen, 2007; Eising, 2007; Cini, 2013). Again, there is a linkage to this research project, as chapter six looks closely at the role of particular societal groups in affecting change in the composition of the EG.

*H3* suggests a direct correlation between policy activity and the number of EGs and posits that the largest number of EGs will be in those areas of exclusive EU competence whilst the fewest will be found in those areas where the EU has little or no formal competence. In support of *H3*, Gornitzka and Sverdrup cite Nugent's observation that:

One factor making for variation is the degree of the importance of the policy within the EU's policy framework - it is hardly surprising...that there should be many more agricultural advisory committees than there are educational advisory committees (Nugent, 2003 in Gornitzka & Sverdrup, 2008, p.731).

In this case, there is little synthesis between the hypothesis above and this research project as MS/EU competence was not one of the comparators selected for this study.

*H4* suggests that EGs increase in inverse proportion to a DGs budget. A mirror image of *H1*, this posits that those DGs with fewer resources and - importantly - smaller budgets are both less likely to have in-house expertise and less able to 'buy in' such expertise. Given that members of EGs are paid only expenses, *H4* suggests that, as EGs are cost effective, a less well-resourced DG would be more likely to use them. Although not directly related to this project, the issue of limited resources is a recurring theme of this thesis, particularly in terms of oversight and quality assurance of information.

In order to test their hypotheses, Gornitzka and Sverdrup used the Commission's Register of EGs to create a database which classified the groups into policy areas and the participants within the groups into professional categories (representatives of Non-Governmental Organisations (NGOs); members of the academic community and so forth). Whilst the authors state that the Commission's register is a fairly reliable source of information 'underpinned by the formal rules of the register' (Gornitzka & Sverdrup, 2008, p.732), this thesis challenges this view. Research in chapter five shows that adherence to the formal rules governing the register varies widely, as does the accuracy and completeness of the register's entries. Others, too, have been unconvinced by the register's reliability. ALTER-EU, a group campaigning for increased transparency in this area, assert that the list drawn up as a result of the 2004 commitment of Commission President Barroso did not provide details of sub-groups nor complete membership details<sup>8</sup> (Vassalos, 2010, p.76).

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<sup>8</sup> Vassalos' valid concerns have been somewhat ameliorated by Post Lisbon changes to the rules governing the register which have led to improved (although still incomplete) information concerning the EGs.

Gornitzka and Sverdrup's work found both an uneven distribution of EGs across policy sectors and differing procedures used by EGs operating within different sectors. In identifying this sectoral differentiation, their findings build on earlier work that identified that a high degree of functional specialisation operating at the Council level resulted in working party members relating to colleagues based on professional role rather than national background (Egeberg, Schaefer & Trondal, 2003, p.31). Gornitzka and Sverdrup found that this sectoral differentiation is not solely a result of variation within the policy fields, but also because of different working practices, norms and routines amongst the DGs. For the purposes of this thesis, this element of Gornitzka and Sverdrup's findings is crucial, underpinning the findings in the institutional chapter's transparency audit.

#### 2.14 Composition of the EGs.

Although somewhat dated, the most detailed analysis of EGs to date remains Larsson's 2003 study undertaken on behalf of the *Expertgrupp för studier i offentlig ekonomi* (ESO) - an independent body of researchers established by - and reporting to - the Swedish Ministry of Finance. As previously stated, Larsson addressed three central questions in his study:

- To what extent does the Commission establish EGs and of what type?
- How does the Commission control the work of the EGs?
- Why are they established and how do they affect the decision-making structure of the EU?

As discussed above, distinguishing an EG from a working group or steering committee is far from straightforward, a difficulty recognised by Larsson, who approached the problem by identifying a number of the features he expected to find in an EG. He shows that, although those EGs established by the Commission as a result of treaty changes or directives are generally referred to as 'committees' whereas less official bodies are usually termed 'EGs', this terminology is far from consistent. With this lack of consistency, Larsson started from the position that EGs consist of individuals with a common specialism (i.e. they are 'experts') rather than individuals representing national interests. However he found that, in many cases, 'the "experts" in question are in fact officials sent out from ministries and government agencies of the MSs' (Larsson, 2003, p.57). Although Larsson's data is some years old, a more recent study into the role of EGs as information providers found that more than 80 percent of EGs include national administration officials amongst the membership and that:

if you happen to open a door at any randomly selected EG meeting, there is about a 50 per cent chance that you will find *only* national officials seated around the table (Gornitzka & Sverdrup, 2011, p.54 - emphasis added).

It appears that this tendency towards including a high proportion of national officials within the EGs continues. Research for this chapter confirms that this tendency towards including a high proportion of national officials within the groups continues.

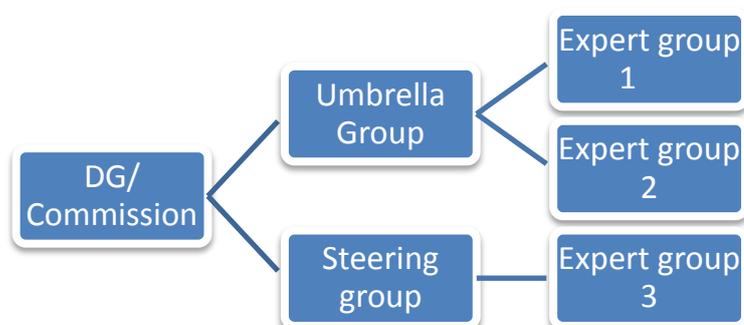
### 2.15 EGs and the Directorates General (DGs).

Having identified the difficulty of identifying an EG, Larsson considered ordering them with reference to the Commission's own data. The available information proved to be far from complete, however, as the 'shape' of the EG structure varied between policy areas and DGs - a finding that predates but reinforces the 'sectoral differentiation' identified by Gornitzka and Sverdrup (2008). He found, for example, that groups of senior officials may be classified either as a 'high level group' or 'senior EG', depending on the DG involved. Similarly, Larsson noted that some DGs use the term 'umbrella groups' to describe an arrangement where a number of MSs have a particular interest in a given policy area and therefore ensure high level representation which, in turn, leads to the establishment of a number of 'sub groups' reporting to the umbrella group.

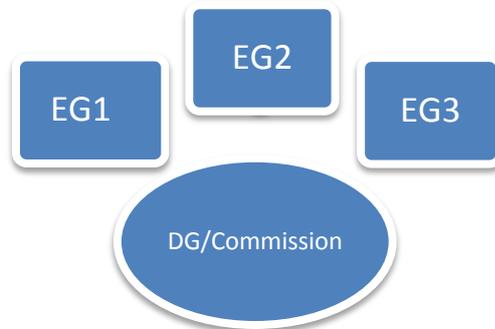
Confusingly, he found that the membership of the groups often overlaps – a member of the umbrella group may also belong to one or more of the sub-groups. Neither is this confined to individuals – Larsson found examples of sets of people appearing in different configurations and of old groups being given a new name. More confusingly still, sub-groups are employed by other DGs as working groups to assist a regular EG and also with overlapping membership. Whilst this may appear excessively detailed, it is included here because it shows that lines of authority are blurred and hierarchical relationships indistinct. This reinforces the view of Larsson and Murk, who argue that the fragmented structure of the groups leads to a severe lack of overview (2007, p.94).

This fragmented structure is illustrated in figures 2.3. and 2.4, which show two possible relationships between the Commission and its EGs, although numerous other permutations are possible:

**Figure 2.3 – Diagram of umbrella EGs.**



**Figure 2.4 – Diagram of autonomous DGs.**



Note: In some DGs, the term 'EG' may be substituted with 'sub group' or 'working group'.

Although there is a formal mechanism for the Commission to initiate an EG, in reality this generally happens at DG level with a single *Chef de dossier* responsible for the group. van Schendelen (2002) suggests that, whilst it is in the interest of the *Chef de dossier* to secure the best experts in a given policy field, s/he is subject to continuous lobbying by interest groups seeking to influence both the establishment and composition of the group. This is discussed in more detail in section 2.18.

#### 2.16 Commission's control of EGs.

It is difficult to address the question of how the Commission controls the work of the EGs, without first exploring the motives behind a decision to establish such a group. Given that the remit of an EG is to provide expertise and advice to the Commission, this may seem a somewhat redundant question but, as Larsson points out, the establishment of an EG may serve a number of purposes (2003, pp. 20-23). Firstly, an EG may be involved in the agenda setting phase of policy-making. Often achieved by 'brainstorming', the group agrees that a particular issue requires a common European response. Secondly, Larsson suggests, an EG may be used to signal the commencement of an official policy-making process whilst simultaneously 'de-politicizing' it by transforming a political issue into a legal or technical one. Thirdly, an EG may be a means of building or mobilising support for a particular policy issue. Here interested parties become involved in the policy process through their involvement in an EG which, in reality, is simply a means through which 'pre-negotiation' is conducted ensuring that the selection of a particular policy is a mere formality. Finally, Larsson suggests, EGs are formed to reduce the pressure for action on a particular issue by creating the *impression* of activity - a process he characterises as the EG acting as a fig-leaf. So, for Larsson, EGs are established for one of four reasons:

- Agenda setting;
- Preparing initiatives and de-politicizing issues;
- Mobilising support and consensus;
- Providing a fig leaf.

This raises the question of what processes the Commission employs to control the work of the EGs. Until 2002, few regulations governed this process. For Larsson, this provided the Commission with ‘unlimited possibilities to...influence the outcome of the committee’ (2003, p.75). The Commission exercised control through its capacity to establish or abolish a particular group, through choosing to invite certain participants over others, and in exercising its privilege to appoint a group chair. Furthermore, the Commission typically approved an EG meeting agenda and provided both the premises and secretariat to facilitate this meeting, a feature Larsson underlined by observing that ‘the one holding the pen has far more influence than most other members of a committee’ (2003, p.74). Some years later, Gornitzka and Sverdrup also remarked on the Commission committee structure’s lack of ‘a well-articulated set of rules to regulate its operations’ (2008, p.728). However, following the adoption of the 2010 Framework Agreement between the EP and Commission which was introduced after ratification of the Lisbon Treaty, some regulation of EGs has been introduced - article 3a of this agreement states that:

The Commission will apply the basic principle of equal treatment for Parliament and the Council, especially as regards access to meetings and the provision of contributions or other information, in particular on legislative and budgetary matters (European Commission, 2015a)

In late 2010, a communication from the President to the Commission established a set of rules governing the EGs. This document contained provisions on the creation and scope of an EG, together with guidance on ensuring a balance of gender and geographical representation, together with a commitment to adopt an open call for applications where practicable (European Commission, 2015b). It appears, then, that since Gornitzka and Sverdrup’s 2008 study, a significant body of regulation governing the EGs has been introduced, although to date no analysis of its effectiveness appears to have been made. However, this simply reflects the rather sparse body of scholarship concerning the EGs. Overall, Larsson’s (2003) work - despite being somewhat outdated - provided a strong foundation for the work undertaken in this thesis and, in particular, was essential in understanding how these groups fit into the EU’s ‘world of committees’ (Larsson, 2003, p. 27). Similarly, Gornitzka and Sverdurp’s (2008; 2011) analysis of the composition of the EGs - although

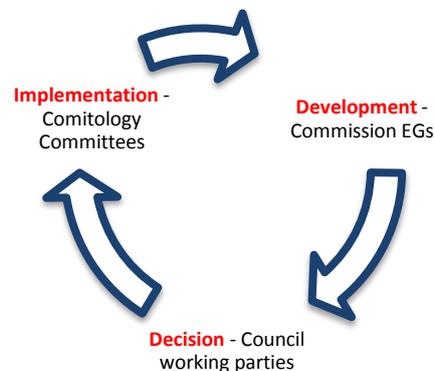
not specifically related to this thesis' research approach - helped in the formation of the initial suppositions.

### 2.17 EGs and decision making.

This section considers the formal and informal roles of the Commission EGs in the policy process and suggests that, although EGs are formally involved chiefly in policy development phase (figure 2.5), in reality, individual actors within an EG sometimes have a role throughout the policy cycle, not least because the stages actually overlap or occur concurrently (Versluis, van Keulen & Stephenson, 2011).

A number of scholars have argued that analysing the policy-making process by separating it into distinct phases is flawed (Sabatier & Jenkins-Smith, 1993; Everett, 2003). Some of these criticisms are supported - the presumption that policy makers make wholly rational decisions based on perfect knowledge is unrealistic, for example. However, it does act as a useful heuristic tool to allow the role of the EGs to be understood and, as such, it is used here. So, for the purposes of this thesis, the policy making process in the EU is considered as a three stage model: Development, Decision and Implementation. Although a number of complementary activities such as evaluation occur within this model, this is not relevant here, and so is not included. A diagrammatic representation of this simplified model is at 2.5, annotated with the relevant advisory group.

**Figure 2.5- Policy making phases.**



As previously discussed, the Commission may elect to establish an EG to provide it with expertise where none exists 'in house'. It follows that an EG may be set up to assist with the drafting of the text of a proposition before it is submitted to Council, a process noted by Gornitzka and Sverdrup who observed that 'different DGs might use EGs as a way of outsourcing tasks, to compensate for its own limited administrative capacity' (2011, p.59). In noting this, Gornitzka and Sverdrup identify a very practical consequence of the fragmented nature of the Commission's Directorate system. Again, their work here proved essential in formulating the initial suppositions for this thesis.

The diagram at figure 2.5 shows the EGs' role as confined to the policy development phase. However, this 'stagist' approach is a purely heuristic or guiding tool (Versluis, van Keulen & Stephenson, 2011). In reality the stages are indistinct and often overlap, a weakness acknowledged in Parson's memorable phrase that 'to imagine that public policy can be reduced to over-simplified stages has more methodological holes than a sack-load of Swiss cheese' (Parsons, 1995, p.80).

Larsson provides a good example of the oversimplification of the stagist model. In his analysis of the EGs he identified informal 'fast track' arrangements that were used to augment the formal processes. This is particularly relevant for this study, which shows the importance of these informal processes in the EG appointment processes. In Larsson's study, which looked at different groups across the institutions, he found examples where 'basically the same constellation of people [are used] throughout the entire process' (Larsson, 2003, p.93).

He found that this duplicate composition process was particularly prevalent in groups operating in highly specialised policy areas, citing the example of two thirds of the individuals that composed a particular comitology committee also operating as the EG in the same policy area<sup>9</sup> (2003, p.109). The same individuals sometimes met twice in one day - firstly as an EG then later as a Comitology Committee. Similarly, those individuals that served on an *ad hoc* group served also on both the Comitology and EGs operating in this area<sup>10</sup>. As stated, Larsson's work - although somewhat dated - proved essential for formulating the suppositions made at the outset of this thesis. This was particularly the case at its micro-level analysis of overlapping functions - an overlap also identified by Rhinhard (2002) who noted:

Often comitology members may be the same as those found in Commission advisory committees and Council working groups, simply changing "hats" - if not rooms - when a comitology decision needs to be made (Rhinhard, 2002, p.198).

Although he considered Comitology rather than EGs, Rhinhard's approach of identifying the individual members is also highly relevant to this thesis. In particular, the multiple functions he identified are discussed in chapter seven's analysis of process transparency. However, this thesis argues that - by definition - there are few experts in a given policy area and that it is therefore unsurprising that the same individuals are involved in different stages of the process. This does, however, further underline the problem with depicting EU policy as operating through a mechanistic 'stagist' process. Importantly, it also raises questions about the plurality of expertise and representation - an aspect addressed in the process chapter and reflected in the project's

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<sup>9</sup> Two thirds of those individuals that served on the comitology committee responsible for the regulation of cereal products also served on the EG on cereal products (Larsson, 2003, p.108).

<sup>10</sup> The *ad hoc* group established to prepare and coordinate the EU position on the Montreal ozone protocol.

recommendations. For this thesis, then, the formal role of the institutions in policy-making is less significant than that of the advisory groups and the individual actors who serve on them.

An extremely valuable source for this thesis, Robert (2010) applied a sociological approach to understand how the individual members 'share a collection of common properties' and use these to form a group. Robert's work was the first to examine the EGs at the actor level to understand why individual experts 'besiege' the Commission. Robert found that many individuals used membership of the EG to form contacts (Robert, 2010, p.253), a finding echoed in chapter seven of this thesis. In terms of the composition of the groups, she found that the Commission's regulations on geographical balance tended to replicate the proportion of votes in Council, quoting one Commission official thus:

The new MSs must participate; we cannot have the ten of them, but at least two or three. There are States which are still powerful in terms of votes in the Council, whereas if Lithuania does not agree, well you know how it is (In Robert, 2010, p.254).

Crucially for this thesis, Robert found that linguistic skills - and particularly fluency in English - are important pre-requisites for membership of an EG, describing it as 'a more or less explicit criteria' (2010, p. 257). The empirical data presented in chapter seven demonstrates that this remains the case and shows a concern amongst EG members that the language requirement can skew the balance of the group.

Robert's research also complements the findings of this thesis by showing a high degree of self-reproducing capital in the EGs, with two thirds of EG members having had previous experience in a group suggesting that, for recruitment into a group, previous experience as an expert is more important than professional networks (Robert, 2010, p.264). Again, the issues of previous experience and the professional networks amongst the EG members is examined in depth in the case studies in chapter seven.

It is of note that, with the exception of Robert's study (2010), the limited research undertaken into the EGs has tended to place its focus at the group level. But the role is not a collective one: advice is proffered by individuals, and research shows that these same individuals may be serving on working groups and Comitology Committees, thus blurring the institutional functions. It is surprising, therefore, that little research seeking to understand the role of these individuals - their motivations in giving freely of their time to advise the Commission, for example - has been undertaken. The case studies in chapter seven fill this void. A further question arises, however, in that the individual exercising an advisory function throughout the policy cycle and in such a way that cuts across formal institutional remits, potentially wields a great deal of influence without public accountability. This

raises further questions as to the linkage between an increased degree of transparency of expert advice given to policy makers, and the legitimacy that this affords the Commission. The next section reviews some of the literature dealing with this linkage.

#### 2.18 Lobbying and the EGs.

As discussed in section 2.15, the *Chef de cabinet/rapporteur* is subject to intense lobbying when establishing or working with an EG. van Schendelen (2002) identifies a number of techniques employed by interest groups invited to join a committee. Firstly, they appoint an individual who is an expert in both the policy area and the art of influencing the decision process - someone with both technical and political expertise. Secondly, they provide support to 'their' expert, by identifying other members of the group for the expert to target and influence. Finally, they deliberately seek to provide expertise - ideally the same person - to both an expert and comitology committee, allowing the interest group to influence both the first draft and the final decision. Although van Schendelen cites the examples of Unilever and Greenpeace as multi-national exponents of this technique, interviews with representatives of lobbying organisations undertaken for this study - and discussed in detail in chapter six - suggest that this practice is commonplace. However, whilst van Schendelen accurately describes this process, his explanation is open to question as this is often a factor of resource limitations rather than tactical decision-making. The often highly technical discussions within the EG are such that, even in a large and well-resourced organisation - and certainly in a smaller one - there will be a limited number of individuals with the level of expertise commensurate with appointment to the group, so it is unsurprising that the same individuals advise in different forums .

Here, the linkage between the provision of expertise and legitimacy is laid bare. With participation limited to the most resourceful actors who operate in private, the public cedes control over the legislative function to a body neither elected nor, in this situation, accountable (Liberatore & Funtowicz, 2003). If, however, an effort is made to ensure a degree of balance in representation, and to render to the process a modicum of transparency, the participation of experts in the policy process is visible and, at least to some extent, legitimate (Weingart, 1999). For this thesis, the issues of the transparency of the expert advice together with that of the balanced representation of expertise are central. This underscores both the thesis' relevance and the original contribution it makes to our understanding of EU policy-making.

## 2.19 Conclusion.

This chapter has summarised the key literature relating to the tension between the use of expertise in policy making and its accountability processes. It has shown that, until recently, there was a dearth of articles into the Commission's EGs, with virtually no research having been undertaken for some years. However, as interest in the less visible aspects of EU policy making has grown, so scholars have recently begun to research these groups. This project is therefore timely in contributing to an evolving body of empirical work in this area. Moreover, by providing a first glimpse into the workings of the groups and the experience of their members, this thesis explores the extent to which the accountability of expertise is assured through the EU's transparency mechanisms. The next chapter explains decisions taken to select appropriate research methods.

## Chapter 3. Methods.

### 3.1 Introduction.

Part of this thesis' originality lies in its linkage of the apparently separate issues of transparency - often presented through a normative frame as a pre-requisite for good governance - and expertise; a quality that - by definition - can only be assessed and understood by a specialised group. This linkage is problematised in the study's primary research question: how and why is the expert advice used in the EU's policy process made transparent?

This chapter sets out the research methods adopted to investigate this question. The thesis explores the transparency of expertise through three levels of analysis - institutional, actor and process. Its aims and the suppositions established at the outset reflect these levels:

- A1. To determine the effectiveness of measures taken to increase institutional transparency at the EP and the European Commission (S1).
- A2. To understand how transparency measures serve the interests of different groups of actors (S2).
- A3. To analyse and explain variations in the transparency of the policy process (S3).

The chapter proceeds as follows. Firstly, it explains the decisions taken around the thesis' research design, with a particular focus on the use of an inductive - rather than deductive - approach. The next section discusses the various indicators used to measure the effectiveness of the EU's transparency measures. The third section explains and justifies the decision to adopt a comparative case study approach and the data collection methods used, firstly at the institutional level of analysis, then at the group/actor and process levels. The next section explains the rationale for approaching all participants as 'elite' interviewees, before describing the conduct of the interviews with different groups of actors. Finally, the chapter discusses the ethical challenges experienced during the conduct of the research - anticipated and otherwise - and explains the measures taken to address these.

### 3.2 Research design

This section explains and justifies the decision to adopt an inductive design for this research project. With its empirical focus, the thesis seeks to understand the key issues around the transparency of EU policy-making as these are understood by the actors involved. From the outset, therefore, it was clear that it would be necessary to have a flexible research design allowing the theory to be drawn

from observation and patterns of behaviour (Bryman, 2008, p.11). For this thesis, the initial data gathering involved analysis of the transcripts of speeches and of key transparency documents. Following this, 63 semi-structured interviews were undertaken with actors involved in the EU policy process. Participants came from sixteen EU MSs and included judges and other legal professionals, MEPs, EU officials, NGO officers, journalists and members of public affairs bodies. The patterns of views emerging from these interviews informed chapter six's multiple transparencies model.

Beyond its appropriateness as a means of uncovering the views of policy-makers, there were practical reasons for employing an inductive - rather than deductive - research design. In particular, it was evident that previous research was not suitable for establishing hypotheses for this project. Whilst there have been a number of studies into the workings of committees and advisory groups (Beyers & Dierickx, 1998; Brandsma, Curtin & Meijer, 2008; Egeberg, Schaefer & Trondal, 2003), these have tended to focus on established groups where members meet regularly and have frequent interaction. The participants in the EGs, however, are not Brussels-based and may meet only a few times a year. With fewer socialization opportunities than is the case for Brussels-based groups, the findings from studies of these groups cannot be confidently applied to this research project<sup>11</sup>. Using previous studies into expertise proffered to MEPs by interest group representatives was also problematic. Whilst there is a significant body of literature concerning the access of interest groups to the EP, this has tended to focus on these groups gaining access for purely advocacy purposes, or with the introduction of measures taken to increase the transparency of this process (Dur, 2008; Eising, 2007; Greenwood, 2011).

Again, the available literature does not relate to this study, as it tends to examine interest groups seeking access to MEPs in order to achieve interest-furthering goals - an approach which does not explain the information providing role of such groups. Yet it is through this function - their ability to plug the knowledge gap - that such groups gain access to busy MEPs in the first place. Bouwen's work on corporate lobbying in the EU is a notable exception to this. He describes an interest group's facility for providing information as an 'access good' and argues that there is, therefore, a 'logic of access' (Bouwen, 2002). However, whilst Bouwen's work is highly relevant for this project, it pre-dates important milestones such as the European Transparency Initiative, the Lisbon Treaty, and the creation of the JTR: milestones that have shifted the parameters of the research area.

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<sup>11</sup> That said, the lack of obvious cohesion drivers such as frequency or intensity of meetings may be tempered by other factors. By definition, EGs bring together people with a particular interest or expertise in what is often a highly technical area so, from the outset, it seemed likely that some of the individuals would be pre-known either personally - through professional contact, for example - or by reputation, an area considered in some depth in chapter seven.

A quantitative approach was also considered, with responses coded numerically. However, whilst this would be a suitable means of determining what respondents thought about transparency, it would not reveal why they thought it. To illustrate, a numerical finding might show that *64% of MEPs but only 11% of societal actors stated that the EP was 'very' or 'somewhat' transparent*, but this does not explain why MEPs see the EP as a transparent body and societal actors do not. A quantitative approach was rejected, therefore, in favour of qualitative techniques that would yield more fine-grained data, and provide an insight into participants' views of the key issues around transparency. This research design offers scope for identifying the meaning hidden behind such views. This is of particular relevance to this project's concept of multiple transparencies and recognises the significance of individuals, a critical element of this project. Qualitative research accommodates different 'understandings of the social world though...examination of the interpretation of that world by its participants (Bryman, 2008, p.366), and multiple interpretations of the same event are facilitated and even expected (Yin, 2011, p.11). By applying Yin's (2011, p.8) features of qualitative research, this thesis' inductive design allowed for transparency actors' interests, views and preferences to be understood in their contextual settings and for patterns to be established through the use of multiple sources.

Having determined that a qualitative - rather than quantitative - approach was appropriate for this research, a number of data-gathering options were considered. Some of these were rejected for purely practical reasons. An ethnographic approach, rooted in the anthropological tradition, would require a high degree of 'immersion' in the research environment for a significant period of time. As access to policy makers tends to be limited, this poses a problem for researchers, and few studies at the EU institutions have adopted this approach save for those undertaken by researchers whilst working as MEPs' assistants (Busby, 2013, for example). Consideration was also given to non-participant observation. Whilst this may have proved a fruitful means of gathering data, it would involve obtaining permission to attend both EG meetings and private meetings between MEPs and interest group representatives. In the former case, whilst EG meetings are normally closed to outsiders, access is occasionally granted to researchers. This is rare, however, and requires persistent and delicate negotiation with officials in the relevant DGs (B. Kohler-Koch, personal communication, September 4, 2012). In the latter case, it would simply not be possible to gain access to private meetings between MEPs and interest group representatives for the purposes of non-participant observation, so this data collection technique was rejected.

A focus group was also considered, but this was entirely impractical. In itself, an attractive and appropriate research technique, a focus group brings together participants, and places a premium

on group interaction in order to reach a 'joint construction of meaning' (Bryman, 2008, p.474). But, whilst this would be a novel and interesting means of researching the transparency of policy making, it would be virtually impossible to organise: the EG members are not based in Brussels and so members are rarely available to meet. Furthermore, whilst interest groups are usually Brussels-based, the individual representatives are difficult to identify and - as competitors - are unlikely to agree to work together for a research project.

It was apparent, therefore, that a series of interviews would be the most effective way to garner the views of the different transparency actors. However, an entirely structured interview with closed questions and a carefully scripted interaction would limit interviewees to a set of predefined responses (Yin, 2011, p.133). In this study, however, the participants were likely to be better informed and more familiar with the operating procedures in Brussels than the interviewer, so closed questions would not have yielded suitable data. Put simply, in this research project the interviewer lacked the information to prepare the right questions in advance.

This implies an interview technique more conversational than scripted, one that is 'flexible, but also controlled' (Bryman, 2008, p.461). For Yin, this means following 'a mental framework of study questions but [in which] the specifically verbalized questions...differ according to the context...of the interview' (Yin, 2011, p.134). Thus a structured interview - with its formal and sequenced questioning - was rejected in favour of a semi-structured one. This approach is particularly favoured when dealing with elite participants, as the relationship between interviewee and interviewer needs careful management.

A number of scholars have expressed unease with the term 'elite interviews', burdened as it is with connotations of superiority (Riesman, 1964; Dexter, 2006). Dexter concedes, however, that it provides a useful shorthand to describe participants in '...important or exposed positions [that] may require VIP interviewing treatment on the topics which relate to their importance or exposure' (Dexter, 2006, p.18). Whilst Riesman (1964, p.28) prefers the term 'non-standard interview', he describes such an interview as:

- Stressing the interviewee's definition of the situation
- Encouraging the interviewee to structure the account of the situation
- Letting the interviewee introduce notions of what is relevant.

Here the features identified by Riesman map neatly onto Yin's features of qualitative research discussed above. By allowing the interviewee the space to define those issues of relevance, Merton, Fiske and Kendall (1956, p.124) argue that the interviewer is 'often eager to let the interviewee

teach him what the problem, the question, the situation, is', although Miller and Glassner (2004, p.125), raise the interesting issue of whether the researcher can be sure that such interviewing can elicit 'authentic accounts of subjective experience' rather than the 'repetition of familiar cultural tales'. Whilst this 'cultural tale' point is understood and accepted, this research project had a fairly large number of interview participants, providing multiple sources of data. Furthermore, the interviews focussed on participants' views on transparency rather than their experience, and these views may have been informed by 'familiar cultural tales'.

To summarise this section, it was not possible to draw up suitable hypotheses based on existing literature in order to apply them to the EGs. Furthermore, the closed working practices of the interview participants and the scant level of detail available in the official documentation pointed towards the need to identify actors' views of the key transparency issues. Although alternative means of qualitative data gathering such as non-participant observation and focus groups were considered, issues of access posed too great an obstacle. Thus, the decision to undertake a series of elite interviews for this thesis was taken for both methodological and practical reasons.

### 3.3 Conceptualising effectiveness.

A1 of this thesis seeks to analyse the effectiveness of measures taken to increase transparency at the EP and the European Commission. It is therefore necessary at the outset to conceptualise effectiveness as it applies in this thesis.

Unlike efficiency, which - at its most simplistic - can be simply measured as a ratio of inputs to outputs, effectiveness is an extremely malleable term, with roots in organisation theory (Barnard, 1938; Rollinson, 2008), economics (Heather, 2004; Salvatore, 2015) and political science (Scharpf, 1999; Heard-Lauréote, 2010). Unsurprisingly, disciplines conceptualise effectiveness differently reflecting variations in academic conventions. So where an economist would regard effectiveness chiefly as the means through which an economic goal can be achieved without reference to cost (Heather, 2004, p. 488), a political scientist may analyse the extent to which it enhances government legitimacy (Heard-Lauréote, 2010, pp. 24-26).

With the empirical focus of this thesis exploring how the transparency mechanisms operate in practice, conceptualising transparency's effectiveness in terms of legitimacy alone would be too limiting: it would neglect other aspects such as trust or accountability, for example. As chapter six shows, however, many participants use these terms to explain the function of EU transparency. Clearly then, no single conceptualisation of transparency's effectiveness will serve its multiple aims, nor be appropriate for all actor groups.

To overcome this problem, this thesis borrows and adapts the output/outcome approach of organisational theory. This depicts effectiveness as the extent to which the output meets the outcome, with ‘outcome’ being ‘the requirements of the end user’. By using this model, the measure of the effectiveness of transparency is sufficiently flexible to accommodate the different transparency tools examined in this thesis (*outputs*) and measure these against the primary transparency attribute (*outcome*) cited by different actor groups (*end user*). The table at figure 3.1 below, designed by the author for this thesis, shows how this is applied to the transparency typology used throughout this thesis.

**Figure 3.1 - Effectiveness of transparency**

<b>Group/Actor</b>	<b>Transparency output</b>	<b>Transparency outcome</b>	<b>Measure of effectiveness</b>
Commission Officials	European Citizen’s Initiative	Participation	Number of contributions to public consultations
MEPs	MEP declarations of interest	Trust	Changes in trust (Eurobarometer)
Societal Groups	EG register	Accountability	Accuracy and completeness of data
Interest Groups	JTR	Governance	Number of registrants

#### 3.4 Comparative case design - institutional.

This thesis’ institutional comparison addresses the first research aim: to determine the effectiveness of the measures taken to increase institutional transparency at the European Parliament and the European Commission (A1). Underpinning this, the thesis’ first initial supposition reflects the lack of formal oversight at the institutions and provides the starting point for this comparison:

- (S1) That whilst measures intended to increase the transparency of the EU’s policy-making process have been introduced at the EU institutions, the lack of a robust and independent scrutiny process reduces the effectiveness of such measures.

At the institutional level, the analysis of the transparency of expertise at the EP and the Commission involved a comparison between *de jure* and *de facto* transparency. Once identified, adherence with selected rules acted as indicators to test the degree to which the publicly available electronic registers provided complete and/or accurate information. Clearly, however, the regulations pertaining to each register vary significantly – the rules concerning the provision of MEPs declarations of interests do not apply to the provision of documents concerning EG meetings, for example. Nonetheless, each could be tested independently so that the detail of what ought to be available in accordance with the institutions’ own regulations (*de jure* transparency) could be

measured against what actually is available (*de facto* transparency). Before undertaking this audit, the requirements laid down in legislative documents and the electronic registers were studied. These are available online, through either the 'Europa' portal or dedicated websites. Given that the purpose of this test for compliance involved publicly available information, analysis of the public registers - rather than the raw data used to populate these registers - was undertaken.

### 3.5 Data collection - institutional.

As a starting point for understanding the formal measures to enhance the transparency of expertise, a large body of documents was analysed. Whilst some of these were readily available - the EP's website provides a user-friendly link to MEPs declarations of financial interest, for example - in other cases this proved more problematic as the search facility of the online registers generally requires that a document reference number be provided. Given this limitation, a cross-referencing system was employed, allowing documents to be identified through being cited in the text of a more recent document.

A substantial number of official sources related to the European Transparency Initiative (ETI) including the transcript of Commissioner Kallas' Nottingham speech, the original ETI Green Paper (COM(2006) 194), associated press releases and documents relating to the public consultation. The Green Paper's consultative process triggered 164 responses, the bulk of which were submitted by organisations, with only 17 contributions (10.3%) submitted by individual EU citizens. As a detailed textual analysis of all 164 responses would have been extremely time consuming, it was intended that a stratified sample representing the different types of organisations - public sector, private sector, Civil Society/Non-Governmental and private citizen - would be selected. This proved not to be possible, however, as the documents concerned had been archived and were no longer available electronically. As a result, documents from the public consultation were selected through convenience sampling, using only those submissions that were available through the websites of the organisations involved. It is understood that this approach favoured representations from better-resourced organisations and excluded the analysis of the contributions of individual citizens entirely, but it was considered preferable to completely discounting the public consultation. The only alternative strategy was to apply for the archived documents through a freedom of information (FOI) request.

The formal procedure for requesting a document through a FOI request is established in *Regulation 1049/2001 on Public Access to Documents* (EUR-Lex, 2001b). The Commission should provide a document within 15 working days of request, although a number of interview participants stated

that this timescale is frequently exceeded [Interview 7 - Societal Actor; Interview 21 - Societal Actor]<sup>12</sup>. Significantly for this project, administrative staff in DG Secretariat-General (DG SG) indicated that the details of individuals making requests are recorded to reduce the incidences of the Commission acting on frivolous requests [Interview 3 - Commission Official]. As the analysis of the consultative process was undertaken early in the research, it was considered that a request for access to the archived responses may inadvertently reduce the likelihood of the relevant Commission officials later agreeing to interview. On balance, therefore, it was decided that risk of being denied future access outweighed the benefits of accessing the entire archived consultation.

In addition to the documentary analysis, desk research was used to identify the groups with the greatest degree of access to policy-makers. Whilst it is understood that frequency or incidence of access to the institutions is not necessarily a reliable measure of success, it was considered a useful initial proxy. Analysis of the entries on the Joint Transparency and EG Registers (JTR/EGR) was undertaken in order to show the incidence of interest representation from particular categories such as the corporate and business sectors, trades unions and NGOs<sup>13</sup>.

Both the JTR and the EGR are administered by DG SG. As others have noted, however, examining either register in relation to the other is difficult for the lay person, as they use complex and incompatible protocols (Greenwood & Dregger, 2013). Whilst the creation of a single database to incorporating the data from both registers was considered, this proved impractical as the detail of the 5500 entries would have needed to be transferred manually. Instead, a smaller but more manageable solution was arrived at, with the information from the EGR manually transferred to create a single searchable EG database. This database provides a swift means of identifying overlaps between representation on the EGs and to check the extent to which membership of a group is balanced by gender, nationality and so forth.

### 3.6 Comparative case design - group/actor and process.

The group/actor comparison addresses the thesis' second research aim: to understand how transparency measures serve the interests of different groups of actors (A2). Whilst recognising that different groups will obviously have their own interests and seek to further these, the initial supposition is that they may strategically use the EU's own transparency tools to do so:

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<sup>12</sup> Chapter six's analysis of the complaints made to the European Ombudsman reflects this, with a high proportion of these complaints relating to delays in responses to FOI requests.

<sup>13</sup> These categories are used in the JTR.

- (S2) That the use of transparency tools introduced to enhance citizen confidence in the EU may be used by particular actors to undermine such confidence.

The process comparison addresses the thesis third research aim: to analyse and explain variations in the policy process (A3). In chapter seven's analysis of the experiences and motivations of the members of two EGs, this thesis provides the first empirical research in this area. In doing so, the chapter also explores whether the distinction between political and technical policy made by some scholars (Weingart, 1999; Winzen, 2011), affects the degree of transparency. Whilst it is understood that this distinction is not clear cut, it is a recurring theme in the academic literature. As such, this distinction formed the basis of the thesis' third initial supposition:

- (S3) That where technical rather than political considerations shape the outcome, there is less transparency of the policy process.

### 3.7 Selection of cases - group/actor.

A study aiming to understand how the transparency of expertise affects the policy-making process clearly requires access to the views of experts, policy makers and those that seek to influence these groups. In addition, having identified the experts involved, a suitable means to capture the various data was required. Initially, this involved determining the major issues as they are understood by individual actors with the groups, whilst recognising that these would certainly vary between - and perhaps within - groups.

In the majority of cases, the forums within which the groups operate are closed to outsiders – in Heald's terms, there is no 'transparency in real time' (2006, p.32). Yet relying solely on 'retrospective transparency' is inadequate because, in the context of the EU institutions, the formal nature of such transparency reporting tends to favour transparency of outcome rather than process. To illustrate, whilst the minutes of Commission EG meetings should be available to outside scrutiny, the content of these minutes is usually scant, with little detail concerning the discussion, the different positions of individuals within the group and the outcome of votes where these are taken. Instead, information is limited to the groups' agreed position. In parallel, notwithstanding the JTR which provides an indicative but incomplete picture of the groups seeking access to MEPs, private meetings between MEPs and interest group representatives are confidential. MEPs' diaries are not public documents<sup>14</sup>, masking both a meeting's content (process transparency) and the fact that a meeting even took place (event transparency). This poses something of a challenge for those wishing to research the dynamics of policy advice. The closed nature of this advice creates a

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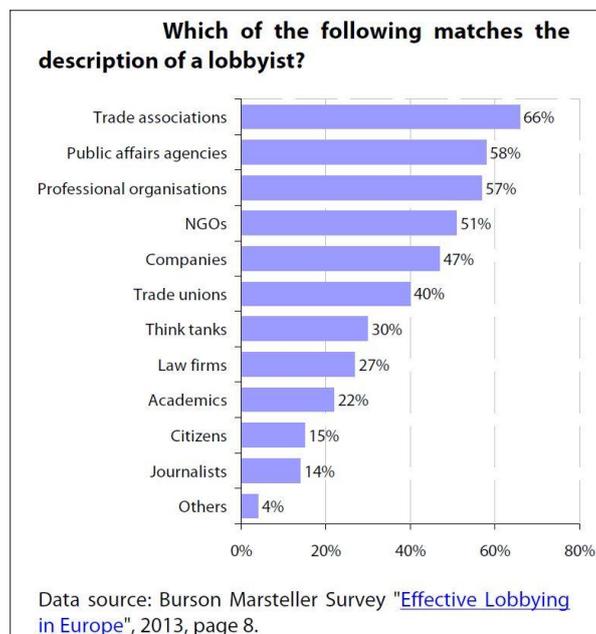
<sup>14</sup> British Conservative MEPs are exceptional in this regards, being required by their national party to complete and publish online a six-monthly lobbying contact report.

knowledge deficit loop: the lack of access stifles the researcher’s capacity to identify the key issues around transparency as they are perceived by the individuals involved. Yet, it is only through accessing individual understandings that it is possible to identify the important issues.

Chapter six shows that there are clear differences between participants’ views on the purpose of transparency and advances the notion of ‘multiple transparencies’. Because of these, different actors attribute transparency with a variety of related but often conflicting qualities including - variously - a capacity to increase citizen participation, to enhance accountability and to improve trust. To clearly delineate these multiple transparencies, it was necessary to devise some system for categorising interview participants by professional function. For those with clear roles such as an MEP or Commission Official this was straightforward. It became more complex, however, when considering how best to refer to members of a group that seeks access to - and influence over - policy-makers.

From the start, the decision was taken to avoid the term *lobbyist*, not least because there is no agreed definition either between the EU institutions or the MSs. In the UK, for example, the Public Affairs Council specifically excludes NGOs from the definition of *lobbyist*. Figure 3.2 below shows, however, that in an EU context more than half of MEPs and Commission Officials consider the term *lobbyist* to include NGOs (Burston-Marsteller, 2013).

**Figure 3.2 - Survey result on lobbying.**



In addition to the lack of a common definition, a further consideration was that the term *lobbyist* is often used pejoratively. This point was raised in interviews with MEPs and those involved in the

process itself, with one interviewee referring to *lobbying* being ‘a term of abuse in France’ [Interview 14 - Interest Group Representative].

This lack of a common terminology extends beyond the term *lobbyist*, with no universal means of distinguishing between those that seek access to policy-makers for commercial gain/profit and those that do so for ideological/non-profit reasons. Whilst it is recognised that these distinctions are simplistic, they are emblematic of the myriad terms used both amongst academics and between the institutions. Saurugger (2008), for example, draws a distinction between *general interest groups* - those representing business - and *public interest groups* such as NGOs. This delineation is adapted slightly by Eising, Rasch and Rozbicka (2015), who identify differences between *public interest groups* and *business interest groups*.

This difference in terminology is not only confined to scholarship, but is mirrored at the institutions themselves and has changed over time. The Commission’s 2001 *White Paper on European Governance*, for example, makes reference to ‘the organisations that make up civil society’, and indicates that this refers to groups such as the Churches, NGOs, Trade Unions (TUs) and employers groups (European Commission, 2001a). However, its *Principles on Consultation* document published the following year and still extant in 2015, acknowledges that there is no commonly accepted - let alone legal - definition of the term ‘civil society organisation’ (CSO) (European Commission, 2002).

Kohler-Koch and Finke (2007) chart the changes in Commission terminology through three generations of EU Society, with an evolution of terminology from *Special Interest Groups*, through *NGOs* to *Civil Society*. Here, Kohler-Koch and Finke’s position mirrors the argument advanced in section 2.3 that the distinction between the terms transparency and openness simply reflect changing fashions in language (Heald, 2006, p.25).

One solution for dealing with the fuzzy and overlapping nature of the terminology is to use a standard umbrella term. Thus Kaiser and Meyer’s use of the term *societal actors* was chosen to ‘avoid the rigid dichotomies between public and private or state and non-state actors’ (2013, p.5). However, whilst it is recognised that Kaiser and Meyer’s approach helps to avoid these sometimes misleading distinctions, it was not appropriate for this research, as the actors’ different views underpin the notion of ‘multiple transparencies’. It was crucial, therefore, to delineate between actor types.

This parallels the situation with the JTR where inter-institutional guidance for organisations created various categories for registrants, despite the Commission recognising the inherent problems in defining a term such as *civil society* or NGO. Thus, organisations registering on the JTR fall within a

specific category. These include *interest representatives (lobbyists); professional consultancies acting under contract; in-house lobbyists acting on their own account; or NGOs* (JTR, 2015).

Similarly, this project requires such distinctions. So, whilst recognising that such categorisations are imperfect, for the purposes of this thesis the terms and definitions are shown at figure 3.5 below:

**Figure 3.3 - Typology of interview participants.**

Term	Defined as	Examples
<b>Interest group/representative</b>	Public affairs agencies, their clients and other corporate bodies	<ul style="list-style-type: none"> <li>• EUK consulting;</li> <li>• Lysios public affairs;</li> <li>• Volkswagen-Audi</li> </ul>
<b>Societal Group/representative</b>	Advocacy and/or campaigning group; NGO; Journalist	<ul style="list-style-type: none"> <li>• Corporate Europe Observatory;</li> <li>• Friends of the Earth Europe;</li> <li>• Transparency International</li> </ul>
<b>Outside Group/representative</b>	Umbrella term for actors/groups from outside the EU Institutions	

### 3.8 Selection of cases - process transparency.

The intention behind this project’s examination of the use of expertise at the EP and the Commission is to enhance our understanding of this hidden aspect of the policy process. However, whilst this examination is fundamental to this project, it is recognised that some consideration of the policy process is essential to a project on EU policy-making. Thus, process transparency is examined through analysis of two distinct but timely case studies. To focus on both the ‘human’ aspects and the mechanics of the cases, the publicly available information concerning the relevant EGs was analysed, and a series of semi-structured interviews with the relevant EG members undertaken.

With the thesis’ third initial supposition grounded in the literature’s distinction between technical and political policies, chapter seven analyses and explains variations in the transparency of the policy process (A3), and considers whether these differences can be attributed to the nature of the policy itself. Accordingly, careful consideration was given to the selection of cases.

As access to the policy process is the means through which transparency of the cases was to be measured, it was clearly necessary that cases be selected where there was a good chance that the policy process would be complete within a reasonable period. Put simply, were a case selected where the policy process became inordinately delayed or abandoned, there would be no process to examine. In order to militate against these obstacles, consideration was given to selecting cases where the process had already been completed. Employing a historical case approach proved

impractical, however, as it would not provide visibility of the important distinction between real time and retrospective transparency (Heald, 2006, p.32), because some aspects of the process could *only* be understood in real time. To illustrate this point, whilst an electronic record of the time and date of an EG meeting is retained and may be in the public domain, a detailed record of the discussion in the meeting is *not* made available to the public.

Given this limitation, it was apparent that the cases selected for the analysis of process transparency would need to be contemporaneous. Inherently, this carried the risk that the policy process would be delayed, leaving one or both of the cases open-ended. It was recognised, therefore, that cases should be selected where there was reasonable confidence that the policy would come to fruition within the timeframe of this research project. Accordingly, the first criterion for the selection of cases was that each should have a clear deadline. Clearly, applying this condition to the selection eliminated *Duration of Legislative Passage* as an independent variable, but this is not considered a significant limitation as it is not relevant to this study.

The factors considered in the selection of cases went beyond ensuring that each had a deadline, however, as the analysis sought to identify the conditions under which transparency of the policy process is more likely (S3). As such, it was necessary to control for extraneous factors, suggesting that the selected cases should be as similar as possible on as many variables as possible. Here a ‘most similar’ case comparison appeared appropriate, as this would allow for the reduction of the number of variables. The four-type research design model advanced by Faure (1994) appeared suitable for this comparison. Faure drew on Mill’s (1888) ‘two methods of comparison’ - to refine the notion of comparing between either most similar or most different cases as at figure 3.4 below.

**Figure 3.4 - Faure’s four types of comparative research design.**

	<b>Method of Difference</b>	<b>Method of Agreement</b>
Most similar research design	Dealing with differences in similar cases	Dealing with similarities in similar cases
Most different research design	Dealing with differences in different cases	Dealing with similarities in different cases

In applying Faure’s model, it is apparent that the most appropriate type for this study is that represented by the upper left quadrant (shaded) above. This suggests selecting cases sufficiently similar to allow for comparison, whilst ensuring that, as far as possible, only the independent variables remain to explain differences in process transparency.

Whilst scholars counsel against selecting cases with similar outcomes, they also recognise that one of the merits of the case study method is that it allows the researcher to understand the events that

produce the outcome, rather than just the outcome itself. This view is particularly relevant here, as the rationale for applying a case study method to this element of the wider project is to test the transparency of the policy process, rather than explaining the process itself. So the thesis' focus is transparency, rather than policy outcome.

Given that this study's focus is on the role and transparency of expertise as it relates to the formulation and implementation of EU policy, it was considered that the selection of case studies should reflect this by relating to a fundamental tenet such as the single market or free movement. Further, as the research was undertaken during 2011-2013 in the context of serious questions over the long term future of the single currency - the largest financial crisis since the introduction of the single market - and an increase in youth unemployment across the EU, cases were sought which reflected these challenges.

Relatively few groups appeared to meet the necessary criteria. At DG Justice (DG JUST), the *Cross Border Insolvency Group* and the *Attachment of Bank Accounts Group* were both advising the Commission in drawing up proposals to address particular challenges arising through the context of the economic crisis. A breakdown of these groups showed that the *Insolvency* group had a more broadly-based composition with members drawn from academia, professional bodies and legal practice, whilst the *Bank Account* group members were largely practicing bankers and lawyers. Given the membership profiles, it was considered that members of the *Insolvency* group would probably be more willing to participate in the research and this was selected as the first case.

Applying Faure's design, the second case needed to allow for comparison of the transparency of the policy process whilst being similar to the first case. As the thesis' third initial supposition is predicated on transparency being a function of the technical-political aspects of the policy, a case was sought which would expose the differences in similar cases (Faure, 1994).

At DG Education and Culture (DG EAC), the *Erasmus Plus* proposal was selected as the preparation for this brought together experts appointed in a personal capacity with those representing national bodies to draw up a successor to the EU's Lifelong Learning Programme (LLP). From the outset, the Commission intended that the successor programme include much broader training elements such as cross-border apprenticeships, in order to address rising youth unemployment across much of the EU. In addition to a common contextual setting, the decision to select *Erasmus Plus* allowed for greater control, as the independent variables differed in few respects. Detailed scrutiny of the proposals reveals that both cases use a common legislative instrument, deal with harmonisation of

policy in areas of formal MS competence, have the same underlying strategic objective and share a common deadline.

As the comparability factors in figure 3.5 below show, in legislative terms there was little to distinguish the cases.

**Figure 3.5 - variables for case studies.**

	<b>Erasmus Plus</b>	<b>Cross border insolvency</b>
<b>Formal competence</b>	MS	MS
<b>Legislative deadline</b>	2013	2013 (advanced from 2014)
<b>Strategic objective</b>	Europe 2020 (legislative proposal p.2)	Europe 2020 (legislative proposal p.4)
<b>Purpose</b>	Harmonisation/mobility	Harmonisation/mobility
<b>Legislative Instrument</b>	Regulation	Regulation
<b>Procedure</b>	OLP	OLP
<b>Legal basis</b>	TFEC 165 (4)	TFEU 81(2)
<b>Budget</b>	High - €14.7 billion	Low - €1.5 million
<b>Impact/numbers affected</b>	High - 5 Million 'mobility activities' predicted	Low – 350,000 businesses [α]
<b>Political Salience</b>	High	Low
<b>Rationale</b>	Response to market success	Response to market failure
<b>Anticipated degree of process transparency</b>	High	Low

The key differences related to the allocated budget and numbers of citizens affected. However, projected numbers do not provide a useful comparator in this case, as the figure of 350,000 affected by the *Insolvency* amendment relates to the number of firms rather than number of individual employees or, indeed, creditors, a figure that is not projected but would certainly be much higher. Moreover, even at the 5 million estimate, *Erasmus Plus* is projected to impact on only 1% of EU citizens during its 7-year lifecycle. It is, therefore, the distinction between the budgets of each of the cases that provides the strongest indicator of political salience, with the seven year *Erasmus Plus* programme allocated a €14.7 billion budget, against the €1.5 million projected costs of implementing the *Insolvency* regulation over the same period.

With its complex financial architecture, it is perhaps unsurprising that detail of the EU budget tends to be of interest chiefly to specialists. Insofar as EU citizens engage with this subject at all, they routinely overestimate the proportion of the MS's budget allocated to the EU, with UK citizens perceiving that 7% of their taxes are spent on the EU, against the accurate figure of 1% (YouGov, 2014). Given the extent of the overestimate of MSs budget contributions, it seems reasonable to suppose that any move to increase them would be politically charged - a view reinforced by the hostile reaction to the Commission's 2014 request for 'top up' payments from Italy, the Netherlands and the UK (Euractiv, 2014). Whilst this, in itself, points to *size of budget* as a robust indicator of political salience, this is reinforced by the context in which this research was undertaken: the financial crisis affecting both Eurozone and non-Eurozone MSs. The subsequent austerity measures

adopted across the EU have included benefit cuts, tax rises and reductions in the minimum wage, leading to real hardship for many EU citizens (Bistis, 2013). In 2014, one third of EU citizens cited the economic situation as the most important issue facing the EU, followed by unemployment and public finances (Eurobarometer, 2014). Given the strength of public opinion, it seemed apparent that the size of budget allocated to an EU policy area was a good indicator of its political salience for the process comparison.

### 3.9 Data collection - group/actor and process transparency.

At the group/actor level of analysis, the aim of the interviews was to understand participant's views concerning transparency both in general and in relation to a particular issue (A2). The purpose of asking interviewees for their general views concerning the purpose of transparency was to determine whether the existing transparency tools meet that purpose. To illustrate, the features of an online transparency tool designed to increase participation (ease of use; multiple access points) are quite different from one designed to increase trust in an organisation (completeness of information; independent scrutiny process).

The rationale for asking interviewees about transparency of the JTR was that it allowed participants to give responses in relation to a concrete example, and thus to provide a depth of insight that overcame transparency's 'almost quasi-religious significance' (Hood, 2006), a point reinforced by one interviewee:

In a sense "transparency" has become a buzzword that is meant to bridge the gap between citizens and what happens here [in Brussels]...but for the institutions, it's an idea...that through transparency people might start to love us [Interview 6 - societal actor].

The JTR was selected as this concrete example because the issue concerning whether registration should be voluntary or mandatory had proved divisive since its launch. The public positions of the Commission and EP were polarised, and some societal groups were presenting this as a totemic transparency issue (Greenwood, 2011)<sup>15</sup>. It thus provided a useful and timely means to consider differences between actors' understanding of the role of EU transparency (A2) (S2).

For the process level of analysis, the purpose of the interviews was to investigate whether the public picture concerning the appointment process and conduct of EG meetings accurately reflected the experiences of those involved. In addition, the interview with EG members would provide the first empirical data on the experience and motivations of the individual members of Commission EGs.

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<sup>15</sup> See, for example, campaigns by ALTER-EU; CEO; Friends of the Earth Europe all campaign for a mandatory transparency register.

In terms of arranging interviews, societal actors generally proved willing and flexible participants, and there were few access difficulties. Access was far more problematic with regard to MEPs and Commission EG members, however. The next section explains the methods used to gain access to these 'hard to reach' groups. As working practices vary between these groups, this section is subdivided into the relevant actor types.

- MEPs.

Although it was necessary to identify and target individuals from different groups, it was clear that MEPs have very full diaries and that access would be challenging. Consequently, identifying and approaching relevant MEPs took priority. Consideration was given to contacting all 754 MEPs in an attempt to maximise the response rate, but it was considered that little would have been gained by sending speculative requests for interviews to MEPs with little or no obvious interest or experience in issues around transparency. As Dexter found in his study into the US Congress, political representatives are '...free professionals who can choose their own job definitions and role emphases' (Dexter, 2006, p.21). So, whilst the EP has an official position on transparency, it is clear that some MEPs have quite different views or are unconcerned about this issue. Equally, some MEPs with an apparent interest in issues around transparency may only be interested in the subject as it applies to a particular national setting.

To that end, a four stranded strategy was devised to identify the main transparency actors amongst MEPs. Firstly, the EP website was used to break down the membership of those committees likely to have a particular interest in transparency. These included the *Constitutional Affairs Committee*; the *Petitions Committee* and the *Civil Liberties, Justice and Home Affairs Committee*. Next, using the techniques employed by professional interest representatives, priority was given to targeting the Chair, Rapporteur and Shadow Rapporteur of these committees. For the second strand, the original intention had been to ask a representative of a societal group for the names of MEPs with which they had the most dealings as this was likely to be a strong indicator of an interest in transparency issues. This was problematic, however, as such a group tend to be self-selecting: those MEPs with whom transparency advocates had most dealings, whilst likely to be well informed, interesting and willing interviewees, were also likely to have a more pro-transparency stance than those MEPs that did not deal with societal groups. To address this, the question to the societal representatives was phrased in such a way as to invite them to identify their 'heroes' and 'villains' amongst MEPs interested in issues around transparency. This term was used by one participant to describe transparency advocates and opponents amongst officials and elected representatives. It was therefore used as a means of identifying participants with an interest in transparency but also to ensure a mix of views. A third strand involved asking a former MEP - instrumental in the

negotiations around the introduction of the high profile JTR - for an introduction to those former colleagues that had also been closely involved with the initiative. The final tactic involved adopting a snowball technique so that, during the course of an interview, an MEP was asked which of his or her colleagues had a particular interest in this area. This did not prove very successful, however, as usually the same names recurred, although this did at least suggest that the right people were being approached.

The process of arranging interviews was an ongoing one, in that interviews were undertaken whilst still arranging others, a process which proved advantageous on some occasions. Any process of identifying and gaining access to elite participants calls for 'a mixture of ingenuity, social skills, contacts, careful negotiation and circumstance' (Odendahl & Shaw, 2002, p.305), and this is true when arranging interviews at the EP. Given the number of demands on MEPs' time it was clear that a considerable degree of persistence would be required. This view was confirmed through discussion with a personal contact in the EP who suggested that a combination of perseverance and name dropping would prove most effective. Here some judicious interview management proved useful. For example, an early interview with a former MEP provided an opportunity to ask for some guidance as to effective strategies for getting access to his former colleagues and also to get permission to use his name in correspondence.

To improve the chances of a positive response, interview requests to MEPs adapted the approach explained during an early interview with a professional public affairs representative. This interviewee described how the firm s/he worked for used a standardised protocol, with requests for meetings followed up using a variety of means [Interview 14 - Interest group representative]. Applying this, a planned approach was used to request interviews. This is indicated at figure 3.6 below:

**Figure 3.6 - MEPs interview request protocol.**

Day	Method	Benefit of method	Disadvantage	Include
1	E-mail	Immediate. Cheap.	Easy to delete. Filtering by staff so request may not reach MEP.	Tailored request based on MEPs committee interests etc
7	Follow up e-mail			As above but state that it is a follow-up
14	Hard copy letter both by post and Fax	Personalised. More likely to get filed than deleted.	Expensive. Slow (hard copy). Fax seems antiquated (but is still used by lobbyists because seen as more effective than e-mail)	Handwritten salutation and signature block. Include more detail of my research interests and show how this dovetails with MEPs work. Include statement that I will phone office on a specific date (approx. 7 days hence).
21	Telephone	Immediate, more likely to elicit response.	Probably dealing with MEP assistant. Possible language barrier.	That this is a follow up to fax/letter/e-mail requesting interview.

By employing this multi-strand approach, interviews with nine MEPs from the target list of fifteen were arranged. Unsurprisingly, however, coordinating MEPs' diaries is no easy task, and these interviews took place over the course of five visits to Brussels in the spring and summer of 2012. Given the possibility that interviews arranged with MEPs might be cancelled at short notice, each visit also included interviews with other participants including Commission officials, lobbyists and, in particular, representatives of societal groups or NGOs, as these groups tend to be more flexible around interview times.

- EG members.

During the pilot study, it became apparent that contacting individual expert advisers - even those based in the UK - would also be challenging. Where individuals represent national administrations, the EGR simply annotates the name of the organisation. As a result, efforts to contact an individual at the Welsh assembly were stymied as the only information available was the name of the Commission EG the individual attended; information not held by the switchboard operator, who was only able to connect to a named individual. When contact with representatives of national administrations or agencies was made, it was apparent that the individual expert policy advisers were more engaged with their particular areas of expertise than with the institutional settings in which they delivered their policy advice. To illustrate this point, a representative of a UK-based agency acknowledged that s/he attended '...a meeting in Brussels now and then', but was unaware that this was an EG meeting [Interview 2 - EG Representative].

A number of strategies were employed to contact and arrange interviews with EG members. The majority of these interviews were conducted with individuals advising the Commission in the policy areas used as case studies for the process section of this project. Initially, the names and professional affiliations of those members of the first case study - the *Insolvency* group - were appended to an Excel spreadsheet. Where possible, e-mail addresses were established and an initial e-mail sent requesting an interview. Ideally, follow up requests would have followed a set protocol (as in figure 3.6). However, most members' contact details were often unavailable. Fortunately, an early respondent - a UK-based academic and practitioner - contacted the Commission official involved in establishing and administering the group who, in turn, agreed to forward e-mails to all group members. As a result of this, 13 interviews with members of the *Insolvency* group were undertaken in late 2012, representing 60% of the members plus the responsible Commission official. Six of these interviews were conducted in person in London or Brussels, with the remainder conducted by telephone. Participants were a mix of judges, senior legal practitioners and academics drawn from eleven MSs, both new and old.

Identifying individual members of the second case - the *Erasmus for All* EG - proved even more difficult, as some members represented national governments or organisations, so the Commission's EG register does not give details of the names of individuals appointed in this way. The first approach involved accessing the publicly available results of the previous calls for *Erasmus* experts. This entailed a search through the archives of the website of the Commission's Education, Audiovisual and Culture Executive Agency (EACEA). Whilst this yielded the names of approximately 300 national *Erasmus* experts appointed in 2011, it did not reveal the nationalities, contact details or other information concerning the individuals. Some of these *Erasmus* experts were identified using the websites of national education authorities although, as these were seldom available in English, this proved extremely time-consuming and was largely nugatory effort. A more successful approach involved approaching a contact in a UK-based education authority who agreed to forward an e-mail to other members of the *Erasmus* group. This led to nine telephone interviews representing approximately 32% of the *Erasmus* group members drawn from six MSs.

To augment the interviews with those experts advising specifically in the areas associated with this project's case studies, twelve interviews were conducted during 2012 and 2013 on an opportunity basis with members of other EGs advising different DGs in a number of other policy areas. Taken together, 31 interviews were conducted with EG members from across fourteen MSs.

### 3.10 Conduct of interviews.

Although participants had different backgrounds and professional roles, each met Riesman's (1964) criteria of a non-standard interview, in that the interviewee had a greater understanding of a particular aspect of the knowledge area than the interviewer. In total 63 interviews were undertaken for this project. Participants included representatives from the Commission (permanent officials, seconded civil servants and Commission experts); the EP (MEPs and EP officials) and outside groups (NGOs, public affairs bodies and journalists). 41 interviews (65%) were conducted face to face, with the remainder conducted over the telephone. Most face to face interviews were recorded, and here responses were transcribed verbatim. Where recording did not occur, notes were taken instead.

Interviews with MEPs were all conducted in private in their offices at the EP. The average length of interview with an MEP was 40 minutes, although one took only 20 minutes and several over an hour. Odendahl and Shaw suggest that 'interviewing people who are accustomed to exercising power and imbued with elite social status calls for particular strategies on the part of the interviewer' (2002, p.311). They suggest that the dynamics of interaction play out in various ways and this was certainly

the case for this research project. For example, a number of MEPs attributed the tone of the correspondence requesting an interview to their subsequent agreement to see me. This suggests that a deferential approach is likely to increase the positive response rate, but it also risks undermining the power relationship so that the interviewer approaches an interview 'like a supplicant granted audience with a dignitary' (Thomas, 1993, p. 87).

There was a marked contrast in the nature of the interviews with societal actors. Here, interviews were generally conducted in a public space. The average length of meeting with societal group representatives was 80 minutes, although some were completed more swiftly and one went on for over two hours. Without exception, the researcher was expected, the societal groups involved had usually prepared some documentation and interview participants seemed genuinely pleased that research was being undertaken in an area in which they have a campaigning interest.

It is difficult to be sure how the relative age of participants affects the nature of the interview, simply because it cannot be controlled. Wenger (2002) suggests that a big age differential, where the researcher is significantly younger than the interviewee, can make it difficult for the interviewees to be taken seriously. Odendahl and Shaw, by contrast, suggests that interviewees are likely to be more candid with younger interviewers, possibly because they discount their capacity to use the information (2002, p.312). Here the initial assumption - that being of a similar age to the majority of my interviewees may be an advantage - was probably misplaced: it was of no benefit in arranging interviews and may have resulted in less candour on the part of the interviewee.

### 3.11 Coding scheme.

At the start of each interview, participants were reminded that the context of the research project was an analysis of the effectiveness of measures taken to increase the transparency of EU policy making. Documentary analysis had shown that the term 'transparency' was used in a wide variety of contexts and linked to complex and cross-cutting themes. These included common *European identity; citizen participation; democratic accountability* and *anti-corruption*. The documents coding protocol therefore seemed to show transparency to be a panacea. This provided the rationale for the first interview question, with participants asked to explain the purpose of transparency. The initial coding scheme assigned the responses to one or more of the conceptual themes explored in the transparency literature and these themes were used as indicators for the purpose of transparency. The literature regarding these themes is discussed in detail in chapter two, but - for brevity - they are listed at figure 3.7 below together with examples of the relevant academic work in each area:

**Figure 3.7 - Summary of transparency and related concepts.**

Transparency and its related concept	Associated with
Transparency and Accountability	Meijer, 2012; Power, 2003
Transparency and Democracy	Birkinshaw, 2006; Heald, 2006
Transparency and Governance	Hood, 2006
Transparency and Legitimacy	Curtin & Meijer, 2006; Meijer, 2012
Transparency and Participation	Welch, 2010;
Transparency and Trust	Grimmelickhuizen, 2012

### 3.12 Ethical considerations.

Given the background and experience of the interview participants, few ethical concerns regarding the conduct of the interviews were predicted. However, although the subject area appeared non-controversial, it became clear that measures to safeguard the identification of participants should be considered. This was an issue for the EG members in both cases, but particularly so for the fairly small *Insolvency* group as many of the members knew one another well. For legal practitioners in this group, identifying an individual may have inadvertently breached client confidentiality. To address this, participants were informed that all information would be anonymised and any direct quotes would be non-attributable. This posed a practical difficulty, however. Because this thesis sought to understand how transparency measures serve the interests of different groups of actors (A2), it was clear that there would need to be some means of indicating an interviewee's professional role. For the most part this was straightforward, with the participant simply referred to as 'academic' or 'lawyer'. However, two interviewees from the *Insolvency* group were very senior legal professionals - one a British Queens Counsel (QC) and Circuit Judge and the other a Judge at the European Court of Justice (ECJ). Whilst maintaining the anonymity of these participants was important, these were the only two judges on this expert group. It was not possible, therefore, to refer to them by their professional title. Consequently, the decision was taken to use the blanket term 'lawyer' for all legal professionals, regardless of the seniority of the individual concerned.

The selection of case studies also raised some ethical considerations. It was initially considered that academics would be more likely to respond positively to requests for interview, and so priority was given to identifying EGs with a high number of academic members. However, the Commission frequently appoints larger numbers of academics to those groups that devise an EU response to a sensitive and urgent issue - people trafficking, for example - or to a sudden human crisis. So, despite the high proportion of academic members, these groups were not approached, to avoid potentially distracting individuals involved in such work.

A further issue arose during an interview with the organiser of a societal group which campaigns for greater transparency of EU policy-making. Over the course of several meetings, it became apparent

that the interview participant had assumed that the interviewer - rather than being neutral - shared the participant's political agenda. This presented something of a dilemma for the interviewer as the societal group concerned was a valuable source of information and disabusing its representative of this view may have closed off future access. Following discussion with the individual concerned, it was agreed that the interviewer would continue to have access to the group and, in return, draw its attention to any irregularities identified in researching the electronic registers.

In terms of retention of data, all interviewees' personal details together with interview transcripts are retained on the University's password-protected system. Due to equipment limitations, it was not possible to transfer digital recordings to the password protected system. However, the recording device is retained in a locked container within the University's postgraduate research centre. As part of the consent process, participants were informed that the data would be held until completion of all research outputs. It is intended, therefore, to retain interview transcripts and related documentation in order to refer to these when preparing sections of this thesis for subsequent publication.

### 3.13 Conclusion.

This chapter has explained and justified the decisions taken concerning the research methods employed for this project. It has discussed that in analysing transparency through three lenses - institutional, actor and process - the thesis' aims based on a series of initial suppositions together address the project's central research question: how and why is the expert advice used in the EU's policy process made transparent? The chapter has discussed the rationale for undertaking a series of elite interviews and why this was a suitable data-gathering instrument for this project. It acknowledges that this type of research poses particular challenges for the researcher and discusses the decisions and measures taken to address these challenges. Finally, the chapter discusses the ethical issues considered in advance of the research and explains the measures taken to address the unanticipated ethical problems that arose during the data gathering phase. The next chapter examines the changing nature of transparency as a concept and maps these conceptual changes to enhancements in transparency at the EU institutions.

## Chapter 4. Transparency as a changing concept.

### 4.1 Introduction.

This chapter presents transparency as an evolving and amorphous idea. The first section traces the changing concept of transparency through the academic literature, showing that the term has evolved in both meaning and breadth, resulting in a number of useful conceptual models. The second section traces the evolution of EU transparency from the early 1990s to the launch of the JTR in 2011, showing that as the term ‘transparency’ is used so variously there is no single ‘ideal’ conceptual model, rather that a variety of conceptual lenses are needed. The final section discusses the role of transparency advocates in championing the JTR and introduces the notion of a ‘monitocracy’: a group acting as both transparency advocate and monitor. It argues that, rather than providing a thorough and impartial scrutiny process, such groups allocate their limited resources to reflect the groups’ political or ideological aims.

Through its analysis of transparency as an evolutionary process, this chapter contributes to the project’s central research question: how and why is the expert advice used in the EU’s policy process made transparent? It maps the changing nature of EU transparency, showing that, in its early incarnation, it was used as a set of ‘tidying up’ measures to formalise *ad hoc* consultation arrangements. Over time and in parallel with advances in technology, transparency has broadened in scope and it is now seen as the way to provide citizens with the means to both observe the policy process and to contribute to it: a distinction Meijer, Curtin and Hillebrandt refer to as ‘vision’ and ‘voice’ (2012, p. 10). By showing the changing nature of transparency, this chapter shows that no single, static set of indicators are appropriate for answering this project’s central research question, but that these will vary with context and meaning. Thus this chapter establishes the basis for the three-stage analysis conducted chapters five, six and seven.

### 4.2 Distinction between transparency and openness.

At the outset, this chapter posits that EU politicians and policy makers consistently use the terms *transparency* and *openness* as verbal cues to describe good - or modern - governance. In the public discourse the terms are often used interchangeably, generally presented as given positives, and framed accordingly<sup>16</sup>. As such, their underpinning concepts have become rather blurred, with little public discussion of the nuanced relationship between *transparency* and its conceptual siblings, *scrutiny* and *surveillance*.

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<sup>16</sup> To illustrate, the website of the UK’s Parliamentary and Health Service Ombudsman makes frequent reference to being ‘open and transparent’ as does that of the Intergovernmental Panel on Climate Change.

Although the terms are often used together, some scholars draw a distinction between transparency and openness (Larsson, 1998; Birkenshaw, 2006). Larsson (1998), for example, suggests that openness refers to the provision of information, whilst transparency extends beyond this as a measure of the usability of this information. Heald (2006, pp. 25-26) offers two explanations. Firstly, that the terms mean the same thing but are aimed at different audiences, with openness a more accessible term for non-specialists. Alternatively, he suggests that transparency has simply become the 'contemporary term of choice' (2006, p.25). Certainly, it appears that the use of the term 'transparency' has increased. It is telling, for example, that - when it was created in 1995 - the UK's *Committee on Standards in Public Life* established 'openness' as a core principle, but made no reference to 'transparency' (Nolan, 1995). By contrast, a 2015 search of the central UK Government website showed more than 6000 pages making reference to 'transparency' (HM Government, 2015). This increased usage supports Hood's (2006, p.3) view that, as a term, transparency has 'attained quasi-religious significance' in the discourse around modern governance.

In terms of the EU transparency tools used in this study, the two terms appear to be used interchangeably with the open data forum hosted on the transparency portal. Given that there is no common agreement on the difference between the two terms, this study draws no distinction, using transparency and openness as synonyms.

#### 4.3 Directions of transparency model.

In Heald's (2006) 'directions of transparency' model discussed in chapter two, he advances the notion that transparency operates across both vertical and horizontal planes. To briefly reiterate, in this model, upwards vertical transparency refers to the capacity of a hierarchical superior to observe the actions of a subordinate, whereas downwards vertical transparency relates to the ability for the 'ruled' to observe the conduct and behaviour of their 'rulers'. Here Heald is presenting transparency as a principal/agent relationship in which the agent has the capacity to hold the principal to account.

On the horizontal plane, Heald distinguishes between 'outward' and 'inward' transparency. The former describes the capacity for an agent to observe what is happening outside the organisation, whilst the latter applies to the ability of an actor to observe the organisation from within.

#### 4.4 Dichotomous models.

Some scholars present contrasting transparency types (Heald, 2006; Meijer, Curtin & Hillebrandt, 2012; Drew & Nyerges, 2004). In Heald's dichotomous models, he firstly distinguishes between

'event transparency' and 'process transparency' (2006, p.30). Following a standard framework, event transparency describes the visibility of measurable inputs, outputs and outcomes, whilst process transparency relates to the visibility of the linkages between these. Distinguishing between the two in terms of EU policy-making is rather difficult, however. To draw on an empirical example examined for one of the case studies presented in chapter seven, the EP's draft amendments to a Commission proposal on *Cross Border Insolvency* [Com (2012) 0744] are readily accessible through links on the Europa website and through the EU's legislative observatory. In Heald's event/process model, it is unclear whether these draft amendments should constitute events in themselves, or be considered part of the process of the total legislative outcome. Furthermore, whilst the legislative stages can be tracked (constituting, say, process transparency), the 'process' here simply refers to the mechanical legislative procedures, whilst neglecting the detailed (and often invisible) negotiations.

Heald's second distinction is between 'retrospective transparency' and 'transparency in real time' (2006, p. 33). The former refers to the release of information at set times, such as the annual publication of school performance tables or the results of the UKI's National Student Survey (NSS). The latter relates to information provided continuously, such as live market data or journey planners. There are, of course, circumstances where transparency is necessarily provided retrospectively rather than in real time: in order to deny market sensitive information to currency speculators, for example. But again, applying this model to the Commission proposal outlined above is not without problems. If meeting minutes, legislative amendments and so forth are published online after the event, this would seem to constitute retrospective transparency, whilst real time transparency would involve public access to the meetings themselves or attendance at the EP to observe the legislative negotiations. This raises the intriguing issue of whether a Europarl TV's broadcast of a committee negotiation is real time transparency when broadcast live but retrospective transparency when repeated.

Heald's third distinction is between 'nominal' and 'effective' transparency (2006, p. 30). Nominal transparency relates to the provision of information in a form selected by the provider. This may accentuate the positive to create a false impression or simply be impenetrable. For transparency to be effective in this situation, it needs 'receptors capable of processing, digesting and using the information' (Heald, 2006, p.35). This nominal/effective distinction is made elsewhere in the literature, with other scholars advancing the notion that, in analysing the effectiveness of transparency, the nature of the provision of the information is as important as the information itself

(Mahler & Regan, 2007; Drew & Nyerges, 2004). This is explored in some depth in chapter five's analysis of institutional transparency.

Other scholars present dichotomous models that distinguish between transparency's dual roles in acting as a provider of information that allows citizens to observe the activities of government and as a means for citizens to have their opinions heard and to become involved. There are different conceptualisations of these twin functions, with distinctions drawn between transparency's 'informational' and 'participative' functions (Meijer, Curtin & Hilenbrandt, 2012, p.10; Lathrop & Ruma, 2010), and its role in providing 'vision' and 'voice' (Curtin & Mendes, 2011).

#### 4.5 Functional models.

Academics taking a functional approach differ in their views as to the measure of effective transparency. Drew and Nyerges (2004), for example, distinguish between the 'quantity' and 'completeness' of information, arguing that the latter is the appropriate measure of its effectiveness, whilst Mahler and Regan (2007) argue that the 'usability of information' is the best indicator of effective transparency. In the context of this thesis' analysis of the electronic provision of information to the public, Mahler and Regan's approach seems particularly apposite. Transparency providers may exploit rapidly evolving information systems to render increasing amounts of data easily and swiftly accessible. They may, however, provide so much information that transparency can overload those it purports to serve so that the '...expected benefits [of transparency] do not materialize because the receptors have been disabled by overload' (Heald, 2006, p.41). Perez (2009, p.55) neatly describes individuals subject to online information overload as being 'lost in hyperspace'.

#### 4.6 Summary of models.

Clearly, a variety of models are available for conceptualising transparency. However, as chapter five shows, in the EU the function of transparency varies widely between - and within - the institutions. As a result, no one conceptual framework is sufficient for measuring the effectiveness of transparency, nor is a single typology appropriate for this project's purpose. Rather, the distinctions provided in literature are used as a menu to analyse the impact of the EU's 'complex dynamics of transparency' (Meijer, 2012, p.429). To reduce the scope for confusion, figure 4.1 below shows the main delineations discussed in the transparency literature.

**Figure 4.1 - Delineation of effectiveness of transparency.**

Varieties/typologies of transparency	Associated with
Directions of transparency ( vertical and horizontal planes)	Heald, 2006
Event v Process transparency	Heald, 2006
Retrospective v Real Time transparency	Heald, 2006
Nominal v Effective transparency	Heald, 2006
Transparency measured by completeness of information	Drew and Nyerges, 2004
Transparency measured by usability of information	Mahler and Regan, 2007
Participative and Informational functions of transparency	Meijer <i>et al</i> , 2012
Transparency as a facilitator of vision and voice	Curtin and Mendes, 2011

The second section of this chapter maps these different concepts to the changes in the scope of EU transparency, from the Single European Act to the launch of the 2011 JTR.

#### 4.7 The lineage of the JTR.

Introduced in 2011, the Commission and EP's JTR was one of a series of initiatives intended to increase the transparency and accessibility of the EU policy process. By placing the JTR in its timeline, this section shows the evolution of EU transparency from its slow beginnings in the 1990s through a swifter and accelerating set of changes that mirrored advances in technology. The section shows that particular events, including a series of controversies at the European Commission, the publication of the EU's White Paper on Governance and the introduction of the European Transparency Initiative, established an environment that minimised resistance to the introduction of the JTR.

#### 4.8 From SEA to Maastricht.

Signed into law in 1986 and brought into effect the following year, the Single European Act (SEA) represented the first major revision of the 1957 Treaty of Rome. One of the consequences of the introduction of a single market was to create a significant rise in the numbers of Brussels-based lobbyists (Mitchell, 1995). By the early 1990s, the Commission estimated that Brussels was home to 3000 special interest groups employing over 10,000 individual lobbyists (European Commission, 1992). In particular, the periods between the SEA and the Maastricht Treaty saw the development of the practice of outsourcing lobbying activities to professional companies - independent consultants lobbying on behalf of clients.

It is in this context that, in 1992, following the Danish rejection of the Maastricht treaty, the Delors' Commission undertook a review with the intention of introducing a number of measures to increase the transparency of EU decision making. Peterson (1995) argues that the original - highly political - purpose of this review was to expose the secrecy of national governments within the Council of

Ministers. Increasing EU transparency was a means to expose and diminish the practice of MS governments avoiding domestic unpopularity by apportioning blame for unpopular decisions to 'Brussels'. Through its life cycle, however, the review became the means through which the Commission's acute management failings could be addressed. Thus transparency would deal with the bureaucratic fragmentation, the skewed loyalty of Commission officials to their own DGs and 'clientele' and the lack of clear rules concerning access to information such as de facto black market in information, including instances where:

The Secretariat-General had uncovered cases of internal commission documents being bought and sold or taken from Commission offices by lobbyists (Peterson, 1995, p.476).

Although undemanding by the standards of later measures, the transparency package included a means of systemising the Commission's consultation with interest groups, a notification procedure so that interested parties were given advance warning of Commission policy initiatives, and a more coherent consultation process:

For the people who work the Brussels circuit, consultation is not really a problem...it's just hard to keep track of what is on the Commission's agenda (Hull, 1993, cited by Peterson, 1995, p.472).

#### 4.9 Early transparency proposals.

In 1992, the Commission published *An open and structured dialogue between the Commission and special interest groups*, which acknowledged its long standing relationship with interest groups and proposed, for the first time, a registration process.

The Commission has in particular a reputation for being accessible to interest groups and should of course retain this ease of access. Indeed, it is in the Commission's own interest to do so since interest groups can provide the services with technical information and constructive advice. The present communication arises from the belief that by placing these relations on a slightly more formalized footing the Commission will make them more transparent to the benefit of all concerned (European Commission, 1992, p.1).

In addition to formalizing the hitherto rather *ad hoc* relationship between the Commission and interest groups, the document also proposed the creation of a Code of Conduct to operate between the Commission and interest groups and the introduction of a set of measures to increase the Commission's transparency. These transparency measures were, however, fairly minor. They included, for example, bringing forward the publication of the Commission's work programme and publicising the existence of certain databases. Given that these measures were not particularly onerous, they can perhaps be seen as a *quid pro quo* for the far more significant measure at the heart of the Commission's proposal - the creation of a register of interest groups.

The Commission's proposal set out a suggested format for the register, including the provision of the following information:

- Name and contact details of the organisation;
- Date of foundation and legal structure;
- Names of senior officials;
- Names of member organisations;
- Objectives of the organisation.

Interestingly, the Commission proposal suggested that, whilst the creation and maintenance of the register could be outsourced to the private sector, entries should be supervised by the Commission itself. Inclusion on the register would not, however, confer any particular recognition or privileges - a caveat that was to be again emphasised in the establishment of subsequent registers.

#### 4.10 The Santer Commission.

In 1998, Paul van Buitenen, a Dutch member of the EU Commission's financial control unit, contacted a number of MEPs alleging widespread fraud in the Commission's accounts. Immediately suspended by the Commission, Buitenen subsequently informed the media:

I found strong indications that...auditors have been hindered in their investigations and that officials received instructions to obstruct the audit examinations (BBC, 2002).

In December 1998, as a result of van Buitenen's statement, the EP refused to discharge the Commission's accounts citing the withholding of information on fraud and mismanagement. The EP proposed a vote of no confidence in the Commission - a vote, Topan argues, always intended to show support to, rather than overthrow, the Commission (Topan, 2002). Nonetheless, once the motion had been rejected, the EP established a Committee of Independent Experts to report on the allegations. Whilst the report, published in March 1999, did not identify any instances of individual Commissioners benefitting personally from fraudulent activity, it did find:

instances where Commissioners or the Commission as a whole bear responsibility for instances of fraud, irregularities or mismanagement in their services or areas of special responsibility (Committee of Independent Experts, 1999, p.137).

Following publication of the report, the Commission resigned *en masse*, an act that, for Lequesne and Rivaud (2003) is evidence that it accepted the moral judgement of the Committee, a view rather at odds with Santer's response at the time:

I consider the tone of the report's conclusions to be wholly unjustified. We have taken our responsibilities, even if we judge the report to be unbalanced (BBC, 1999).

It is interesting to consider whether it was the impact of the resignation of the Santer Commission alone that provided the impetus for subsequent transparency reforms. Cini (2008), links the resignation to the introduction of the Commission ethics unit, arguing that the Commission had shown little interest in regulating the ethics of its officials prior to the resignation. Whilst this may be so, it does not explain the relative speed with which the new Commission moved to bolster its transparency credentials.

#### 4.11 Aftermath of the Santer resignation.

Viewed from the MSs, the resignation undoubtedly led to a loss of the Commission's credibility. The British periodical, *The Economist*, reported at the time:

Members of the resigned commission face a hail of derision from parliaments and journalists in much of Europe (*The Economist*, 1999).

However, the Commission frequently received hostile coverage in a number of the MSs, so it seems unlikely that the subsequent transparency reforms can be explained simply as a reaction to the Commission's loss of credibility resulting from the resignation. Rather, it is suggested, the timing of the resignation was at least as important here: the Commission was left neutered at a critical period - the Kosovo crisis was ongoing, the Rambouillet peace negotiations had stalled and the NATO operation against the Republic of Yugoslavia was about to begin. Nonetheless, following the Commission's resignation, the pace of transparency reform undoubtedly quickened. Attributing this directly to the Santer crisis would be too simplistic, however, not least because a number of the Commission's transparency initiatives were already underway prior to the publication of the independent expert's report, including its proposal on public access to documents.

#### 4.12 Right of access to documents.

Although published in early 2000, the Commission's proposal on the right of access to documents (2000/0032 COD) was not a response to criticism following the resignation of the Santer Commission, but a legislative requirement of the 1997 Treaty of Amsterdam. Article 191a of the treaty, which came into force in May 1999, stated that:

Any citizen of the Union...shall have a right of access to EP, Council and Commission documents...within two years of the entry into force of the Treaty of Amsterdam (European Commission, 2015a).

However, although the resignation of the Santer Commission does not link directly to the access to documents directive, it is the case that the EP rejected many aspects of the Commission’s original proposal as too weak. It is therefore intriguing to consider whether, in the aftermath of its involvement in the Santer Commission’s resignation, this reflected an enhanced willingness on the part of the EP to challenge the Commission’s authority.

Published on 26 January 2000, the Commission’s original legislative proposal on the right of access to documents was submitted to the EP’s Civil Liberties, Justice and Home Affairs Committee (Michael Cashman MEP, Rapporteur). In its first reading in Committee, a number of points were raised including, interestingly, that the title of the regulation should be amended to include a reference to improving transparency in the working methods of the EU institutions (Europarl, 2015). The proposal proceeded through the legislative process during the 2000 and early 2001, with the Commission’s modified version published on 28 May 2001. Whilst it is not considered necessary to undertake a detailed analysis of the various amendments proposed at the different stages of the legislative process, a brief illustration is useful to demonstrate the capacity of online tools to track the legislative procedure. The examples below provide some sense of the different priorities at the Commission and the PEP.

**Figure 4.2 - Definition of the term ‘document’.**

<b>Original Commission proposal - Jan 2000</b>	<b>Parliament proposals - Oct 2000</b>	<b>Commission’s modified proposal - May 2001</b>
Any form of content irrespective of the medium on which it is carried...excluding documents expressing individual opinions or reflecting free and frank discussions or the provision of advice as part of internal consultations and deliberations, as well as informal messages such as e-mail messages which can be considered as telephone conversations.	Any form of content except for any informal information in the form of written messages which serves the provision of personal opinion or the free exchange of ideas (“brain storming”)	The restriction on access to documents for internal use, such as discussion documents, opinions of departments or informal messages, removed but included to protect documents for internal use, before a decision is taken.

**Figure 4.3 - Time limit for dealing with applications.**

<b>Original Commission proposal - Jan 2000</b>	<b>Parliament proposals - Oct 2000</b>	<b>Commission’s modified proposal - May 2001</b>
One month time limit from application to response. This could be extended provided applicant was informed in advance and reasons given.	Two weeks limit from application to both response and provision of documents.	One month period reduced to 15 working days (as specified in Code of Good Administrative Behaviour for Commission Staff).

In terms of transparency of the legislative process, however, it is noted that a number of the EP's proposed amendments were not referred to in the Commission's modified amendment, yet were included in the final regulation. In terms of the transparency conditions, this would appear to suggest that the transparency of the legislative process is usable (Mahler & Regan, 2007) but not complete (Drew & Nyerges, 2004). Examples of this are at section 4.4 and 4.5 below:

**Figure 4.4 - Cost and procedures of application.**

<b>Original Commission proposal - Jan 2000</b>	<b>Parliament proposals - Oct 2000</b>	<b>Commission's modified proposal - May 2001</b>
The applicant to have access to documents either by consulting them on the spot or by receiving a copy. The costs may be charged to the applicant.	In the case of very large documents or a very large number of documents, the cost of making copies may be charged to the applicant. The charge has to be limited to a reasonable sum which will not exceed the real cost of production of the copies.	No mention

**Figure 4.5 - Language of documents.**

<b>Original Commission proposal - Jan 2000</b>	<b>Parliament proposals - Oct 2000</b>	<b>Commission's modified proposal - May 2001</b>
Documents to be supplied in an existing language version, regard being had to the preference expressed by the applicant.	Documents shall be supplied in the language version requested by the applicant.	No mention

In addition to illustrating the distinction between usability and completeness of transparency, the examples above also illuminate the distinction between the Event Transparency and Process Transparency (Heald, 2006, p. 30). The information cited above is drawn from the procedure file on the EP's website. This provides, in either full or in summary form, electronic versions of the original proposal, committee reports and votes in the EP relating to its legislative passage. The gaps in the example above, however, suggest that the process, whilst transparent in terms of the information supplied, is incomplete. This may reflect the opaque nature of an important aspect of the legislative process mentioned in the introduction to the Commission's modified proposal, published on 28 May 2001:

Following the informal 'trilogue' meeting convened to seek a compromise solution to Parliamentary amendments, the EP agreed to revise substantially its initial amendments to the proposed Directive as drafted following the first reading of the co-decision procedure (EUR-Lex, 2001b).

Although *ad hoc* in nature and therefore without a standard format or level of representation, the 'trilogue' (or 'trialogue') system establishes informal tripartite meetings attended by representatives

of the Council, Commission and EP to agree amendments acceptable to all parties *prior to formal agreement* (European Commission, 2015c - emphasis added). The Commission states that, whilst the nature of such meetings vary from the highly technical to the extremely political, they have a single purpose: to ensure Commission endorsement to EP amendments in order to prevent the Council from having to act unanimously (European Commission, 2015c).

Closed to outside scrutiny, the trilogue system has been characterised, variously, as ‘secluded decision making’ (Reh, Heritier & Bressanelli, 2013, p.1118) and as policy making ‘under the radar’ (De Ruyter, 2013, p.1196), with a number of scholars challenging the opaque nature of the trilogue system in terms of democratic legitimacy (Brandsma, 2013; Reh, 2014; Hansen, 2014). Similarly, during interviews for this study, several participants from societal groups raised the trilogue system as an issue:

[It] is outrageous - in terms of transparency I mean. It proves that it [the EU] is all about deals behind closed doors. How can the voters see it? They can't see it, so how can they know...how can they trust it? [Interview 10 - Societal Actor].

This hostility toward trilogues became evident in the comments made by a number of representatives from societal groups, and so the subject was specifically raised in subsequent interviews with participants at the institutions. Interestingly, whilst the lack of transparency was always acknowledged, the system itself was usually defended as a means of expediting the legislative process:

People get excited about this subject [trilogues] because they think it's all about deals. But it's just an informal meeting before a formal conciliation committee - it's the formal meeting that counts. I had a journalist here recently telling me that decisions are made at trilogue and it's all terrible and I just said "I think you're dead right mate and most members will say you're right too - until they start maybe wanting to negotiate with the Council when they'll suddenly see the benefits". [Interview 11 - MEP].

The trilogue system shows that it was both formal and informal processes occurring in the wake of the Santer resignation that led, eventually, to regulation 1049/2001. Simultaneously, however, a further transparency measure proposed by the Commission does appear to have been implemented as a deliberate response to the resignation and, significantly, drafted in such a way as to apply beyond the Commission to other EU institutions.

#### 4.13 The Kinnock reforms.

Following the resignation of the Santer Commission in March 1999, a six month interregnum Commission under the leadership of Manuel Marin acted in a caretaker capacity until, in September 1999, this was replaced by a new Commission under Romano Prodi. Prodi appointed Neil Kinnock as

Vice President in charge of administrative reform. Kinnock had been a transport commissioner in the Santer Commission, but had not been implicated in the report. As part of a series of ethical reforms undertaken as part of his new portfolio, he undertook to conduct a comprehensive and swift review of the Commission's management structure in order to:

Improve the public's perception of the European Commission after a year when scandal and mismanagement seriously tarnished its image (Kinnock, 2000).

Some commentators noted that Prodi's decision to appoint Kinnock to this administrative portfolio demonstrated a reform agenda both serious and urgent:

The situation is reminiscent of Mr Kinnock's purging of the Militant Tendency within the UK Labour party and his modernising reforms of the party in the 1980s (Kaboha, 2000).

Kinnock implemented one of the key recommendations of the Committee of Independent Experts by proposing the creation of an *Advisory Group on Standards in Public Life*. This put forward the creation of a group of five independent appointees charged with providing information on ethical standards across the institutions and, separately, a disciplinary office to deal with occasions when ethical standards were transgressed. Furthermore - perhaps in response to the Commission's initial reaction to Paul van Buitenen's communication with MEPs - the proposal included the creation of a "whistleblower's charter" (European Commission, 2001b).

The Kinnock proposals were published in a White Paper - *Reforming the Commission* - in March 2000. This document, and its associated action plan, consisted of 98 separate proposals across three policy areas, the majority of which were to be implemented within 12 to 18 months. As the bulk of the proposals in the document addressed issues concerning the management of Commission staff, including their training and conditions of service, it is unsurprising that the few mentions of transparency included in the document related solely to internal issues. As an example:

This new staff appraisal system must clearly be fair, transparent and objective (European Commission, 2015k, p.15 - emphasis added).

Here, then, the term 'transparency' is being employed as management shorthand to describe the openness of an internal management system rather than being used to describe the opportunity to scrutinise a process or an event from outside. Elsewhere in *Reforming the Commission*, however, the term was deployed in its broader sense as one of the five principles of good governance: *independence, responsibility, accountability, efficiency and transparency*. These principles, slightly

modified, were again employed in the White Paper on European Governance published the following year (European Commission, 2001a).

#### 4.14 The White Paper on Governance.

In October 2000, the Commission's work programme created twelve working groups to prepare a White Paper on European Governance (European Commission, 2001a). Each of these groups had a particular mandate such as *Better Regulation*, *Civil Society Participation* and *Trans-European Networks*. The groups reported independently in June 2001 and the White Paper was published the following month. Collectively, the White Paper proposed a series of reforms largely reflecting the recommendations of the reports of the working groups. Undertaking to facilitate greater citizen involvement, the White Paper states that the system of policy making 'must be more open and easier to follow' (European Commission, 2001a, p.4).

The White Paper's five political principles - *Openness*, *Participation*, *Accountability*, *Effectiveness* and *Coherence* - somewhat echo the principles set out in the previous year's White Paper and reflect an apparent shift away from binding regulation towards 'softer' policy instruments such as framework directives, co-regulation and cooperation. In its conclusion, the White Paper reiterated a number of measures of particular relevance to this study. These included the introduction of a Code of Conduct to improve the openness of the relationship between the EUs and civil society, and the opening up of a multi-disciplinary expert system that informs EU policy makers (2015e, p.33). Significantly, the conclusion acknowledges a potential barrier between a set of proposals and their implementation:

Carrying these actions forward does not necessarily require new Treaties. It is first and foremost a question of political will (European Commission, 2001a, p.33).

In raising this question of political will, the White Paper's conclusion acknowledges the potential for its proposals to be blocked or diluted at the institutional level. Similarly, it might be seen as a matter of agency in that individual 'veto players' might act to block or dilute reform (Cini, 2008, p.745), a point discussed in section 4.12. Equally, however, the reference to political will can be read as an appeal to individual politicians to champion the reforms within the institutions - in short, to act as policy entrepreneurs (Kingdon, 1984, p.151). Seen in those terms, the appointment of a new Vice President for Administrative Affairs, Audit and Anti-Fraud in 2004 was a crucial event in the evolution of EU transparency. It was not the only significant factor, however, a point raised in Cini's (2008) observation that events such as the Eurostat affair and the forced resignation of Marta Andreasen added to the impetus for introduction of further transparency measures.

#### 4.15 The Andreassen and Eurostat affairs.

In 2000, internal auditors raised a number of concerns around apparently fictitious contracts with outside companies. Although these concerns were raised with *Office de Lutte Anti-Fraude* - the EU's anti-fraud office - no action was initially taken. Whilst the majority of the irregularities were alleged to have occurred during the 1990s, they continued into the Prodi administration's tenure, threatening to taint the new Commission and perhaps explaining its sensitivity to the further exposure of wrongdoing. Further exposure was forthcoming, however, when Marta Andreassen<sup>17</sup> was the chief accountant to the European Commission. In 2002, she refused to sign off the Commission's accounts and was suspended over her public comments that she considered the EU's accounting system open to fraud.

#### 4.16 Barroso reforms.

Following the 2004 elections to the Sixth EP, the Council proposed Jose Manuel Barroso - former Prime Minister of Portugal - as Commission President. EP hearings took place during the autumn with the Commission approved in November 2004. It is perhaps understandable that one of the new Commission's priorities was to be seen to address the Andreassen and Eurostat issues, occurring as they did so soon after the publication of the White Paper. Accordingly, the Barroso Commission introduced a number of new initiatives, including the creation of an ethics unit within the DG Secretariat-General (DG SG).

It may appear somewhat contradictory that, despite a stated commitment to 'deregulation', (Rudda, 2005), the Barroso Commission regulated to introduce the ethics unit, although Vogel and van den Abeele (2010), suggest that this as an example of Barroso's 'better regulation' rather than 'deregulation'. Arguably, too, the introduction of the ethics unit - and the subsequent transparency measures that this engendered - allowed Barroso's new Commission to distance itself from its predecessor. Significantly, Barosso appointed the former Estonian Prime Minister Siim Kallas to the administration brief.

Some scholars have suggested that Kallas was initially stifled in his new role as his appointment coincided with the completion of the Kinnock reforms (Cini, 2008; Greenwood, 2011). This would seem to imply that Kallas's promotion of a new transparency programme might be seen as evidence of a new Commissioner keen to make an impact, although another view is that, by appointing a

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<sup>17</sup> Marta Andreassen was later an MEP for the UK Independence Party, but in 2013, defected to the British Conservatives.

Commissioner from a MS with a recent history of administrative reform based around openness and transparency, Barroso sought to add impetus to a shift towards transparency that was already underway. Both views find support in interviews conducted for this study:

Kallas made a lot of noise about transparency and he is so proud of it. But he had to make a lot of noise to get heard [Interview 12 – MEP].

His [Kallas's] appointment was Barroso's way of saying "Look at how committed I am to transparency that I give this to an Estonian". He was trying to show that Amsterdam [Treaty] meant something [Interview 23 – MEP].

#### 4.17 European Transparency Initiative.

In March 2005, Kallas outlined the European Transparency Initiative in a speech at Nottingham Business School. In the speech he stated:

Transparency plays an enormous role in promoting a more citizen-friendly EU and therewith helps to increase public trust towards the institutions (Kallas, 2005).

By linking transparency to public trust in this way, Kallas seemed to reinforce an assumed relationship between accessibility and legitimacy that had been stated in an earlier transparency regulation:

Openness enables citizens to participate more closely in the decision-making process and *guarantees* that the administration enjoys greater legitimacy (regulation 1049/2001 - emphasis added).

Kallas stated that the initiative was built on three assumptions. These are summarised below:

- That, whilst transparency is necessary and desirable, a fully open decision-making process denies policy-makers 'space for reflection'. Therefore, transparency procedures need to be agreed before the decision making process begins.
- That transparency is a means of gaining the trust of the public and legitimacy ensured when the institutions are transparent.
- That transparency protects policymakers against themselves by 'preventing human weaknesses to prevail'.

Kallas's speech focussed on only two aspects of EU transparency: financial accountability and personal and institutional integrity. Kallas discusses the extent to which information on the allocation of EU funds is publicly available, stating that he was 'amazed at the information gap' when compared against the situation in his native Estonia, where such information had been published on departmental websites for some years (Kallas, 2005). In terms of personal integrity, Kallas's speech stated that the Commission's Code of Conduct and Declarations of Financial Interests were of a high standard and might act as a template for other EU institutions and - indeed - MSs. He singled out

the EP's register of financial interests as being particularly weak. This register is examined in more detail in chapter five.

Perhaps the aspect of the Nottingham speech that has gained the most attention was the section dealing with the transparency of the non-public institutions involved in policy making. Whilst the speech does not criticise lobbying *per se* - indeed it states that lobbyists provide useful information to decision makers - it argues that the process lacks transparency. Crucially, in the light of subsequent events, Kallas observes that:

There is no mandatory regulation on reporting or registering lobby activities. Registers provided by lobbyists' organisations in the EU are voluntary and incomprehensive and do not provide much information on the specific interests represented or how it is financed. Self imposed codes of conduct have few signatories and have so far lacked serious sanctions (Kallas, 2005).

Here Kallas would appear to be arguing that the lack of transparency mitigates in favour of the creation of a mandatory register of lobbyists, although he also states that this lack of transparency also applies to NGOs, many of which receive funds allocated by the Commission which are then used to lobby the Commission:

People have a right to know how their money is being spent, including by NGOs (Kallas, 2005).

Some scholars have suggested that, in addressing the issues of NGOs in the speech, Kallas was signalling a change in the Commission's relationship with civil society groups (Heard-Lauréote, 2010; 2013; Greenwood, 2011). However, the intention behind the inclusion of NGOs in the speech may simply have been to draw a parallel with Kallas's view of the role of lobbyists. Seen in this way, Kallas was not being critical of NGOs involvement *per se*, but rather of their lack of transparency. Certainly, subsequent contact between Kallas and a number of campaigning groups suggest that he saw a continuing role for NGOs in the policy process. In that sense, the speech merely reflected the statement in the White Paper and, indeed, the 1992 *Open and Structured Dialogue* document:

Civil society must itself follow the principles of good governance, which include accountability and openness (White Paper, 2001);

By placing [interest group] relations on a slightly more formalized footing the Commission will make them more transparent to the benefit of all concerned (Open and Structured Dialogue, 1992).

#### 4.18 The JTR.

Cini's (2008) paper tracing the origins of the ETI shows the importance of agency in determining the shape and direction of broad policy initiatives. Her work examined specific transparency measures introduced under the auspices of the ETI, and identified the roles played by key individuals and groups involved. She categorises the actors in each measure as belonging to one of three groups: Agents of *change*, *advocacy* or *veto*. In the case of the JTR, Cini identifies in particular the roles as Commissioner (*change*), the societal group Corporate Europe Observatory (CEO)(*advocacy*) and public affairs [interest] groups (*veto*).

By breaking down the ETI and analysing some of its individual elements in this way, Cini's approach demonstrates one of the important features of the ETI: that it is not a single initiative at all, but rather a repository for many individual sub-initiatives. Many of these are cross-cutting at institutional or policy level, and so have different effects on individuals and constellations of individuals. In analysing the actors and groups involved in transparency, this rather clouds our understanding of agency, as an individual may simultaneously be a transparency advocate in one area, and a veto-player in another. This dual advocacy/veto role is illustrated in section 6.8 which discusses the Commission official who cited the citizens' initiative and one stop portal as evidence of the Commission's commitment to transparency, whilst simultaneously advancing the 'space to think' argument to justify closed negotiations.

This thesis posits that the EU has multiple transparencies, and employs a broad spectrum of measures to facilitate them. Any single transparency measure will have its own set of advocates and critics. So, for the JTR, the decisions that were taken around its implementation and the rules governing its operation simply reflected the relative strength of the groups involved. The shifting power relationships between these groups therefore determined the eventual shape of the register the protocols involved in registering.

Cini (2008) shows that the JTR evolved from the lobbying regulation element of the ETI and traces this to a letter sent in January 2005 from Eric Wesselius of CEO to the newly appointed Commissioner for administrative affairs in the first Barroso Commission. Greenwood's (2011) work on the lobbying regulation also identifies the Commissioner as a key actor, and suggests that, as a former Estonian Prime Minister, Kallas was particularly receptive to initiatives designed to further EU transparency and provide for it to more closely resemble the Estonian model. Greenwood describes Kallas's championing and becoming personally involved in steering the JTR through its legislative process and shows the increasingly close working relationship between Kallas and Wesselius.

Chabanet (2007) shows that the content of Kallas's Nottingham speech employed much of the tone and language of CEO's campaigning literature. In July 2005, Kallas attended the launch of ALTER-EU - CEO's sister group - and an increasingly close working relationship appears to have developed through the next two years, with ALTER-EU's founding document stating that it 'had built a confident working relationship with key EU officials' (ALTER-EU, 2015).

Chapter six considers the role of CEO/ALTER-EU and other transparency advocates in terms of insider/outsider groups. At this stage, however, it is clear that the (at least partial) insider status enjoyed by CEO/ALTER-EU was rooted in the close relationship between the Commissioner and Wesselius. To illustrate, Greenwood analyses the considerable body of e-mail correspondence between Kallas and Wesselius around this time. This correspondence, once in the public domain but no longer publicly available - included 'briefings and advice seeking on the positions of other stakeholders; holiday tales, and the exchange of 'smiley' emoticons' (Greenwood, 2007), suggesting a close and friendly working relationship between the two men.

On the issue of whether the proposed transparency register should be mandatory or voluntary, however, the two parties disagreed and from 2008 onwards, ALTER-EU became increasingly critical of the Commission's position on this issue. This period seems to coincide with a cooling of relations between Wesselius and Kallas and, consequently, between ALTER-EU and the Commission. This 'cooling off' marked ALTER-EU's shift from insider to outsider status and from transparency advocate to transparency monitor, a shift explored later in this thesis.

#### 4.19 Societal groups as 'Monitocracies'.

From its outset, the JTR has lacked any formal oversight arrangements. Greenwood and Dregger (2013) take the view that this reflects its provenance; that whilst Kallas and his cabinet were extremely keen to establish the register, they paid little attention to its operational workings. Greenwood and Dregger (2013, p. 145) cite one commentator's view that Kallas saw the register as a means to maximise his legacy and reputation - an impression apparently shared by an interviewee involved in this study:

He [Kallas] was at the [EG] debate last week, and he was still so proud of his initiative of many years ago...but now we live in 2012 [Interview 28 – MEP].

In his 2005 speech in Nottingham launching the ETI, Kallas made reference to an estimated 15,000 Brussels based lobbyists, a figure that originated in an earlier EP report, although without citing a source (Greenwood, 2011, p.329). Greenwood describes these figures, frequently cited<sup>18</sup> but with

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<sup>18</sup> See, for example, Hill, 2013.

unclear derivation, as having ‘entered into folklore as a result of the frequency with which they have been quoted’ (Greenwood, 2011, p.329). This implies that the 15,000 estimate is generally used by the media and accepted by outside observers, but it is evident that there is considerable doubt about the veracity of this figure amongst those directly involved. Neither of the websites of the two industry bodies representing Brussels based lobbyists - the Society of European Affairs Professionals (SEAP) and the European Public Affairs Consultancies Association (EPACA) - make reference to the 15,000 figure, the latter stating that there is ‘...no precise count of the number of Brussels based lobbyists’ (EPACA, 2015). The number used on ALTER-EU’s website implies that the 15,000 figure is an underestimate, stating that ‘between 25,000 and 30,000 professional lobbyists currently roam the corridors of the EU institutions’ (ALTER-EU, 2015).

In terms of the workings of the register, the accuracy (or otherwise) of the estimate is of less importance than the fact that an estimate was made at all. By providing a number - even if inaccurate - it was entirely predictable that the number of registrants as a proportion of this figure would be used as a measure of the JTR’s success. From its outset, then, those involved in the register sought to maximise the number of registrations, perhaps at the expense of detailed consideration concerning its practical workings. As Greenwood (2011) points out, Kallas and his cabinet were reluctant to address detailed questions concerning the operationalisation of the register, instead focussing their efforts on taking measures to publicly embarrass high profile companies that had not yet registered and finding ways to overcome the relatively low registration rates amongst law firms and certain other groups. However, whilst there was a high degree of motivation to maximise the number of registrants, the register was launched without any system of institutional oversight to ensure accuracy of the entries, the expectation being that this would operate through the checks and balances of public scrutiny - the ‘self control and public control’ referred to by one interviewee [Interview 24 – Commission official].

It is perhaps unsurprising that, in the haste to maximise registration and with a lack of any real process of oversight, the JTR had a number of teething problems. Whilst some of these were little more than embarrassing - a few spoof entries for non-existent companies, for example - others were potentially more serious, with some companies failing to provide information on funding, or misrepresenting the figures concerned. An inaccurate register entry by the European Chemical Industry Association (CEFIC) – which significantly understated the figure spent on lobbying<sup>19</sup> –

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<sup>19</sup> Representing 29,000 companies, CEFIC has an annual budget of approximately €40 million but claimed that its costs related to representing interests in the EU institutions were less than €50,000 (Chemical Watch, 2009).

ultimately resulted in a complaint by Friends of the Earth Europe (FoEE), and led to the association being suspended from the register for eight weeks, with the attendant negative publicity.

Greenwood notes two aspects of the CEFIC case, the implications of which may explain CEFIC's inaccurate entry. Firstly, at the launch of the JTR there was no detailed guidance relating to how expenditure should be calculated, and secondly, the CEFIC entry followed the template of the previous entries on the register (Greenwood, 2011). Research conducted for this project explored the mechanics of completing a JTR entry, and this revealed that the expenditure field has a drop down menu with 'Under €50,000' being the first of the available options. Given the lack of guidance and the mechanics of completing a register entry, it would seem possible that CEFIC's inaccurate entry was made in error, rather than through a deliberate intention to conceal or deceive. Indeed, it is not immediately clear how CEFIC would benefit from understating its expenditure on lobbying given that its website invites new organisations to join, suggesting that it aims to act as an umbrella organisation for the entire industry (CEFIC, 2015). Nonetheless, the complaint and subsequent suspension resulted in reputational damage for CEFIC (Chemical Watch, 2009). This is particularly relevant to this thesis because, although this specific case relates to a corporate entity rather than an EU institution, it demonstrates in microcosm the paradox of EU transparency identified in the initial suppositions.

Firstly, the CEFIC entry entered the public domain because no internal QA process was in place to identify the error before it was published in the JTR (S1). Secondly, the flawed entry was identified by a societal group who raised its profile. Here, the transparency tools were used to potentially undermine citizen confidence in the EU institutions (S2).

#### 4.20 Conclusion.

The introduction of the JTR, in common with other online tools examined in this project, had a built-in assumption: that it would provide transparency gains, and that these gains would have beneficial effects. As chapter six argues, however, there are multiple transparencies, so these beneficial effects differ, with transparency considered the means to enhance - variously - good governance; citizen trust; citizen participation and/or increased legitimacy. Importantly, however, societal groups see transparency primarily as a means of holding the institutions to account. As section 6.7 shows, a number of groups have been established chiefly for this purpose<sup>20</sup> and, in the absence of a formal oversight process to ensure the accuracy and completeness of the information on the registers, they provide the checks and balances of public scrutiny.

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<sup>20</sup> ALTER-EU; CEO; EU watch, for example.

In the CEFIC case this is precisely what happened: an irregular entry on the JTR was originally identified and publicised by the societal group CEO, although the complaint was lodged by a partner environmental group. In this case it is evident that, by adopting high profile tactics to publicise the irregular entry, the resultant reputational damage was not confined to CEFIC. Indeed, it is somewhat puzzling to understand why the group used these tactics. By adopting a high publicity rather than low key approach, it was clear that the reputation of the newly created JTR – a register CEO had initially campaigned for – would be tarnished, and also that potential signatories may be less likely to register through concern that they may also be ‘named and shamed’. To better understand its motives, it is necessary to consider how CEO’s political and ideological perspective shapes its activity - an issue considered within chapter seven’s analysis of group and actor transparency.

The puzzle underpinning this thesis - whether transparency, without scrutiny, succeeds - is examined through an institutional lens in the next chapter. Its comparison of the transparency of the electronic registers at the Commission and EP test the extent to which these institutions comply with transparency regulations and guidelines.

## Chapter 5. Institutional transparency.

### 5.1 Introduction.

This chapter compares the transparency of the European Commission and the EP through analyses of the information published on two publicly accessible electronic registers. The selected registers - the EP's *Register of MEPs' Interests* and the European Commission's *EGR* - are examples of the EU institutions increasing use of online resources as facilitators of transparency. This shift towards the provision of information through the use of online transparency tools has, unsurprisingly, mirrored the rapid technological innovations seen more broadly. The chapter identifies the regulations and guidelines concerning the type of information which should be available on each register, and tests this against the information actually available in order to test veracity of the thesis' first supposition:

(S1) That whilst measures intended to increase the transparency of the EU's policy-making process have been introduced at the EU institutions, the lack of a robust and independent scrutiny process reduces the effectiveness of such measures.

The chapter proceeds as follows. The first section compares the institutional impetus for increased transparency measures. It shows that, at the EP, the drive for greater transparency of MEPs' outside interests was driven and accelerated by a series of scandals while, at the Commission, the drive for transparency of expertise evolved as a response to the charge of opaque policy-making. The second section explains the rules and guidelines concerning the content of each register before establishing the indicators used to test the effectiveness of the transparency measures. The third section analyses the results of this transparency test and mobilises interview data with those responsible for the maintenance of each register to explain the shortcomings identified. It shows that the registers lack a reliable and independent quality assurance (QA) process - supporting **(S1)** - but that the oversight and scrutiny afforded to the registers is instead delegated to societal actors **(S2)**. The final section demonstrates that, whilst this external QA process can be effective, it results in inconsistent levels of compliance with transparency regulations resulting in no oversight or process in some policy areas.

### 5.2 Background to the MEP Declaration of Interest register.

This section investigates the introduction of the MEPs' declaration of financial interests and argues that the confluence of two events - one institutional and one media driven - provided the impetus for opening up the financial interests of MEPs to outside scrutiny.

### 5.3 Institutional impetus for increased transparency.

In 2008, following rumours of abuse in the EP allowances system, Ciarán Toland - a Brussels based barrister and then director of the campaigning group *Ireland for Europe*, requested a copy of the 2006 annual report of the internal audit service [Case T472-08:3]. This report, consisting of a set of documents prepared by the EP's auditor Robert Galvin, was later referred to simply as the *Galvin Report*. Toland's request was made under the procedures established in regulation (EC) 1049/2001 regarding public access to EP, Council and Commission documents. The Secretary General granted Toland access to only one of the reports, although even within this single document, one paragraph was redacted.

Following a second request, the Secretary General provided full or partial access to fifteen of the sixteen internal audit reports, but denied access to the document *Audit of the Parliamentary Assistance Allowance* [Case T471-08:6]. In his reply, the Secretary General stated that:

Parliament viewed the allowance as a sensitive matter [and that] disclosure would be detrimental to Parliament's decision-making process [Case T471-08:12].

In October 2008, Toland initiated proceedings against the EP in the ECJ and, the following year, his action was supported by the Governments of Sweden, Finland and Denmark. On 7 June 2011, finding in Toland's favour, the ECJ required the EP to release the disputed document, stating that:

The Parliament has not established that disclosure [of the report] would seriously undermine its decision-making process (Case T47-08:85).

Toland argues that the case was brought in the public interest. Interviewed later, he stated that:

No self-respecting parliament should be afraid to disclose its finances to its electors...to those who pay those funds. That's why I took the case and why I was so pleased with the result (Waterfield, 2011).

Although Toland's position is clear in this statement, from the perspective of the EU institutions its logic may be somewhat flawed as, in this case, disclosure would potentially undermine the trust that greater transparency is intended to engender. For the EU institutions generally, the rationale for the shift towards greater transparency might be summarised by the preface of the Commission's European Transparency Initiative:

The Commission believes that high standards of transparency are part of the legitimacy of any modern administration (European Commission, 2006a)

This view was amplified and expanded in Commissioner Kallas's speech launching the transparency initiative:

Transparency plays an enormous role in promoting a more citizen-friendly EU and therewith helps to increase public trust towards the institutions (Kallas, 2005 - emphasis added).

This presupposes, however, that transparency acts as a guarantor of good behaviour. But where such transparency would expose failings, it seems likely that it would undermine the public trust that Kallas identifies. This paradox lies at the heart of this transparency debate: whether legitimacy derives from engagement with the information available through the transparency process or the provision of the information alone. In short, whether it is transparency or scrutiny that drives good practice.

Despite increased transparency providing greater scrutiny opportunities, Eurobarometer data consistently shows a low level of citizen engagement (Eurobarometer, 2014). Potentially, therefore, increased transparency may disproportionately engage a minority serving particular interests, rather than mobilising and seeking to enthuse an uninterested majority. Greater transparency may therefore have a perverse consequence in that it provides a means for information to be exploited by a proxy group that uses it to present a selective - and sometimes negative - picture of the EU. This, in its turn, has the effect of reducing, rather than increasing, the confidence of an EU citizen in the institutions - a situation discussed in more detail below.

In essence, the puzzle underpinning this thesis involves the distinction between actual and potential scrutiny (**S1**). For potential scrutiny, the 'trust building' mechanism operates through the opportunity to scrutinise rather than through the scrutiny itself. In reality, citizens may choose to exercise this scrutiny process through an informed and well-resourced proxy, and thus the development of trust is reliant not merely on the provision of information but on such information being fully and impartially presented to the citizen by a third party. As a scrutiny process this is unremarkable: the prospective purchaser of a new car is unlikely to have the engineering skill or resources to test a particular model's reliability, safety, fuel consumption and so forth. But neither is s/he likely to take the manufacturer's data at face value, relying instead on a trusted source of consumer advice. For the purchaser, it is the impartial nature of this advice that is paramount. Applying this process to the issue of scrutiny through the transparency measures adopted in EU policy-making raises an interesting question concerning the impartiality of this advice, in that the scrutiny of an organisation tends to be conducted by groups with a particular ideological interest.

In understanding how proxies use transparency tools selectively to shape public opinion, a parallel can be drawn with the 2008 case of the British newspaper *The Daily Telegraph*, which exposed the British Members of Parliament (MPs) expenses scandal. The newspaper adopted the tactic of daily

reporting a small number of questionable - sometimes criminal - expenses claims, whilst understandably not reporting on the far more numerous legitimate but mundane claims. Unsurprisingly, this had a negative effect on the public perception of MPs to such a degree that a poll conducted by a respected organisation in the aftermath of the scandal showed that 76 percent of people did not trust MPs to tell the truth, moving the polling organisation to assert that 'in the wake of the MPs expenses scandal, views towards MPs' motives are more negative than at any other time we have measured this before' (Ipsos-MORI, 2009).

In the case of the ECJ's finding on the release of the *Galvin report*, it required that the EP release a potentially damaging document on MEPs allowances, damage likely to be all the greater as a result of the publicity arising from the Toland case. As such, it begs the question of why the Secretary General chose not to exercise the right to appeal the ECJ's judgement. The next section shows that the ECJ's decision of June 2011 came at a time when the EP was dealing with the aftermath of a media report exposing apparent corrupt practices by some MEPs. During this period, it would have been politically impossible for the Secretary General to appeal an ECJ decision, the effect of which was to open up the EP to greater scrutiny.

#### 5.4 Media impetus for increased transparency.

In 2010, journalists from the British newspaper the *Sunday Times*, conducted an eight month undercover investigation into the ethical standards of MEPs. Posing as lobbyists at the EP, the journalists contacted 60 members, seeking to test allegations that some politicians were prepared to sell their services to promote specific amendments to legislation in return for money (EurActiv, 2013). The *Sunday Times* reported that three MEPs were implicated: Ernst Strasser (Austria); Adrian Severin (Romania) and Zoran Thaler (Slovenia). In its report of 20 March 2011, the newspaper published an invoice from Severin for €12,000 for 'consultancy services', together with an e-mail which stated that 'The amendment desired by you has been tabled in due time' (EurActiv, 2013).

It is interesting that, in the immediate aftermath of the publication of this 'cash for amendments' story, some MEPs took the *Sunday Times* report at face value, whilst others were more ambivalent. To illustrate, Martin Shultz, then-leader of the Social and Democrat Group, released a press statement the day after publication of the *Sunday Times* story, in which he stated that: 'If he [Adrian Severin] does not go of his own will, I will take the necessary steps to expel him' (EurActiv, 2011). By contrast, Diana Wallis - then Vice President of the EP responsible for transparency - was rather more

measured: 'It is important for Parliament to consider the individual cases and the wider implications for the institution' (EurActiv, 2011).

There was, however, a general recognition amongst MEPs that the *Sunday Times* story was deeply damaging to the EP in terms of the degree to which it affected public confidence. During interviews for this study, this matter was specifically raised by a number of MEPs invited to explain what they considered to be the main purpose of transparency:

Most of my colleagues are very hard working people who take their job very seriously. Then the *Sunday Times* come by and ask three colleagues to submit this amendment in exchange for a thousand pounds and they say 'yes'...three of them, although they approached a lot more, so we had a double reason to look at transparency...we have to rebuild trust in the Parliament [Interview 28 - MEP].

A number of MEPs raising the issue appeared to view the exposé rather negatively, using terms such as:

The episode where those members were entrapped by *Sunday Times* journalists [Interview 11 - MEP - emphasis added].

This was not a universal view, however, with some members explicitly linking the *Sunday Times'* investigation in positive terms to the subsequent measures to create a more transparent process:

It [the investigation] was an astonishing event really. And, again...of course you're not supposed to say these things...I think it was extremely salutary. It was a bloody good thing. And those members who tried to turn it around and say 'these are "bad boys" who shouldn't have been trying to trip up our loyal members' - that's not on. Essentially, they established that there were members around who were willing to sell their soul [Interview 9 - MEP].

Given the general view amongst MEPs that the *Sunday Times* report had done significant damage to the standing of the EP, it is unsurprising that the EP moved to demonstrate a commitment to increasing the transparency of its activity. Within two weeks of the report's publication, an EP Group on Ethics and Transparency was created by Jerzy Buzek, then EP President. On 7 July, the political group leaders approved the rules which formed the basis of the EP's Code of Conduct. In a clear response to the *Sunday Times* report, the Code instructed MEPs:

To not solicit, accept or receive any direct or indirect financial benefit or other reward in exchange for influencing, or voting on, legislation (European Parliament, 2015).

The formal vote to ratify the Code of Conduct was overwhelmingly passed<sup>21</sup> during the plenary session on 1 December. Given that the Code came into effect on 1 January 2012 - only one month later - the vote appears something of a formality, again suggesting a widespread view that the EP needed to make a public commitment to increasing transparency.

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<sup>21</sup> 619 MEPs voted in favour, 2 against.

It may be the case that, even without *The Sunday Times* report, the Secretariat General would have decided against appealing the ECJ ruling on releasing the *Galvin report*, but the timeline probably cemented this decision. To underline the compressed timeline, *The Sunday Times* published its report on 20 March 2011. By early April the EP's president had created the 'Group on Ethics and Transparency' and this group's report was published at the start of July. Thus, the ECJ ruling in the Toland case was made when the ethics and transparency group was finalising the detail of the Code of Conduct: a period when it would have been politically impossible to take any action which could have been seen as impeding the transparency of the EP.

The next section discusses the impetus for the introduction of the European Commission's register of EGs and suggests that, rather than being driven by a series of outside events, it was introduced to address the perception captured in Hallstein's rhetorical question: 'Are the so-called 'technocrats' all powerful behind the scenes?' (Hallstein, 1972, p.56).

#### 5.5 Impetus for introduction of register of EGs.

For many years, the Commission has acknowledged that the opaque nature of the expert advice created an impression of decision making being taken far away from the citizen. Indeed, as EG meetings are normally held in private, the Commission appears sensitive to the charge that this creates the impression of an opaque and somewhat murky decision making process, with negotiation undertaken by anonymous actors behind closed doors. Perhaps acknowledging this, its 2002 guidelines on the use of expertise stated that: 'Departments should consider allowing the public to observe certain expert meetings, particularly on sensitive issues' (European Commission, 2015b). In 2005, the Commission created an online register of EGs, listing them by policy area and categorisation of members. When initially launched, the register contained no detail of individual members, nor the organisations represented. Clearly, at that time it was not possible to assess the balance in EG representation. Later changes to the register allowed a fuller picture of the composition of the groups, although it remains the case that only members appointed in a personal capacity are named on the register. Although the creation of an electronic register provided a means through which the workings of the EGs could potentially be observed, this is naturally conditional on the provision of accurate and timely information by the DGs.

Since the EGR was first implemented in 2005, its guidelines have been superseded by two documents which have together codified the rules for the EGs. The 'Framework for the Commission Expert Groups' [Sec (2010) 1360] is the agreement between the Commission and the EP concerning the general composition and workings of the EGs, whilst its accompanying 'Commission Staff

Working Document' [Sec (2010) 7649 Final] lays down the detailed regulations and guidelines for the provision of information.

In terms of the impact on the transparency of the EGs, the 2010 Horizontal Rules and the associated Commission Staff Working Document are far more prescriptive than the earlier document. In particular, the 2010 Framework Document requires DGs to add specific data to the register concerning the process used in selecting experts, the internal rules of procedures and a summary of activity. However, the 2010 document - unlike the 2002 one - contains no mention of public access to meetings, suggesting that the Commission's electronic register is the substitute means through which transparency is exercised.

#### 5.6 Code of Conduct for MEPs.

Passed in plenary on 1 December 2011 and in force since 1 January 2012, the MEPs' Code of Conduct is a surprisingly brief document consisting of ten articles over five pages (European Parliament, 2015). The code established a set of guiding principles for MEPs, requiring that they act in the public interest and, in a further response to the *Sunday Times* feature, explicitly stating that members should act in such a way as to ensure respect for the EP's reputation.

In addition, the Code introduced a definition of the term 'Conflict of Interest' and established a set of rules for dealing with these. This issue was highlighted by an MEP involved in drawing up the Code, who commented that it was vital to have a definition of 'Conflict of Interests' as the connotations of the term differed amongst MSs:

It's always been difficult to talk about conflicts of interest with members from the South [Southern MSs], as they see it as suggesting a taint of corruption or implying some sort of malfeasance in public office. So there's always been a lot of denial about it from Southern colleagues. In the North, we tend to accept that conflicts of interest are inevitable and that it's much better to acknowledge this. Having a clear definition makes it a lot easier to address the issue [Interview 05 - MEP].

The code placed a financial limit of €150 for gifts or hospitality and placed an obligation on members to submit a detailed Declaration of Financial Interests. The Code established a member's advisory committee - a group of five senior MEPs appointed at the start of a Presidential tenure to interpret the Code of Conduct and advise members accordingly. Importantly, the Code gave this committee the power to refer irregularities directly to the EP President and stated that any consequent presidential penalty would be displayed prominently on the EP website. A summary of the Code of Conduct is at figure 5.1 below:

### **Figure 5.1 - Summary of MEPs' Code of Conduct.**

1. Guiding principles for MEPs - honesty, integrity, acting in public interest.
2. Duties - not to solicit money or gifts in exchange for influence or votes.
3. Conflicts of interest - defining and dealing with such conflicts.
4. Declaration of financial interests - covered in more detail in next section.
5. Former members - denied use of Parliament services whilst employed as lobbyists.
6. Advisory Committee - establishment and composition.
7. Procedures for breach of code - penalties and option to publicise on Parliament website.
8. Implementation and monitoring - procedures.

### **5.7 Declaration of financial interests.**

Article four of the Code of Conduct introduced a member's Declaration of Financial Interest. This central pillar of the Code was the most specific in the requirements it placed on members. It requires members to make a declaration within 30 days of taking up office. The declaration, made in a standard format, requires MEPs to provide the information in figure 5.2.

### **Figure 5.2 - Information included in MEPs' declarations of interests.**

- The member's occupation for the three year period before taking up office.
- Any salary received for the exercise of a mandate in another Parliament.
- Any regular remunerated activity taken alongside the office, whether employed or self-employed.
- Members of boards, companies, NGOs, associations or other bodies, whether remunerated or not.
- Any occasional remunerated activity (including writing, lecturing or providing expert advice), if the total remuneration exceeds €5000 in a year.
- Any holding or partnership where there are public policy implications or where the holding gives the member significant influence over the affairs of the body in question.
- Any support financial or in terms of staff in addition to that provided by the Parliament. Such staff to be named on the declaration.
- Any other financial interest which may affect the performance of a member's duties.
- Any regular monthly income to be detailed and placed in one of the following categories.
  - a) €500-€1000
  - b) €1001-€5000
  - c) €5001-€10,000
  - d) More than €10,000 per month.

During interviews, an MEP with a reputation as a strong advocate of transparency specifically raised the issue of the monthly income categories, stating that the final banding (band d) was open ended and should be modified to allow greater scrutiny:

The box just says 'more than ten thousand'. So that should be modified...what is above ten thousand? If I tick that box it might be one million [Interview 23 - MEP].

#### 5.8 EP and Commission registers - transparency test.

Before examining the transparency of the registers of MEPs' Declarations of Interests and Commission EGs, it is important to establish the appropriate indicators for effective transparency. As chapter four shows, the literature provides for a number of different conceptual models appropriate for the analysis of transparency. Like most conceptual models, however, these are ideals and their drawbacks are exposed when they are used to explain a real-world phenomenon. To illustrate this point, Heald (2006) conceptualises transparency as operating across different planes - vertical and horizontal. Vertical transparency applies to the scrutiny process relevant to actors in a hierarchical relationship - anachronistically, the ability of the 'ruled' to hold 'rulers' to account or of the 'rulers' to observe the activity of the 'ruled'. Horizontal transparency, Heald posits, relates to the relationship of an organisation to the external world. Outward horizontal transparency refers to the ability of an actor to observe what is happening outside an organisation whilst inward horizontal transparency relates to the outside actor observing the workings of an organisation. This is a useful conceptual model in a number of ways - the horizontal plane provides a means for explaining the close relationship between transparency, scrutiny and surveillance, for example. In an applied context, however, it becomes apparent that it is more ideational than realistic, as roles are not necessarily clearly defined. It is unclear, for example, whether the appropriate transparency plane of an EU citizen choosing to access an electronic register to establish the identity of his or her MEP is vertical (the 'ruled' holding the 'rulers' to account), or horizontal (an outsider observing the activities within an organisation).

Similarly, the distinction Heald draws between real time and retrospective transparency, whilst often straightforward, can become blurred and may not necessarily apply at all. This might be the case where a committee meets in private with the content of the meeting released later. In British cabinet meetings, for example, discussions are held in private and the content generally only released under the 'twenty year rule' (National Archives, 2015). In some situations, however, this is less clear cut. For example, a policy proposal leaked in advance of an official statement is neither retrospective nor real time, and could perhaps be termed 'pre-emptive transparency'. Likewise, new categories are needed to describe a press release prepared in advance but subject to embargo, or a journalist privy to anonymous briefings. As this chapter's transparency test examines two registers, two sets of indicators were needed. These are discussed in detail in sections 5.7 and 5.8.

## 5.9 Transparency test: MEPs' declarations of interests.

For the purposes of the MEPs declaration, two transparency models are employed. The first is that established by Drew and Nyerges (2004). This posits that the transparency is determined by the completeness of the information. Here the indicator used is the extent to which the information applied on the form is complete according to the Code of Conduct. The second indicator applies Mahler and Regan's (2007) usability test: that transparency is determined by the usability of the information. Here the indicator is necessarily subjective inevitably depending on the ability of the user to understand the information and this will, of course, vary. For example, if a document uses a large number of technical or specialist terms, this may provide useful information to a user familiar with the terminology, but for others the meaning may be impenetrable: it is data, rather than information. The next section discusses the context of the transparency test before assessing transparency against the two indicators discussed above.

## 5.10 EP register sample selection.

Article 4 (2) (a) of the Code of Conduct requires all MEPs to submit a Declaration of Financial Interests to the EP President within 30 days of taking office (European Parliament, 2015). Surprisingly, given technological advances, these documents are submitted in paper copy and manually scanned in. As a result, the declarations are available through the electronic register as PDF documents only with the attendant limitations - there is no search facility, for example. A more significant constraint - relevant to this study but generally applicable - is that, although the declarations are in a standard format, they are provided and completed in the MEP's native language. Clearly, this limits the extent to which outside scrutiny is possible, as understanding the declaration requires a working knowledge of the relevant language. As a result, analysis of the declarations must be conducted individually and is, therefore, extremely time-consuming. Consequently, conducting a detailed breakdown of all 754 declarations was beyond the resources of this study, requiring that a sample be established.

Although not an independent variable in this test, it was considered that a stratified sample reflecting the proportion of members by nationality would be appropriate. In interview, a number of MEPs had specifically raised the issue of different attitudes to transparency being rooted in national differences. For example:

There are different rules and regulations and different attitudes in MSs, and what seems acceptable in one is unacceptable in another [Interview 4 - MEP].

Transparency varies between countries. In the UK, for example, MPs have their declarations available in public. But in Germany, the declaration never leaves the office. So there are different attitudes...but it's about different national backgrounds [Interview 26 - MEP].

To draw up a sample, a full list of MEPs was broken down by nationality and a representative sample of 150 members selected using a random generator. This sample represented approximately 20 per cent of the population. All MSs were represented by at least one (Cyprus and Luxembourg) and up to twenty (Germany) MEPs. Analysis of the declaration of interests was conducted between November 2012 and March 2013.

#### 5.11 EP register findings and analysis.

As discussed, the requirement for MEPs to make a Declaration of Financial Interests was included as a provision when the Code of Conduct was introduced in 2012. The Code also established the advisory committee, but this committee only becomes involved at the request of an MEP or the EP President. Its role is purely advisory, not investigatory, and it has no remit to check the information provided by MEPs and so does not review the declarations of interest for accuracy. In terms of the supposition, then, this advisory committee does not constitute a robust and independent scrutiny mechanism to oversee the measures introduced to increase transparency, rather it is a reactive body dealing with complaints or queries.

There is no process to ensure the accuracy of the information contained in the declarations. Conceivably, therefore, an MEP might fail to declare some or all memberships or the role on a board of directors. However, the purpose of this audit is to check the completeness of the information to the extent that it complies with the requirements of section four of the Code of Conduct. Although the regulation requires members to declare interests in a number of areas including mandates in other parliaments and the employment of outside staff, this audit focussed mainly on the areas related to financial interests. Specifically, the audit checked documentation in four areas:

- Article A - Previous occupation
- Article B - Regular remunerated activity
- Article D - Membership of Boards
- Article E - Occasional remunerated activity

In total, 150 declarations were checked. Twelve (eight percent) had no entries - these are discounted from the remainder of the test. The summary of MEPs' declaration of financial interests is at figure 5.3 below with detailed analysis following:

**Figure 5.3 - Summary of MEPs declarations.**

	Previous occupation	Regular outside remunerated activity	Membership of boards	Occasional outside remunerated activity exceeding €5000
<b>Yes</b>	110 (73%)	24 (16%)	72 (48%)	11 (7%)
<b>No</b>	28 (19%)	114 (76%)	66 (44%)	127 (85%)
<b>Blank</b>	12 (8%)	12 (8%)	12 (8%)	12 (8%)
<b>Totals</b>	150 (100%)	150 (100%)	150 (100%)	150 (100%)

**Completeness of information test**

1. Previous occupation.

Discounting the twelve blank entries, 138 members had completed an entry. Of these, 110 (80%) members declared at least one occupation prior to taking up office whilst 28 (20%) declared no previous occupation. The relatively large proportion declaring no previous occupation may perhaps reflect some ambiguity in the question.

I declare occupation(s) during the three-year period before I took up office with the Parliament.

Members' responses suggest that this phrasing is unclear, with some MEPs counting the three year period from before the member's first mandate and others from before the current mandate commenced.

2. Regular remunerated activity.

24 (17%) of members declared a regular remunerated activity, whilst 114 (83%) declared no activity. Of the 24 members declaring a remunerated outside activity, four (3%) do not specify the income.

**Figure 5.4 - Remunerated activity.**

Not specified	€500-€1000	€1001-€5000	€5001-€10,000	€10001 +
4 (16%)	6 (25%)	8 (32%)	5 (20)	1 (7%)

3. Membership of boards.

72 (52%) of MEPs declare membership of a board, with 66 (48%) declaring no such membership. Of those who declare membership of boards, the nature of this membership varies widely, with some members declaring a position on the boards of private companies with others including political roles such as responsibilities in national or European political parties. Again, this suggests that the question, whilst not necessarily ambiguous, is open to differing interpretations.

#### 4. Occasional outside remunerated activity.

Here only 11 (8%) of members declared occasional remunerated activity in excess of €5000, with 127 (92%) declaring no such activity. The majority of these entries appear to relate to media fees, lecture remuneration or book royalties.

In terms of the transparency indicators discussed, the Declaration of Financial Interest failed the completeness of information test, with 8% of MEPs having made no declaration at all. Of the remainder, it seems clear from the test conducted above that some of the questions on the form were open to different interpretations. In particular, responses to the question requiring members to give details of their previous employment during the previous three year period (Article A) differed notably. For some entries, this three year period was calculated from the start of the current mandate whilst, for others, it this calculation was made from the time the MEP first entered the EP.

It is clear, also, that the advisory committee has no investigative or 'spot check' function and, in the absence of any other overseeing authority, this potentially allows inaccurate and even frivolous entries to be submitted to the register. To illustrate, figure 5.5 below shows a screenshot of the declaration made by Jens Rhode, a Danish Liberal MEP. Rhode was able to successfully place into the register a declaration indicating that his previous occupation was 'Master of the Universe' with a monthly salary in excess of €10,000. Whilst it is not suggested that this is common practice, it does show a lack of institutional oversight. Without such an oversight system, there is clear potential for MEPs to inadvertently place inaccurate information into the public domain.

**Figure 5.5 - inaccurate data on MEPs declaration of interests.**

PARLEMENT EUROPEEN  
 REÇU LE  
 19 MAR 2012  
 Unité  
 République Française  
 Députés

**ERKLÆRING OM MEDLEMMERNES ØKONOMISKE INTERESSER**

JF. BILAG I TIL EUROPA-PARLAMENTETS FORRETNINGSORDEN OM  
 GENNEMSIGTIGHED OG MEDLEMMERNES ØKONOMISKE INTERESSER

AFGIVES TIL FORMANDEN INDEN UDLØBET AF DEN FØRSTE MØDEPERIODE EFTER VALG I EUROPA-PARLAMENTET  
 ELLER, I LØBET AF VALGPERIODEN, INDEN FOR 30 DAGE EFTER MEDLEMMERNES INDRÆDEN I EUROPA-PARLAMENTET  
 ELLER INDEN FOR 30 DAGE EFTER ENHVER ÆNDRING.

Efternavn: ROHDE,

Fornavn: JEUS

Undertegnede erklærer herved på tro og love og med fuldt kendskab til forretningsordenen, herunder den dertil knyttede adfærdskodeks for medlemmerne, følgende:

A) "I medfør af adfærdskodeksens artikel 4, stk. 2, litra a), afgiver jeg erklæring om mit erhvervsarbejde i de seneste tre år inden min indtræden i Parlamentet samt min deltagelse i det samme tidsrum i styrelsesråd eller bestyrelser i virksomheder, ikke-statslige organisationer, foreninger eller enhver anden form for organ med status som juridisk person."

Erhvervsarbejde eller deltagelse	Indtægtskategorier <sup>1</sup>			
	1	2	3	4
1. <i>Master of the unions</i>	X	X	X	X
2.				
3.				
4.				
5.				
6.				

<sup>1</sup> Regelmæssige indtægter, som medlemmet opgiver under hvert af punkterne i første afsnit, indplaceres i en af følgende kategorier:  
 1. fra 500 til 1 000 EUR om måneden  
 2. fra 1 001 til 5 000 EUR om måneden  
 3. fra 5 001 til 10 000 EUR om måneden  
 4. over 10 000 EUR om måneden.  
 Enhver anden indtægt, som medlemmet opgiver under hvert af punkterne i første afsnit, udregnes på årsbasis, divideres med tolv og indplaceres i en af kategorierne ovenfor.  
 Hvis de regelmæssige indtægter eller den anden indtægt er mindre end tærsklen i kategori 1, dvs. under 500 EUR om måneden, eller hvis den/det pågældende erhvervsarbejde, deltagelse, aktivitet eller partnerskab er ulønnet, er det ikke nødvendigt at angive en kategori.

DA

**Usability of information test.**

The Declaration of Financial Interests is a paper document completed by each MEP in his or her parent language. The document is then provided to the office of the President and published on the electronic register as a scanned PDF. Approximately sixty percent of the sample provided printed documents, with the remainder handwritten. Amongst MEPs interviewed for this study, however, there appears to be little enthusiasm for the information to be provided in a more user-friendly format, with one stating that the practice of providing public access to the documents as a PDF is necessary as members of the public may wish to ensure that the forms are signed [Interview 23 - MEP].

Whilst it is correct to state that members are required to provide signed declarations, transferring the information from the forms to a searchable database would enhance public access, not least because, quite apart from any language barrier, scanned versions of handwritten documents may be illegible. To illustrate this point, figure 5.6 below shows the declarations for a Finnish MEP, Mitro Repo, and a Polish member, Ryszard Czarnecki.

**Figure 5.6 - illegible entries on MEPs declarations of interest.**

Członkostwo lub działalność	Kategorie dochodów <sup>1</sup>		
	1	2	
1. wiceprezident Rady Ministrów RP			
2. - bezspółdzielni - przedsiębiorcy			
3.			

Ammatillinen toiminta tai jäsenyys	Tuloluokat <sup>1</sup>	
	1	2
1. Konsultointi, luennointi MitroFoni Oy		X
2. pastorin tehtäväk. ssk.		X
3.		

It would seem that, whilst there is a mechanism for citizens to scrutinise the declarations of interests, a number of factors limit this. Foremost amongst these is the lack of translation facilities. For this research, the standard format partially helped to overcome this. Documents in an unfamiliar language were cross referred against the English language template, whilst the assistance of speakers of the MEP's native language helped with translation of the declarations themselves. It is unlikely, however, that an EU citizen with a casual interest in the register would necessarily persevere in the same way, suggesting that the usability of this transparency measure is poor.

Similarly, the lack of a searchable database hinders the transparency of the declarations. To illustrate, it is straightforward to access an individual's declaration to check, for example, the

membership of a board. It is not possible, however, to collate the names of all MEPs serving on this board unless a manual search of over 750 declarations is undertaken. Finally, the provision of handwritten declarations might further stifle transparency where these declarations are illegible or incomplete. In terms of the transparency indicators discussed, the Declaration of Financial Interest failed the usability of the information test, with the lack of a searchable database of MEPs declarations a real weakness.

Whilst it is recognised that this audit of one of the EP's register represents only a transparency snapshot, it supports the supposition that, in the absence of a robust and independent scrutiny process, the effectiveness of measures taken to increase the transparency of EU policy-making is reduced (S1). In order to provide a comparative picture, the next section conducts a similar audit at the European Commission.

#### 5.12 Transparency test: EG register.

As in the EP register test in section 5.8, it is important to decide on the appropriate test before undertaking an audit of the Commission's EG register and, again, Heald's distinction between retrospective and real-time transparency is relevant. In the UK, interest rate decisions arrived at during the monthly meetings of the Bank of England monetary committee are announced immediately, with the full minutes of the meeting published several weeks later (Bank of England, 2015). This reporting cycle creates a steady tempo of operating period followed by an accountability window and is perhaps well suited to the provision of time-sensitive information. This time lag between the monetary committee's decision and the release of the meeting's minutes is an example of Heald's notion of retrospective transparency: a delay in presenting information that he contrasts with transparency in real time, where information is available continuously (2006, p. 33). Applying this distinction to the case of the Commission EGs, we could argue that retrospective transparency equates to the provision of public access to the agendas and minutes of meetings whilst real time transparency would probably manifest itself as public access to the negotiation process, a move generally resisted for perhaps good practical and ethical reasons.

It appears then that, notwithstanding its stated commitment to transparency, the Commission privileges transparency in retrospect over transparency in real time and that, given the private nature of their deliberations, EG negotiations remain closed to real time scrutiny. This raises the question as to whether this retrospective transparency alone is sufficient to ensure citizen confidence in the EG processes and again locates the empirical research in the fundamental puzzle of whether transparency, or scrutiny, drives regulatory compliance. To consider this, the extent to which this retrospective transparency provides a window on the activities of the EGs is now tested.

### 5.13 EG register sample selection.

EGs are composed of individuals belonging to one of three categories:

- (i) Representatives of national administrations;
- (ii) Representatives of organisations; or
- (iii) Individuals appointed in a personal capacity.

Two indicators were used for the audit of the EG register, each involving a separate sample selection. The first indicator tested the Commission's compliance with rule 9 of the Commission Staff Working Document which relates to gender balance in the EGs:

- Rule 9:

'...they [the EGs] shall be chosen according to a selection process that guarantees...as far as possible...gender balance'.

The EG register only records the gender of those experts appointed in a personal capacity, as the individual representing a national administration or an organisation may differ from one meeting to another. Thus the audit for gender balance thus consisted of analysis of all groups consisting only of individuals appointed in a personal capacity ( $n = 115$ ).

The second indicator tested the Commission's compliance with rules 19 and 20 of the Commission Staff Working Document which relates to the provision of information concerning the activities and selection of the groups through the electronic register.

- Rule 19:

'...information concerning the activities carried out by the EGs [shall be] made public directly in the Register or via a link from the Register to a dedicated website'

- Rule 20:

'The register shall include information on the process used for the selection of the members of the EGs...'

As a complete audit was beyond the scope of this project, a random sample was selected from each DG that operated a substantial number of EGs ( $n = 54$ ).

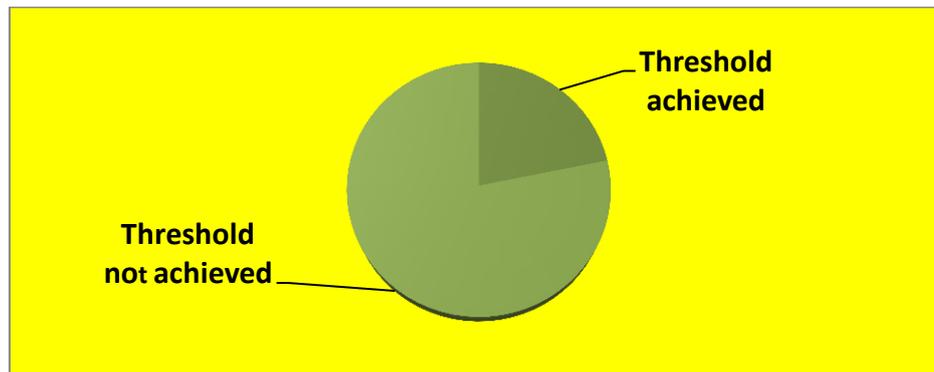
### 5.14 EG register findings and analysis

#### Gender balance test

To test for compliance with the gender balance rule, analysis of the composition of each group containing experts appointed in an individual capacity was conducted. For the Commission, 'gender

balance' is defined as '...at least 40% of representatives of each gender in each EG'. Analysis of the groups ( $N = 115$ ) found an overwhelming lack of gender balance, as defined by the Commission, with only 25 groups (21.7%) achieving the 40% gender threshold compared with 90 (78.2%) that failed to achieve this.

**Figure 5.7 - Gender balance threshold in the EGs.**



Although there were a number of 'near misses', these were fewer than may have been expected with 34 of the groups (29.5%) represented by 80% or more of one gender. Whilst acknowledging the Commission's caveat that the process should guarantee gender balance as a medium-term aim '...as far as possible', it is clear that it is some distance from complying with its own rules in this area.

It appears that compliance with gender-balance regulation is not assured simply through increased transparency. However, it could be that the European Commission sets unrealistic goals in terms of the gender balance of individuals appointed to EGs. By definition, there are a limited number of experts in a given area. It follows that, if the population of experts is disproportionately represented by one gender, the composition of the EG will probably reflect this.

#### Provision of information test

To test for compliance with rule 19, this chapter interprets 'information concerning the activities carried out by the EGs' as the provision of the agendas and minutes of EG meetings. For rule 20, group entries were checked for an explanation of the selection process either directly on the register or through a hyperlink.

An initial analysis revealed that differing levels of details was provided between and within DGs with the entries for some groups showing multiple links to dedicated websites, minutes and agendas of meetings and associated documents, whilst the entry for other groups had not been completed, with only a blank template visible to users. It was apparent that a classification system was needed to 'score' the data on each group against the criteria for rules 19 and 20. The grading system used in an earlier work on the transparency of Comitology Committees (Brandsma, Curtin & Meijer, 2008)

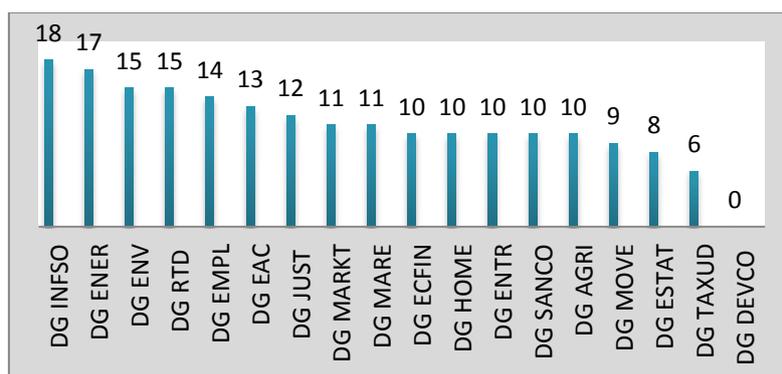
was adapted, and a four level classification system (no information; poor; fair; good) was used with each classification given a corresponding score (0-3). The definitions of the three classifications are below:

**Figure 5.8 - Classification of electronic data.**

Mark	Classification	Meaning
0	No information	No criteria against which to classify entry (blank template only).
1	Poor	Scant detail or incomplete/outdated information (e.g. no minutes of recent meetings; outdated hyperlinks).
2	Fair	Reasonable amount of detail in some areas but with gaps (e.g. information about most recent meeting but no detail about past meetings nor the frequency with which they are held).
3	Good	Detailed entry with thorough and accurate explanations (e.g. access to recent and past minutes; complete explanation of selection process).

Register entries at the DGs with the highest proportion of EGs were scrutinised for compliance with horizontal rules 19 and 20. Analysis revealed wide variation in the level of detail provided, reflected in the differing total 'scores'. In the sample groups, DG Information Society and Media (DG INFSO) and DG Energy (DG ENER) provided detailed information resulting in almost perfect scores, whilst DG Taxation and Customs (DG TAXUD) and DG Mobility and Transport (DG MOVE) provided only sparse information and scored relatively low. The groups examined at DG International Cooperation and Development (DG DEVCO) had no information with only blank templates provided resulting in no score.

**Figure 5.9 - Compliance scores for EG entry by DG.**



In terms of the data concerning the selection procedures and activities of the EGs, the wide variation between DGs may be an illustration of the Commission's inherent bureaucratic fragmentation with its system of relatively autonomous DGs operating in isolation. This view of the DGs as a set of 'fiefdoms' (Kassim, 2008) is underlined by comments of Secretariat staff in interviews for this study. This is discussed in section 5.10 below.

### 5.15 Transparency test discussion.

It is evident that both the EP and Commission registers have some shortcomings in levels of compliance. These are a consequence of the lack of oversight and sanction, suggesting that the registers lack a robust quality assurance (QA) process and that an active scrutiny process, rather than merely the passive provision of transparency, is more likely to modify behaviour. Moreover, this lack of oversight can lead to some surprising anomalies even within a single institution. To illustrate, the screenshot at figure 5.10 - accessed through the Europa Portal - shows that, in the Commission's definition, an NGO does not pursue commercial or professional interests (see below).

**Figure 5.10 - Written response to Denis De Jong, MEP (emphasis added in bold).**

**Answer given by Mr Barroso on behalf of the Commission**

A common definition of the term 'NGOs' cannot be based on a legal definition given the wide variations in laws relating to NGO activities, according to which an NGO may have, for instance, the legal status of a charity, non-profit association or a foundation. The term 'NGO' can nevertheless be used as shorthand to refer to a range of organisations that normally share the following characteristics:

- NGOs are not created to generate personal profit. Although they may have paid employees and engage in revenue-generating activities they do not distribute profits or surpluses to members or management;
- NGOs are voluntary. This means that they are formed voluntarily and that there is usually an element of voluntary participation in the organisation;
- NGOs are distinguished from informal or ad hoc groups by having some degree of formal or institutional existence. Usually, NGOs have formal statutes or other governing document setting out their mission, objectives and scope. They are accountable to their members and donors;
- NGOs are independent, in particular of government and other public authorities and of political parties or commercial organisations;
- **NGOs are not self-serving in aims and related values.** Their aim is to act in the public arena at large, on concerns and issues related to the well being of people, specific groups of people or society as a whole. **They are not pursuing the commercial or professional interests of their members.**

However, it is clear that this is not well policed. Figure 5.11 is another screenshot taken from the Europa Portal in 2012 and shows the membership of the Commission working group on motor vehicles. It lists the breakdown of the EGs at DG ENTR showing the European Automobile Manufacturers' Association (ACEA) as an NGO. However, the ACEA is formed of companies such as Mercedes, VW-Audi and BMW and openly states that it acts as an advocate for the automobile industry (ACEA, 2012).

**Figure 5.11 - Screenshot of DG ENTR entry showing ACEA as NGO.**

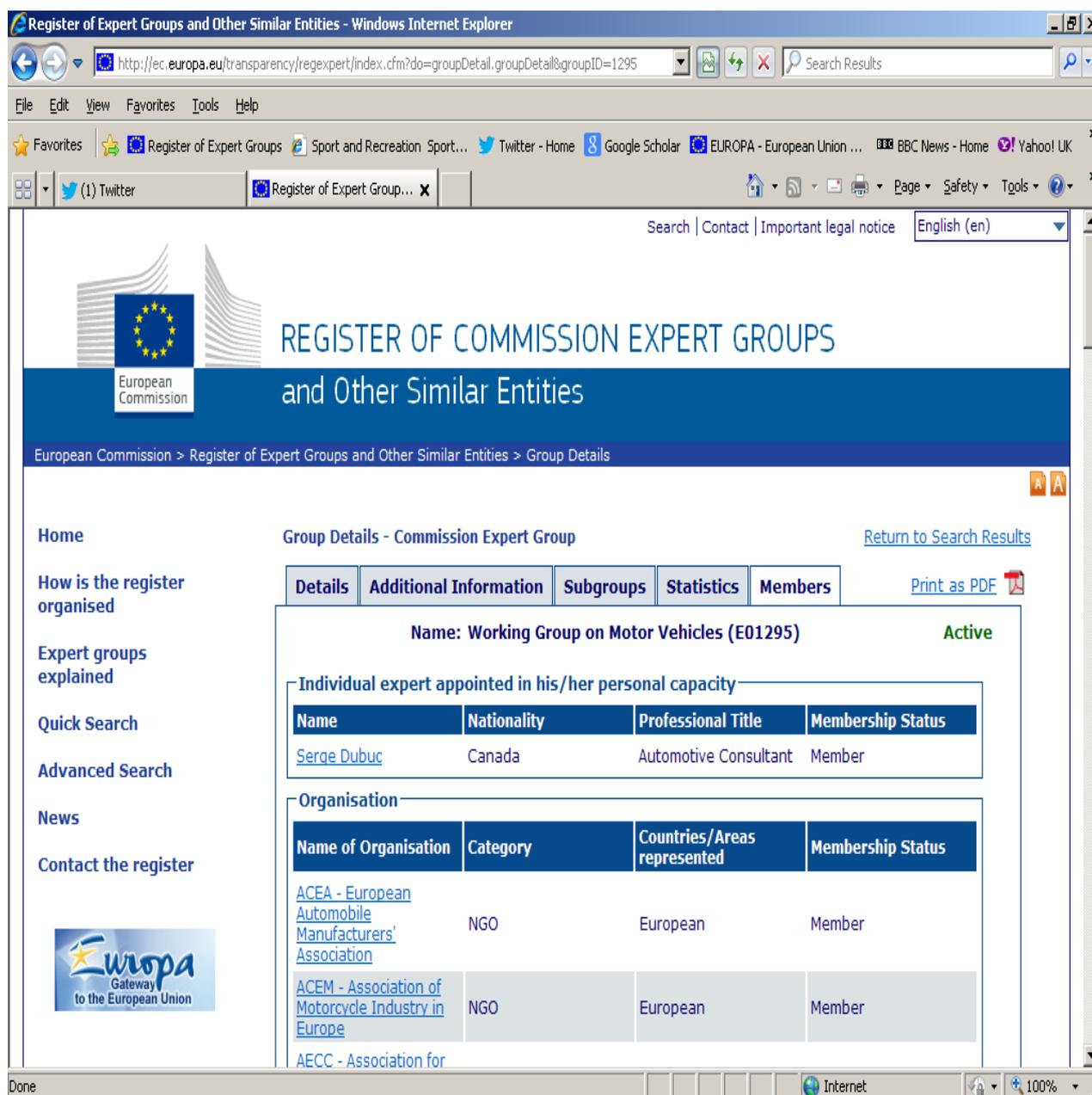


Figure 5.11 shows that, in 2012, DG ENTR routinely categorised industry and corporate organisations as NGOs, although such bodies clearly represent the interests of their members. The next section considers the extent to which the Commission has established protocols or procedures to check the accuracy of the information on the registers.

#### 5.16 Internal Quality Assurance.

The results of this transparency check's analysis of the electronic registers showed that - at the Commission - compliance with the regulation and guidance on EGs varied widely between DGs, with some DGs having extremely low levels of compliance. Similarly, at the EP, the information provided

in MEPs' declarations of interest contained a number of inaccurate, incomplete or irregular entries. Whilst it is not suggested that these shortcomings were intentional, it raised the question as to why flawed entries on electronic registers were able to proceed unchecked and so enter the public domain.

To address this question, interviews were undertaken with individuals responsible for three electronic registers<sup>22</sup> at the EP Secretariat and within the relevant Directorates and units within DG Secretariat-General. Initial questions concerning the maintenance of the registers revealed that - at both institutions - the upkeep of each register is undertaken by just one individual. So, whilst overall responsibility for the EGR lies with the Institutional and Administrative Policies (IAP) Directorate of DG Secretariat General, the maintenance and upkeep of this register is conducted by a single administrative assistant within its institutional affairs unit.

Similarly, formal responsibility for the Declaration of Financial Interests on the EP website lies with the Members' Administration Unit. However, the routine work is undertaken by a single administrative assistant. The administration of the JTR formally lies with a joint EP/Commission secretariat and this, too, is routinely managed by a single administrative assistant, in this case based in DG SGs Transparency Unit.

Although this project's transparency audit identified specific instances of incomplete or inaccurate information in two of the registers, it was considered that it would be tactless to raise these during the interviews with the individuals responsible for the registers. Instead, reference was made to a number of the reports published by societal groups in which errors in the electronic registers had been highlighted. Initially, questions sought to determine the degree of institutional oversight accorded to the registers, with interviewees asked to explain the measures taken to ensure the data published on the registers is accurate. In each case, interviewees asserted that their organisations lack the capacity to conduct oversight or to test data for accuracy, and took the view that responsibility for the accuracy of the information within the registers lay elsewhere. The perceived locus of this responsibility varied, however, with those responsible for the JTR and MEPs declarations stating that the onus for accuracy lay with individual registrants, and those responsible for the EGR stating that responsibility for accuracy lay with the group's *chef de cabinet* at the relevant DG.

In addition to this resource/capacity position, interviewees concerned specifically with the JTR mobilised legal arguments to explain the lack of any institutional oversight of the register.

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<sup>22</sup> The register of EGs; the register of MEPs declarations of financial interests and the joint transparency register.

[The JTR] is a register, but we do not certify the information correct. We cannot...it's more than 5000 entries. So we don't have the means to police it and there is no legal basis for us to do so - we rely on self-control and public control [Interview 24 – Commission official].

For those involved specifically with the Commission's expert register, the resource/capacity issue was again raised, but here there was recognition that responsibility for ensuring the accuracy of the data lay with the institutions, but at DG level, rather than centrally.

It is for each DG to ensure the information is correct. Even if there was time, we could not check the content because only the DG s know about their [expert] groups...and there are a thousand groups across all the DGs [Interview 25 – Commission official].

However, discussion concerning the routine administration of the register revealed an important factor relating to the accuracy of the register. Several interviewees within the IAP Directorate commented that, although responsibility for ensuring the accuracy of the expert register lay with the individual groups' parent DGs, variations in Directorates' internal processes produced uneven results. To illustrate, whilst institutional arrangements require each DG to have a nominated individual with responsibility for the register, DGs interpret this role and its functions differently. As a result, Directorate responsibility for the expert register may lie with a fairly senior policy officer or coordinator, a relatively junior administrative assistant or, in some cases, a temporary intern [Interview 03 – Commission official].

It seems then, that the internal quality assurance (QA) procedure for each register is - at best - inconsistent, reflecting the limited resources allocated. For the JTR, the assumption appears to be that its QA process will operate through a system of 'self-control and public control', whilst the expert register has various in-house arrangements, resulting in patchy QA. Given this, the role undertaken by outside actors is crucial in providing a check on the accuracy of the registers. The next section illustrates the extent to which this role can be effective in ensuring compliance.

#### 5.17 External Quality Assurance.

In July 2010, ALTER-EU submitted a complaint to the European Ombudsman in which it argued that the high incidence of business interests within the Commission EGs represented 'regulatory capture' by the corporate sector. To provide evidence for this claim, ALTER-EU presented a detailed analysis of the EGs in a single DG: DG ENTR. Simultaneously, ALTER-EU published the data in a report titled *The dominance of corporate lobbyists in DG ENTR's Expert Groups*. In its format, this report - with its

catchy title and visually appealing cover - resembled others published by ALTER-EU and its associated group CEO<sup>23</sup>.

The report detailed analysis of the information from the publicly available register of EGs and stated that, of non-governmental expert advisers at DG ENTR, 482 were from the corporate sector compared to 255 from other non-government sectors. The complaint further argued that 32 of the 83 EGs at DG ENTR were 'dominated by big business' (ALTER-EU, 2010).

Following an initial investigation, the Ombudsman forwarded ALTER-EU's complaint to the Commission, inviting it to submit an opinion concerning the specific allegations in the complaint (European Ombudsman, 2015). In the opening paragraph of its 75 page response - published on ALTER-EU's website - the Commission stated:

Over the past few years, Alter-EU has written to the Commission several times on EGs' related issues. In its replies, the Commission has always provided Alter-EU with relevant and detailed information. In addition...the complainant and officials from the Commission met on 22 September 2009 for an informal discussion on some of the issues raised by Alter-EU. (ALTER-EU, 2011).

The Commission's letter seems to demonstrate an informal but ongoing dialogue between the Commission and ALTER-EU. It is interesting to note, then, that ALTER-EU's complaint was raised ten months after the meeting described. In addressing the specific allegation of imbalance in the EGs at DG ENTR, the Commission stated that:

Commissioner Barnier has fully acknowledged that a fair balance of non-industry stakeholders' representation in consultation processes has still to be achieved. In that respect, the Commission is committed to seek an adequate presence of civil society representative in its EGs in the area of internal market, both in setting-up new groups and in re-arranging the composition of existing ones where appropriate (ALTER-EU, 2011).

The Commission's response alerted interested parties of the Commission's apparent undertaking to address the composition of the EGs at DG ENTR. To facilitate the research for this project, a request was made to the campaigns coordinator at ALTER-EU which yielded the name of the relevant official at DG ENTR. Following an initial e-mail contact, a face to face interview was conducted with this official in May 2011. During this, the official stated the intention of DG ENTR to rebalance the groups at the earliest opportunity.

During the summer of 2012, DG ENTR announced that the composition of thirteen groups would be modified through a single call for expressions of interest. This call was published in the *Official*

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<sup>23</sup> See, for example: *Revolving door provides privileged access* (ALTER-EU, 2011); *The fire power of the financial lobby* (CEO, 2014); *The record of a captive Commission* (CEO, 2014).

*Journal of the European Union* (OJEU) on 1 September, and a link to the call was also published on the Register of EGs. The deadline for applications was 31 October 2012.

Prior to this project, there had been no research into the extent to which the Commission achieved its stated aim of re-arranging the composition of the EGs in DG ENTR. Furthermore, within the public domain, no mechanism existed for identifying changes in the make-up of the groups, as updated EG details purge previous versions. However, the database established for this project during the autumn and winter of 2010 - before the Commission's response to ALTER-EU - provided detailed information on the composition of the EGs at DG ENTR at that time. When comparing this archival 2010 database with the later (autumn 2013) electronic register of EGs, it is apparent that there have been a number of changes in the composition of the EGs at DG ENTR. To facilitate a more complete picture, a further e-mail exchange with the relevant official provided information concerning the number of responses to the call for expression of interest, broken down into the relevant groups. This information, combined with the comparison of the 2010 database and the current register was used to create figure 5.12, showing the changes in the composition of the EGs at DG ENTR following ALTER-EU's complaint to the ombudsman:

**Figure 5.12 - Responses to calls for expressions of interest.**

<b>Group name</b>	<b>Orig. no.</b>	<b>Applications received</b>	<b>No. of new appointees</b>	<b>Representing</b>
Agricultural tractors	56	2	0	
Motorcycles	57	5	2	Consumer/Research
Motor vehicles	89	8	4	Consumers organisation/Research/Environment/Road safety
Gas appliances	52	1	0	
Forestry and forest industries	44	3	0	
Explosives	39	5	1	Research
Mission evolution	27	6	1	Consumer organisation
Fertilisers	55	1	1	Research
ICT standardisation	55	6	1	Disabled people
Raw materials supply	62	46	5	4 x Research + 1 x Trades union
Eco design	56	6	0	
Measuring instruments	47	0	0	

As figure 5.12 shows, the number of applications varied from zero to 46. Where applications were received but no appointment made, the Commission assessed that the applicants lacked the relevant experience (personal communication, March 2013). In one group, 46 applications were received, but the majority of these came from organisations that were already members of the group (personal communication, March 2013). In total, fifteen additional appointments from

outside industry and the corporate sector were made to the EGs at DG ENTR, although measured against the incumbent 639 this appears a fairly modest uplift of 2.3 percent.

The table above suggests that, given the highly specialised nature of these groups' work, ALTER-EU's campaign to rebalance them may be hindered by the dearth of available expertise outside the industrial and business sectors. Indeed, given that DG ENTR characterised itself as 'the voice of industry and enterprise in European policy making' (DG ENTR, 2014), it would seem a most likely case for business influence within its EGs.

This case shows that DG ENTR's (albeit limited) rebalancing of the EGs took place following an undertaking given in response to pressure exerted by a societal group that had scrutinised the composition of the EG register. In terms of the puzzle underpinning this thesis, this suggests that it is not transparency that acts as a guarantor of good behaviour, but an associated scrutiny process. Importantly, however, the scrutiny in this case was undertaken by a societal group and applied only to a single Directorate. It is, of course, recognised that such societal groups have limited resources and may well lack the capacity to conduct a broader analysis of EG composition, but in this case it is apparent that ALTER-EU's selection of DG ENTR was informed by the group's wider strategic goal of addressing:

the increasing influence exerted by corporate lobbyists on the political agenda in Europe [and] resulting loss of democracy in EU decision-making (ALTER-EU, 2015).

This raises the issue of whether ALTER-EU's charge of 'regulatory capture' is confined to the corporate sector or replicated in other policy areas. However, compliance is attained through a process of active scrutiny rather than simply transparency, but this scrutiny is conducted by groups with a fairly narrow range of policy interest and a particular ideological position. The implication is clear here: some Directorates and policy areas are, in effect, exempt from any oversight. This explains why this project's institutional audit in chapter five revealed low levels of compliance with EG guidelines at DG Mobility and Transport and DG Development: the work of these Directorates is not directly related to the campaigning interests of the monitoring groups.

#### 5.18 Conclusion.

This chapter has reported on the findings of two audits of electronic registers in order to test the initial supposition that, whilst measures intended to increase the transparency of the EU's policy-making process have been introduced, the lack of a robust and independent scrutiny mechanism reduces the effectiveness of such measures. In the case of the EP's electronic register of members' financial interests, the audit of a sample of 150 entries found a number of examples of ineffective

transparency. These included MEPs interpreting ambiguous questions differently and therefore providing inaccurate responses, an example of an 'approved' frivolous entry and a number of illegible entries. The Commission's register of EGs was also found wanting, with numerous examples of DGs failing to provide the requisite documents concerning the EG appointment process and agendas and minutes of the meetings either incomplete or not provided at all. In each of the examples cited, the registers fail to comply with the regulations governing them and, in each case, these inaccurate or incomplete entries remain on the register - and therefore in the public domain - at the time of writing (2015). These findings support the supposition and suggest that, given that the EU institutions consistently link transparency to public confidence, the lack of a scrutiny process to oversee the provision of information is a weakness in the transparency regime.

With no governance arrangements in place to create a system of independent external oversight, the registers are not routinely inspected for accuracy, neither is a spot-check regime in place. By neglecting to apply this standard management practice, the EU has abdicated responsibility for ensuring that the data it provides on the registers is correct, instead leaving the QA function to the checks and balances of public control. Whilst section 5.11's analysis of the role of ALTER-EU suggests this can be effective, it also shows that there is no oversight of those areas which do not meet the campaigning goals or ideological position of the group, supporting the proposition that there is a requirement for an independent scrutiny process responsible for QA across the institutions. In the absence of such a process, however, the role played by the small but conspicuous cadre of societal groups that monitor and publicise the content of the registers is critical: a role that is considered in some detail in the next chapter.

## Chapter 6. Actor and group transparency.

### 6.1 Introduction

This chapter explores differing views concerning the purpose and scope of EU transparency as this is understood by different groups of actors. Based on data drawn from a series of qualitative interviews conducted with participants either directly engaged in - or with a professional or campaigning interest in - the EU policy process, the chapter advances the notion that, in the context of EU policy-making, transparency has multiple and often conflicting functions. It shows wide variation between groups' understanding of the rationale for transparency and identifies one of the perverse consequences of enhanced transparency processes: that the mechanisms introduced to facilitate the availability of information can be used by individuals or groups to present a selective - sometimes negative - picture of the EU. Against this background, the thesis' second initial supposition stated:

- (S2) That the use of transparency tools introduced to enhance citizen confidence in the EU may be used by particular actors to undermine such confidence.

The chapter proceeds as follows. Section 6.2 summarises some of the conceptual frames advanced in the transparency literature, discusses the extent to which these are useful when applied to policy actors' differing interpretations and experiences of transparency, and presents a simplified summary of these approaches. Section 6.3 explores the multiple functions of EU transparency through analysis of data drawn from a series of qualitative interviews undertaken with actors representing different groups and interests, whilst 6.4 looks specifically at societal groups campaigning for greater transparency and the roles of these groups in monitoring and publicising the activities of the EU institutions.

### 6.2 Summary of models.

Given the fact that, as a phrase, transparency has 'become the contemporary term of choice' (Heald, 2006, p.25) with no single meaning, a number of models are appropriate for conceptualising it. However, as this chapter will show, understanding of the function of transparency varies widely between actors within the Commission and EP. As a result, no one conceptual framework is sufficient, nor a single typology appropriate, for this project's purpose. Rather, the distinctions provided in literature are used as a menu to analyse the impact of the EU's 'complex dynamics of transparency' (Meijer, 2012, p.429). Whilst these were covered in some detail in chapter 4, figure 6.1 below summarises the main delineations discussed in the transparency literature.

**Figure 6.1 - Summary of the transparency literature.**

<b>Varieties/typologies of transparency</b>	<b>Associated with</b>
Directions of transparency (vertical and horizontal planes)	Heald, 2006
Event v Process transparency	Heald, 2006
Retrospective v Real Time transparency	Heald, 2006
Nominal v Effective transparency	Heald, 2006
Transparency measured by completeness of information	Drew and Nyerges, 2004
Transparency measured by usability of information	Mahler and Regan, 2007
Participative and Informational functions of transparency	Meijer <i>et al</i> , 2012
Transparency as a facilitator of vision and voice	Curtin and Mendes, 2011

### 6.3 The multiple functions of EU transparency.

Lacking a single meaning, the ‘multitudinous appeals to transparency’ identified by Heald (2006), means that it is cited in the literature as a necessary condition for ensuring accountability, for enhancing citizen trust and for providing a means for citizens to be involved in the political process. This chapter explores the mechanisms linking transparency to these concepts by exploring the views of those involved in the EU policy process.

### 6.4 Transparency context.

Chapter four showed that, over time and across the institutions, the evolution of transparency has tended to be event driven, with demand for enhancements often introduced in response to scandal, misconduct or allegations of corruption. Kinnock’s ethical reforms during the Prodi Commission (1999-2004), for example, were introduced as a response to the 1999 resignation of the Santer Commission. Similarly, a perceived need to swiftly rebuild trust in the EP following the *Sunday Times* publication of the ‘cash for amendments’ story in March 2011 led to the introduction of a Code of Conduct for MEPs less than nine months after the story’s original publication. In both cases, the rationale for introducing measures to enhance transparency was to address public disquiet. However, whilst these new tools were swiftly introduced to mitigate the negative impact of scandal, analysis in chapter five shows that, despite guidelines or regulations concerning the scope and nature of the information to be provided, few processes exist to ensure compliance. In the absence of such processes, it is argued, the value of a transparency tool is reduced. This explains the chapter’s findings that the accuracy and completeness of MEPs declarations of interests varies widely. Similarly, the guidelines for reporting the activities of the Commission EGs are frequently flouted, with many DGs providing scant information regarding the composition of the groups and little data concerning the frequency and nature of their meetings.

## 6.5 Interview approach.

At the start of each interview, participants were reminded that the context of the research project was an analysis of the effectiveness of measures taken to increase the transparency of EU policy making. They were then asked to state a view as to the purpose of transparency. The coding scheme described in chapter three was used to assign responses to one or more of the conceptual themes explored in the transparency literature and these themes were used as indicators for the purpose of transparency. The literature around these themes is discussed in detail in chapter four, but is summarised in figure 6.2 together with examples of the relevant academic work.

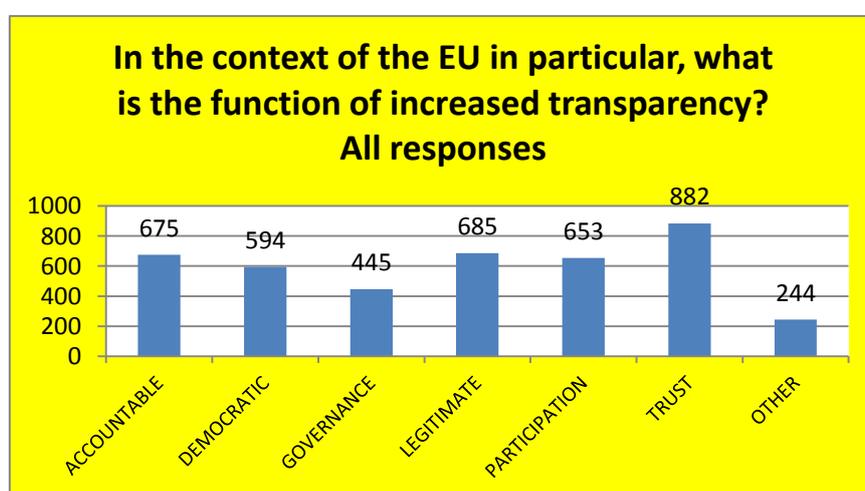
**Figure 6.2 - Transparency and its conceptual linkages.**

Transparency and its related concept	Associated with
Transparency and Accountability	Brandsma, 2012; Power 2000
Transparency and Democracy	Birkinshaw, 2006; Heald, 2006
Transparency and Governance	Esty, 2006; Hood, 2006
Transparency and Legitimacy	Naurin, 2002; Curtin & Meijer, 2006; Meijer, 2012
Transparency and Participation	Welch, 2010; Brandsma, 2010
Transparency and Trust	Grimmelickhuizen, 2012

## 6.6 Findings: all.

Interview data was analysed in order to reveal whether, and to what extent, these linking themes were identified by those closely engaged with the transparency process. Where the exact term was not used, responses were allocated to the function closest in meaning. For example, the term ‘citizen engagement’ was assigned to ‘participation’ and ‘increased confidence’ to ‘trust’. Figure 6.3 shows that, whilst *trust* and *legitimacy* were cited most frequently, few mentioned *governance* when considering the purpose of transparency.

**Figure 6.3 - Frequency of use of linking themes - all participants.**



## 6.7 Findings: classified by actor type.

More fine-grained analysis of the interview data revealed notable variations in the responses according to actor type. For example, when asked to state the purpose of transparency, the term *trust* was the least cited by Commission officials, but the most cited by MEPs.

The table below shows variations in the linking themes classified by actor type. The frequency with which interviewees used particular terms when responding to a question concerning the purpose of transparency was used as an indicator of its principal function. The results in figure 6.4 show, for example, that Commission officials' views as to the purpose of transparency is markedly different from that of MEPs or societal actors.

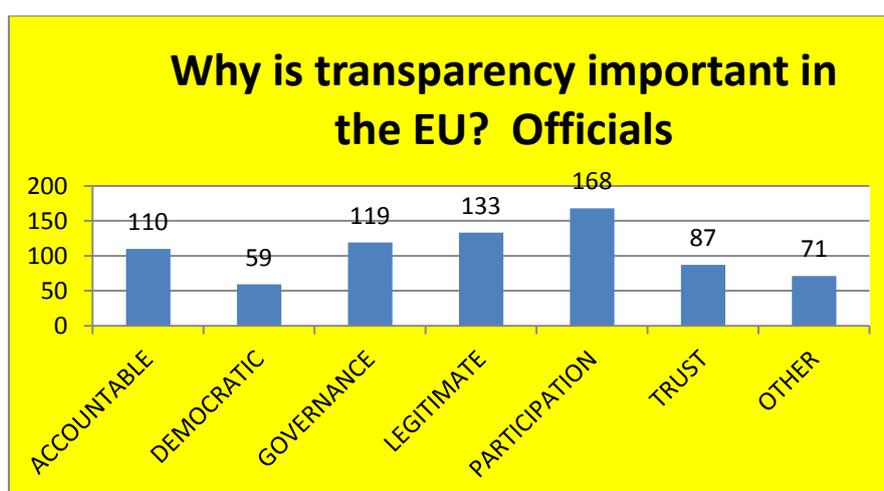
**Figure 6.4 - Principal function of transparency by actor type.**

Actor type	Function	Indicator
Commission Officials	Participation	Means of increasing citizen participation (access to institutions)
MEPs	Trust	Means of (re)building trust in institutions (usually Parliament)
Outside groups (Societal)	Accountability	Increasing accountability of EU institutions (usually Commission)
Outside groups (Interest)	Governance	Demonstrate good governance - increased access to institutions

### i. Commission Officials.

Figure 6.5 below shows that, in interviews, Commission officials were most likely to cite transparency's linkages to *participation* or *legitimacy*, and least likely to cite its linkages to *trust*.

**Figure 6.5 - Frequency of use of linking themes – Commission officials.**



Officials from different DGs shared a view that transparency measures are introduced chiefly as a means of enhancing opportunities for citizens to engage in the policy process. A number of officials specifically referred to the European Citizens' Initiative (ECI) as an example of an innovative transparency tool, although this may reflect the fact that these interviews were conducted in spring

2012 - a period during which the Commission was preparing to launch the first registered initiative. Likewise, several officials singled out the online transparency portal on the *Europa* website as an example of the Commission's commitment to greater transparency but - again - at the time of the interviews this was a fairly new online tool.

In citing the ECI as an example of innovative transparency, Commission officials had selected an example of an online tool designed to provide an access point for citizen engagement. This reinforces findings from the interviews that, for the Commission, the main purpose of transparency is to facilitate citizen participation through increased input legitimacy (Scharpf, 2009). However, whilst it is acknowledged that the ECI is a novel and imaginative means of facilitating transnational participation, as a transparency tool, its utility is limited. By allowing the Commission to observe the views of citizens, the ECI provides some type of outward transparency (Heald, 2006), but it does not provide inward transparency, as it does not allow outsiders to observe the conduct of activities within the institution. In terms of the Curtin and Mendes (2011) model, it is apparent that, in this aspect at least, Commission officials are privileging the function of transparency as facilitator of 'voice' over that of its role as a driver of 'vision'.

Beyond its perceived role in enhancing citizen participation, three officials also stated that the Commission uses transparency as a means of increasing its legitimacy, although none expanded on this to describe the linking mechanisms. In Curtin and Meijer's (2006, p.116) exploration of the linkages between these conceptual ideas, they suggest that greater transparency leads to social acceptance of the policymaking structures and that this - in turn - leads to greater input legitimacy. Clearly, however, this social acceptance will only occur if there is a public appetite for utilising the transparency tools in the first place. More simply, legitimacy will not increase unless there is sufficient public interest in the process and, in the context of EU policy-making, there is little evidence to suggest that this is so. This point was acknowledged in one official's observation:

It's completely underestimated, the level of transparency...you can see all the forms...you can follow all the debates. But hardly anyone does, in practice, which is not surprising. I think [for most people] the newspaper is enough [interview24 - Commission official].

In this case - with little social acceptance of the policy structures - it is unclear how simply providing transparency of the legislative process will lead to an increase in the legitimacy of the Commission. Indeed, by focussing chiefly on the provision of legislative transparency - which is often highly technical and requires the user to understand the institutional processes - the transparency mechanisms may actually *deter* engagement by the non-specialist and, as such, seem extremely unlikely to enhance legitimacy. A number of officials acknowledged that the transparency tools that

provide access to legislative processes are largely used by specialists, but took a view that the degree of transparency of the legislative process compares favourably to that in some MSs. This implies that it is only by direct comparison with the situation in MSs that enhanced EU transparency can lead to legitimacy gains:

I think in the EU we have a very transparent process. You can follow from home the legislative process...I did not find the same level of transparency in my government in [EU MS]...and people are able to see how open is the process in the EU [interview 24 - Commission official - emphasis added].

It is of note that this participant recognised that few citizens choose to access the information available through the transparency tools but also suggested that the fact that the information is available itself creates an open process. Another participant echoed this view but also acknowledged that the transparency mechanisms are used by specialists:

I think the decision-making process is very transparent. You can follow the legislative process...and this is used by organised civil society, by interest groups...but, unfortunately, not always by the media [Interview 25 - Commission official].

When considering recent measures taken by the Commission to increase transparency, a number of officials singled out the dedicated transparency portal hosted by the *Europa* website.

We have a new transparency portal. It's just a one stop shop to find all the other portals but from here you can see all aspects of transparency...even the beneficiaries of EU funds...it allows the media or civil society to compare the declared policy objective to the reality [Interview 24 - Commission official].

As this official suggests, this transparency portal - introduced in late 2011 - does not provide any new transparency tools, rather it allows users to link to pre-existing transparency tools from a single access point. From the portal, users can access searchable databases, public consultations, Commission impact assessments, online registers and the like. Evaluating the impact of this portal on EU transparency provides a telling illustration of the problems encountered in seeking to capture the effectiveness of the many and varied transparency systems through a single conceptual lens.

As a system, the portal adds no new data, so it provides no transparency gains in terms of the completeness of information (Drew & Nyerges, 2004). However, by providing a single access point for users, it enhances the usability of information (Mahler & Regan, 2007). Similarly, the portal has no facility for streaming debates at the EP, so it does not enhance transparency in real time (Heald, 2006). But, by providing a single window on activities across the institutions, and by including links to the ECIs, it provides transparency gains by increasing citizen vision and voice (Curtin & Mendes, 2011).

A series of questions around the relationship between transparency and decision-making garnered some interesting responses with all officials initially stating that greater transparency leads to better decisions. However, when the same officials were then invited to consider this question with specific reference to the closed EG meetings, the opposite view prevailed - that the closed nature of these meetings leads to better decision-making. When asked to expand, each official cited either the 'space to think' argument - the view that EG members should be free to pursue bold thoughts - or the 'objectivity' argument - that EG members should be free to give advice that is contrary to the national position of their own MS.

We want our experts to be free to be wrong sometimes...to sometimes say crazy things without worry. That just would not happen if the meetings were held in public [Interview 25 - Commission official].

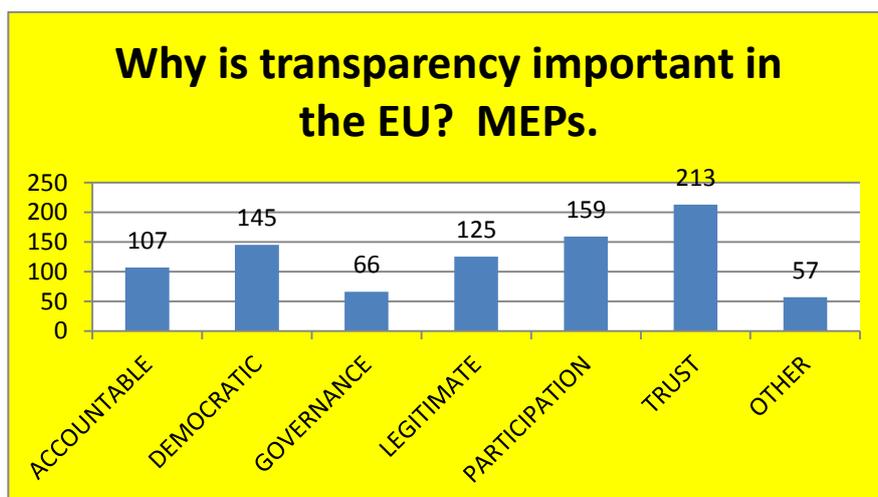
Many of the advisors - most actually - work for national governments. If they had to give advice openly, they would be forced to take a government line...a position...that would reduce the independence of the advice [Interview 24 - Commission official].

Whilst both arguments are understood and supported, it is interesting to observe Heald's (2006) '...multitudinous appeals to transparency' in action, with the two quotations above appearing to demonstrate that transparency is considered to lead to better decision making in principle but is seen as hindering the quality of the advice upon which that decision making is based in practice.

ii. MEPs.

Figure 6.6 shows an analysis of the responses to the question concerning the purpose of transparency indicating that MEPs were most likely to cite *trust* and least likely to cite *governance*.

**Figure 6.6 - Frequency of use of linking themes - MEPs.**



MEPs from across political groupings and of different nationalities shared a view that transparency played a critical role in enhancing trust in the institutions, with a number citing the example of

MEP's Declarations of Interest being made available online as evidence of the EP's commitment to greater transparency. A number of interviewees specifically referred, in this context, to 'rebuilding' trust. Given that the interviews were conducted during 2011/12 in the recent aftermath of *The Sunday Times* 'cash for amendments' story, it is perhaps unsurprising that some MEPs displayed a considerable level of unease and sensitivity - even defensiveness - when discussing the link between transparency and trust in the EP. This may account for some of the responses to an initial - seemingly innocuous - question concerning interviewees' views as to the purpose of transparency, two of which are quoted below:

We have to be transparent because we do an important job and we work hard. We work hard for citizens and we try to engage with them. And of course, we want them to engage with us. The *Sunday Times* approached many of us, you know? And they only found three...of course that is three too many....but only three. But of course they [the *Sunday Times*] don't tell you that [Interview 15 - MEP].

Transparency is vital. It's about trust...in the institutions...in the processes. We have rules here...we have regulations and codes of conduct...and most of us understand these. But the public don't understand these - they just read the newspapers...they see the *Sunday Times* and think "they are all like this". Transparency is how we show them we're not [Interview 23 - MEP].

Analysis of the interviews with MEPs reveals that, although *trust* was the most frequently cited function indicator to describe the role of transparency, the term was frequently used more broadly, especially in relation to the institutional role of the EP. In the context of a series of questions relating to Eurobarometer data on trust in the EU, some MEPs remarked that the EP consistently polls as being the most trusted of the institutions. MEPs differed in their views as to why this should be, however, advancing various explanations including the EP's openness, its direct elections and members' closeness to their constituents. One MEP providing a more zero-sum explanation, however, suggested that trust in the EP is just *relatively* high when measured against the Commission.

Uniquely amongst the EU institutions, the EP broadcasts a proportion of its activity on Europarl TV. This is one of the more innovative EU transparency tools, and frequently cited as such during interviews with MEPs. An online streaming service - rather than an actual television station - Europarl was launched in 2008 and broadcasts EP sessions and Committee hearings live, in addition to educational programmes, debates and interviews with MEPs and commentators. Although created by the EP, the running of Europarl TV is actually outsourced to a production company and independent journalists present its programmes (Personal communication, March 2013). Interviewees were asked their opinion as to the value of Europarl TV as a transparency tool. Whilst most MEPs felt that the facility makes a positive transparency contribution by providing information

to EU citizens, a number also acknowledged that, with extremely low viewing figures, its effectiveness may be somewhat limited:

Nobody can say it's seen by millions. But, then again, it isn't a private channel living by the size of its audience [Interview 9 - EP official].

A small proportion of interviewees had a negative view of the Europarl streaming platform, generally with reference to its €9 million running costs. Interestingly, one participant commented that the journalism lacked balance, but another described it as 'too balanced...like a classic "on the one hand...on the other hand" university essay' [Interviews 08 and 23 - MEPs]. One response, in particular, suggested that the debate around the introduction of Europarl TV was highly charged and somewhat politically divisive:

The EPP [European People's Party] don't like it [Europarl TV] and say that it's all propaganda but that's because they have their own version. Great, but if you want to see bloody propaganda watch EPP TV, which talks about debates in the EP as if there were only EPP members [Interview 9 - EP official].

In interviews, the online interest declarations and Europarl TV were the most frequently cited transparency tools, with the former specifically seen as having a role in rebuilding trust in the EP in the aftermath of the *Sunday Times* story. However, the audit of these declarations described in chapter five shows inconsistencies, with a number of incomplete or frivolous entries. Conceptually, therefore, the declaration system does not meet the criteria for completeness of information (Drew & Nyerges, 2004). Nor does it meet the 'usability of information' criteria (Mahler & Regan, 2007), because entries are completed in the MEPs' chosen language and published as a non-searchable PDF document. However, as a transparency system, the declaration system does provide 'inward transparency' (Heald, 2006).

For Europarl TV, the live streaming of the Committee hearings meets the criteria for both 'transparency in real time' and 'process transparency' (Heald, 2006), although, as it reaches only a small number of EU citizens, it has limited use as a driver of the informational function of transparency (Meijer, 2012).

Beyond discussion about *The Sunday Times* report, the next most prominent transparency issue raised by MEPs concerned access to the EP by individuals representing outside interests. However, despite its importance as an issue, few interviewees were deeply engaged in the specific debate around the JTR.

During interviews with MEPs, it became clear that there was no consistent approach regarding the language used: some MEPs referred to 'lobbying' and 'lobbyists', whilst others referred instead to 'interest representatives'<sup>24</sup>.

Before considering issues around the transparency of outside groups' access to policy-makers, interviewees were firstly asked questions to gauge their views as to the role of these outside groups in the EU policy process and to understand the circumstances under which they met with these groups. Most interviewees acknowledged that outside groups played a significant role in shaping policy, with their function as source of expertise particularly valued:

A member is responsible for things that he does not understand. Without lobbying it is not possible to make good legislation [Interview 12 - MEP].

For policy-makers, then, outside groups provide the much needed expertise discussed in Bouwen's (2002) work on corporate lobbying. Bouwen describes a 'logic of access' where an interest group deploys its expert knowledge strategically in order to gain access to the institutions. He suggests that these groups primarily target the Commission, in order to exert influence at pre-proposal stage. At the EP, Bouwen argues, the need for technical expertise is largely limited to providing MEPs with the information necessary to evaluate a Commission proposal. Eising (2007) also makes this point, observing that the Commission is considered the most valuable contact for interest groups because of the difficulty of achieving significant modifications to a proposal once it has been presented to the EP and Council. However, as the Lisbon Treaty has greatly increased the EP's institutional powers, it seems likely that its members now need substantially more technical expertise, a view suggested by one long serving MEP:

I see lobbyists often now...much more than before. I met a group this morning at a parliamentary breakfast to discuss emissions trading. But this is important because this is not my field...more and more we deal with things outside of our own knowledge [Interview 28 - MEP].

Without exception, MEPs stated that the demands on their time required that they were necessarily selective when granting access to outside groups. They were asked to explain the selection criteria used. The responses here varied, with some interviewees stating that they would be more likely to give access to outside groups from his or her MS regardless of the issue, and others suggesting that the nature of the issue for discussion would determine access. Again, the role of outside groups as

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<sup>24</sup> For consistency, the term 'interest group' is used when referring to public affairs agencies, their clients and other corporate bodies; 'societal group' is used to refer to NGOs, campaigning groups and the Churches, and 'outside groups' is used as an umbrella term for both. In direct quotations, however, the term used by the MEP is retained.

information provider was raised, with several interviewees stating that they would be more likely to give access to requests from individuals or groups demonstrating specialist knowledge:

You look at how knowledgeable they are...how well researched the request...you talk to people with expertise [Interview 23 - MEP].

This raises a further question concerning competing expertise. MEPs are subject to many requests to meet with outside groups representing various interests, many of which claim a level of expertise in a policy area. This issue was addressed in only one interview:

I will ask my people to do some research on people before I decide to talk to them. I will check their resumes to find out if they have good credentials...to check their experience and publications and so on. [Interview 26 - MEP].

Interestingly, more than half of MEPs interviewed stated that they only granted access to outside interests having first ensured that the group had an entry in the JTR, although it appears that - to some extent - this practice may have been triggered by *The Sunday Times* expose:

My view is that it's better for you as a member - and certainly better for those you represent - if you only deal with people who are on the register. If you think about those [*Sunday Times*] journalists, these guys weren't registered. If they had checked, it would have set alarm bells ringing [Interview 8 - MEP].

MEPs were then asked questions concerning the EP's existing transparency processes and what practical changes, if any, they would welcome. Most responses here clearly reflected the interviewees particular interests, with a number relating to 'housekeeping' issues, such as a perceived need to alter the forms used for making interest declarations.

Interviewees were asked questions concerning two specific transparency issues: the introduction of a 'legislative footprint' as proposed by some societal groups and the ongoing debate about whether the JTR should be mandatory. Chapter four described how the mandatory/voluntary JTR issue produced some conflict between the Commission and those groups acting as transparency advocates. In terms of the legislative footprint, the majority of respondents were in favour, with several stating that they felt this would be a major transparency advance:

I've been arguing for this for years. It [the legislative footprint] would allow anyone to look and say "okay, so the rappoporteur has spoken with the automobile industry, but where's the consumer association?" You could see who I've met with, and who might have influenced my report [Interview 12 - MEP].

However, two MEPs raised concerns about practical aspects of the legislative footprint proposal, in particular concerning the recording of meetings between industry representatives and MEPs:

But say I'm working on something medical and I get invited an event at The Thon [hotel] and I meet someone from Glaxo, say, will this be included? If I meet him in the street? If we play squash together? [Interview 23 - MEP].

Again, the proposed legislative footprint - a practical transparency tool - does not easily map across to the conceptualised models of transparency. It would provide information concerning the sources of expertise drawn on by legislators, and so it could be seen as enhancing process transparency (Heald, 2006). It would not simplify legislative language, however, thus doing little to enhance the usability of information (Mahler & Regan, 2007). Similarly, the practical issues raised by two interviewees may mean that some information may be missed, thus failing to meet the criteria for completeness of information (Drew & Nyerges, 2004).

Finally, interviewees were asked to consider the relationship between transparency and the quality of decision-making. As with the Commission officials, MEPs initially identified a positive relationship between transparency and decision-making, although - unsurprisingly - they differed from Commission officials in their view that adopting a particular position for political reasons did not negatively impact on the quality of these decisions. There were, however, two areas where opaqueness was considered legitimate: where greater transparency would potentially undermine the position of MSs and where it would expose party tactics and so diminish political advantage:

When you think about negotiations between states, if every working group of the Council has to be open, it's unworkable, because you have to make compromises. You cannot make compromises with the cameras rolling [Interview 12 - MEP].

Let's say we discuss how to attack the EPP. If we then have to publish the notes of the meeting, then everyone would know our tactics. And some groups would not want to show that it is bitterly divided amongst themselves but to the outside world they want to have one opinion [Interview 28 - MEP].

Here it is apparent that, although the circumstances under which Commission officials and MEPs consider transparency to be undesirable may differ, the underlying rationale for their views are the same: that the public gaze diminishes the space for actors to make the compromises necessary to effect good decision-making. Instead, compromise is brokered elsewhere, a point noted in one MEPs response to the question:

If you have public debates in the Council, you know for sure that that is not where the business is being done...it will happen in the corridors...during the coffee breaks [Interview 12 - MEP].

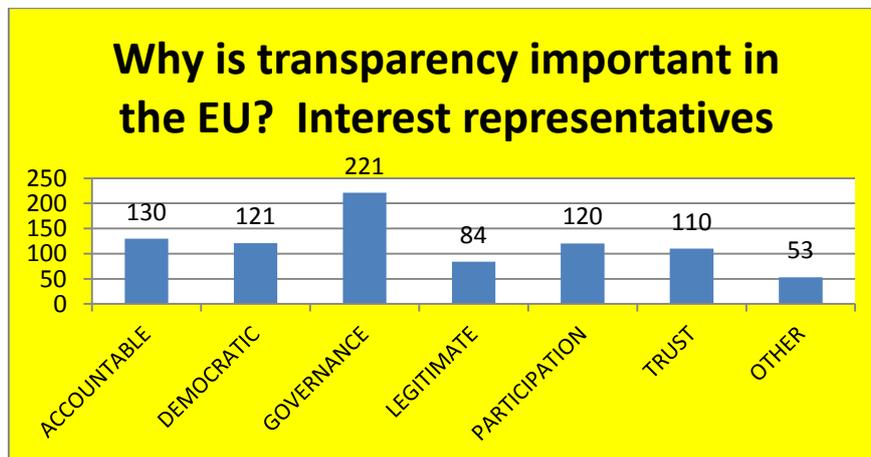
Here, one of the perverse consequences of greater transparency is exposed: that it can lead to informal and unrecorded negotiations conducted away from public scrutiny, with the formal proceedings acting simply to 'rubber stamp' pre-agreed positions. Applying this to this project's

typology of transparency, negotiations open to the public gaze may provide only nominal rather than effective transparency (Heald, 2006).

iii. Outside groups.

Analysis of data drawn from interviews with outside groups revealed some stark differences between them concerning the function of EU transparency. Figure 6.7 shows interest representatives most likely to cite *governance*, whilst figure 6.8 indicates societal representatives most likely to cite *accountability*. In each case, *legitimacy* was the least cited function of transparency. As this section shows, these differences extend beyond the function of transparency issue, with interview data exposing a fundamental disconnect between outside groups that campaign for greater EU transparency and those that represent the interests of corporate clients.

**Figure 6.7 - Frequency of use of linking themes – interest groups.**



For public affairs professionals, there appeared to be little distinction between the function of transparency whether applied to the EU or the corporate sector, with responses to a question concerning the purpose of EU transparency frequently drawing parallels:

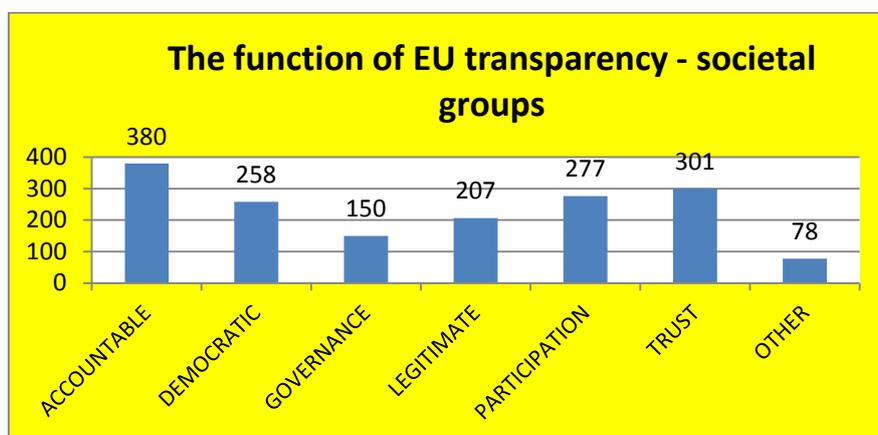
Transparency is part of professional public affairs. That's true for us and it's true for the Commission and the Parliament. So transparency is about professionalism. If we are not transparent, we're not going to be in business ten years from now [Interview 14 – interest group representative].

This perceived similarity between corporate and institutional transparency was again referred to when explaining the phenomenon identified by another interviewee - an interest group representative with long and varied experience gained both within the EU institutions and in organisations that interact with them. The individual concerned identified a shift over time in the way the EU has approached transparency, taking the view that the institutions have increasingly moved towards a corporate governance model [Interview 14 - interest group representative]. This is

intriguing because corporate governance - with its emphasis on maintaining confidentiality for competitive advantage - generally provides shareholder accountability through annual *ex post* financial reporting. Conceptually, therefore, the interviewee seemed to be suggesting that, whilst the EU institutions are employing measures to further retrospective transparency, they are showing less commitment or enthusiasm to enhancing real-time transparency.

This interest group view - that there is a parallel between institutional and corporate transparency - can be juxtaposed with the position of societal actors, exposing the fundamental difference in their positions.

**Figure 6.8 - Frequency of use of linking themes – societal groups.**



Whilst public affairs professionals suggest that the changing EU transparency landscape creates a convergence of EU and corporate reporting requirements, those societal groups with an interest in this area emphasise the role of EU transparency in monitoring the relationship between the institutions and corporate bodies:

So for us, transparency is a tool to expose excessive influence by very small minority groups like corporate leaders...it allows us to document one sided decision-making [Interview 7 – Societal actor].

This suggests that, for those groups campaigning for greater transparency, the transparency tools exist to increase the visibility of the relationship between the institutions and the corporate sector, and that the groups use these tools to monitor and report on this relationship.

Another distinction between the views of outside groups was apparent in the responses to the questions concerning negative consequences of EU transparency. For the interest group representatives, the parallels between EU and corporate transparency was again raised, with one echoing the views of Commission and EP interviewees by suggesting that greater real time transparency would reduce the quality of decision-making. However, unlike the Commission’s

‘space to think’ argument, or the MEPs’ ‘political’ arguments, interest group representatives argued that real time transparency of decision-making would deny decision-makers access to the expertise of the corporate sector as there would be a reluctance to expose this expertise to the scrutiny of competitors [Interview 14 - interest group representative].

From the interview data, it seems that - amongst Commission officials, MEPs and interest representatives - the negative aspects of transparency identified fell into a number of broad themes: ‘space to think’; political positioning; the creation of informal decision environments and considerations of commercial sensitivity. These themes differed for societal groups, however. These groups were less forthcoming when asked to suggest the negative aspects of transparency or provide examples of instances where transparency should be denied, but where such examples were proffered, these referred to issues around national security or the protection of personal data. Figure 6.9 below summarises actors’ views regarding the purpose and potential negative effects of transparency:

**Figure 6.9 - Advantages and disadvantages of transparency – by actor/institution.**

<b>Actor/institution</b>	<b>Positive effects</b>	<b>Negative effects</b>
Commission	Increases participation	Hampers innovation [ <u>Space to think</u> ].
EP	Increases trust	Loss of political advantage Creates informal processes
Interest Group	Improves governance	Loss of competitive advantage
Societal Group	Improves accountability	Undermines MS national security Reduces personal privacy

It is clear that there are multiple functions of EU transparency, with different understandings between the institutions and amongst outside groups. These different understandings reflect the variety of roles, experiences and ideological positions of the actors and groups involved. Thus the Commission uses transparency to promote participation and enhance legitimacy, whilst the EP exploits its capacity to enhance citizen trust. Beyond the institutions, interest group representatives advance the case for transparency’s role in promoting good governance, whilst those societal groups that campaign for greater transparency promote its role in facilitating accountability, a function of transparency of particular importance to this project. The next section considers the differing roles of transparency mediators and transparency advocates.

## 6.8 The role of the European Ombudsman.

Established in article 20d of the Maastricht Treaty, the European Ombudsman is elected by the EP for the whole parliamentary term. The remit of the office holder is to investigate cases of potential maladministration at the EU institutions, including instances of failure to reply of requests for information and refused or delayed provision of such information (European Ombudsman, 2015).

The Ombudsman's investigation can be undertaken either on the office holder's own initiative or on the basis of complaints received. In practice, however, there were few own-initiative investigations launched during the tenure of the first two office holders, meaning that its investigations were largely reactive. The Ombudsman's figures suggest that easily the highest proportion (58%) of the complaints it investigates relate to the European Commission, with the next largest tranche (11%) concerning the European Personnel Selection Office (EPSO) (European Ombudsman, 2015). Analysis of its investigations - which are published on the European Ombudsman's website - suggest that the majority of complaints it investigates relate to a failure or refusal to provide information, often regarding the composition of groups advising the Commission. Indeed, it has investigated a number of complaints from societal groups, including some relating to the composition and perceived imbalance of the EGs.

Given its remit, then, it may seem that the Ombudsman provides the mechanism of public control identified by Commission officials. Crucially, however, the Ombudsman's role is narrowly circumscribed, limiting its powers of scrutiny. Firstly, it is largely reactive, with the office holder's role chiefly that of investigating complaints. Here, the potential maladministration giving rise to the complaint would need to be identified in the first place. Again, this leads to a situation where, in certain policy areas, perceived maladministration is likely to generate complaints to the Ombudsman, whilst a lack of critical oversight in other policy areas means that potential maladministration goes unchallenged.

A further limitation in the Ombudsman's oversight role concerns the duration of the process. The complaint system requires that complainants must have first sought remedy from the institution concerned before making a complaint to the Ombudsman. So, where the complaint concerns a delay in responding to a request for information, for example, a significant period will have elapsed before the formal complaint is made. Subsequently, however the regulations concerning timescales for communication and response allow for the Ombudsman's 'friendly solution' to be reached within six months of the date of the complaint. However, where the nature of the complaint prevents a compromise solution, this timescale can shift significantly.

In June 2008, for example, CEO filed a complaint against the Commission citing a failure to respond to requests for information on the composition of those groups advising on biofuels policy [case 1151/2008/(DK)ANA]. Here the Commission disputed the content of the complaint leading to a protracted correspondence between CEO, the Commission and the European Ombudsman. The Ombudsman's final decision was published in July 2013, five years from the date of the complaint.

Similarly, in 2009, the societal group *The European Coalition to end Animal Experiments* (ECEAE) complained to the Ombudsman concerning the selection procedures used when establishing a working group into the use of non-human primates in research [case 2558/2009/(TN)DK]. Again, the Commission disputed the arguments advanced in the complaint and the negotiation between the parties involved took over four years, a decision eventually being published in July 2013.

Whilst the formal powers of the Ombudsman remain unchanged, it appears that they are perhaps now being interpreted more broadly. In October 2013, Emily O' Reilly became the third European Ombudsman succeeding P. Nikiforos Diamandourosa. Early in her tenure, she stated that she would exercise the right of own-initiative powers 'to investigate system problems in the EU administration more strategically' (European Ombudsman, 2015). In May 2014, she launched an own-initiative inquiry into the composition of these groups investigating their balance and the potential conflicts of interest amongst those experts appointed in a personal capacity. This inquiry remains ongoing at the time of writing. However, although it is significant, it appears that the inquiry was triggered by the fairly large number of complaints made by societal actors concerning the composition of the groups. This suggests that the oversight gap identified in this project remains extant: that those areas not scrutinised by these groups - and therefore not the subject of complaint - are likely to remain 'under the radar' of the Ombudsman and therefore not subject to own initiative investigations. This being the case, an understanding of both the role and motivation of those societal groups acting as transparency advocates is crucial.

## 6.9 The role of societal groups.

Section 5.17 shows the process through which a complaint by a societal group led to DG ENTR rebalancing the membership of a number of EGs and amending inaccurate register entries. Here compliance with transparency guidelines and regulations was affected through a scrutiny process. In the absence of a formal and consistently applied system of independent oversight of the registers, this role is undertaken by societal groups. This section considers the role of societal groups acting as transparency advocates and their use of transparency tools to monitor the activities of the institutions. By evaluating the role of these groups with reference to the literature on insider and outsider groups, the chapter shows that some of these monitoring groups, acting as a proxy for the

checks and balances of public control, exercise only selective scrutiny, rendering some policy areas effectively exempt from any scrutiny process.

#### 6.10 Core and ancillary transparency advocates.

A number of Brussels-based societal groups have areas of activity which particularly focus on the relationship between the EU institutions and the corporate sector. For example, as part of the *European Coalition for Corporate Justice* (ECCJ) campaign for tighter regulation on financial disclosure by multi-national companies (ECCJ, 2015) the group identifies instances of multi-national company (MNC) representation on the relevant advisory committees [Interview 16 – Societal actor].

In this regards, ECCJ is fairly typical of societal groups. It campaigns for greater transparency of EU policy-making, but sees this transparency in the context of its wider campaign aims – in this case, as a means to expose the institutional-corporate relationship around financial regulation. So here, transparency is the group's ancillary function.

Generally, societal groups have limited resources and expertise to allocate to transparency activities, and so exercise the scrutiny function in one of two ways. For a few groups, a specific individual is responsible for overseeing activities in the institutions. To illustrate, both the Madrid based *Access Info Europe*(AIE) and the Brussels based *Transparency International (EU)* (TI-EU) have, within a small team of eight to ten personnel, a single individual solely responsible for promoting and monitoring transparency at the EU institutions [Interview 29; Interview 30 – both societal actors]. Similarly, Brussels based *Friends of the Earth Europe* (FoEE) has a former Commission employee responsible only for monitoring the activities of, and liaising with, the Commission [interview 27 – societal actor].

However, whilst TI (EU), AIE and FoEE each have an individual member of staff with a dedicated transparency role, the exercise of this role differs slightly. FoEE - like ECCJ - campaigns for transparency as a means to further wider objectives, and its transparency role is exercised from within the group's Economic Justice team. As a result, the individual concerned focuses chiefly on transparency as it relates to issues around economic justice. By contrast, both AIE and TI-EU have transparency as a core function and the individual concerned has a remit that cuts across policy areas.

#### 6.11 Insider and outsider transparency advocates.

Even amongst the core transparency groups there are significant differences, as some work closely with the EU institutions, whilst others do not. Conceptually, this distinction draws on earlier

typologies of 'insider' and 'outsider' pressure groups. Grant (1989) identifies three characteristics of an insider group:

- i. that it is recognised by a government as legitimate in speaking for its members;
- ii. that, as a consequence, it is allowed to engage in a dialogue
- iii. that, in return, it implicitly agrees to present a well-researched and accurate case and be willing to accept the outcomes of the bargaining process.

Insider groups, Grant argues, often develop a hierarchical and professional structure, mirroring that of governments and civil services. They use political skill to frame issues in a measured way using terminology familiar to policy-makers. Outsider groups, by contrast, tend to have a more broad-based membership. Without the constraints imposed on insider groups, they are able to make more far-reaching demands but, with fewer access opportunities, these are less likely to be met. Lacking access, outsider group strategies often involve grassroots campaigns organised by a core of committed individuals<sup>25</sup>. For Chalmers (2013), determining a group's insider or outsider status is more nuanced. He instead distinguishes between insider and outsider tactics. The latter, Chalmers suggests, refer to a group that uses the media and organising events to inform and mobilise citizens outside the policy community, a criteria that is particularly appropriate for the core transparency groups.

TI-EU is one of more than a hundred 'chapters' of the organisation worldwide. TI's annual Corruption Perception Index (CPI) ranks countries by integrity, and its publication is widely reported in mainstream media. In some areas, TI works closely with certain government agencies – it has a formal Partnership Programme Agreement (PPA) with the UK's Department for International Development (DfID), for example (TI-EU, 2015). An independent evaluation of this PPA commissioned by DfID described TI as '... the global civil society movement leading the fight against corruption' (IOD Parc, 2015).

The Brussels chapter of TI - its EU liaison office - consists of ten paid staff, augmented by a small number of volunteers (TI-EU, 2015). In 2012, approximately 40% of the funding for the EU office was provided by DG EAC<sup>26</sup> and it has a presence on a small number of Commission EGs (TI- EU, 2015; European Commission, 2015b). In 2012, TI-EU was selected as Brussels 'NGO of the year' by the European public affairs community (EPACA, 2015).

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<sup>25</sup> Grant further distinguishes between outsider groups by necessity - those that seek to become insider groups but lack resources - and outsider groups by choice - ideological protest groups that have no wish to be associated with government.

<sup>26</sup> 2012 most recent audited figures. For 2013 TI projects EU funding will be 15% of its budget.

Despite having approximately the same number of staff as TI, and with a very similar operating budget, the Brussels based core transparency group CEO receives no EU funding. Describing itself as a research and campaign group, CEO’s structure differs from that of TI, in that it appears to be a ‘stand-alone’ organisation, rather than one acting under an umbrella group. Interestingly, however, two of its six-person advisory board are members of the Amsterdam-based *Transnational Institute of Policy Studies* (TNI). TNI, established in 1974, describes itself as a group of ‘activist researchers’ committed to ‘confronting corporate globalisation’ (TNI, 2014).

Although only illustrative, the table below provides a typology of transparency advocacy groups. Here the indicator for insider status is financial support from the EU institutions and/or presence on a Commission EG, whilst the indicator for core status is having transparency as a direct campaigning goal:

**Figure 6.10 - Typology of transparency advocates.**

	<b>Insider</b>	<b>Outsider</b>
<b>Core</b>	<ul style="list-style-type: none"> <li>• Transparency International</li> <li>• Spinwatch</li> </ul>	<ul style="list-style-type: none"> <li>• Access Info Europe</li> <li>• CEO/ALTER-EU</li> <li>• Statewatch</li> </ul>
<b>Ancillary</b>	<ul style="list-style-type: none"> <li>• Friends of the Earth Europe</li> <li>• CEE Bankwatch</li> <li>• Amnesty International (EU)</li> </ul>	<ul style="list-style-type: none"> <li>• Greenpeace</li> <li>• European Coalition for Corporate Justice</li> <li>• Alternative Trade Mandate</li> </ul>

Partially funded by DG EAC and with representation on EGs, TI-EU clearly enjoys the legitimacy of an insider group. CEO, by contrast, receives no EU funding and has no direct presence on Commission EGs. Ostensibly, therefore, CEO appears to meet the criteria for an outsider group. Section 4.18 shows, however, that CEO had insider status in the initial stages of the negotiations around the JTR. As a result of disagreement concerning whether this register should be mandatory or voluntary, however, the group’s status changed but, as it relinquished its insider status, it assumed a dual role as both advocate for, and monitor of, transparency.

6.12 Scrutiny by outsider transparency advocates.

Chapter five’s analysis of the electronic register’s QA processes argued that the EU has abdicated responsibility for ensuring that the data it provides on the registers is correct, and that it instead delegates this function to the checks and balances of public control. The chapter suggests that, as the conduct of this public control requires both time and specialist knowledge, it is actually exercised through the close scrutiny of core transparency groups. The previous section shows that, in the context of its campaign to tighten financial regulation around the corporate sector, ECCJ has a twin

monitoring and advocacy role. CEO, and the closely associated ALTER-EU, have a wider remit, however, and take measures to counter - rather than simply monitor - the relationship between the corporate sector and the Commission.

Although formally a separate group, Greenwood (2011) shows that, from its 2005 launch, ALTER-EU had very close links with CEO. During the research undertaken for this project, it became clear that this remains the case, both in terms of the overlapping membership and in the routine sharing of resources. It was noted during interviews that the groups have adjacent offices, but that individuals frequently move between the two for discussion. This closeness is further borne out by analysis of the groups' entries on the JTR. The same individual is listed as the permanent person in charge of EU relations, whilst the financial disclosure section of ALTER-EU's entry, lists CEO as the largest funder, providing for more than fifty percent of its total budget (JTR, 2015).

Launched in 2005 and composed of approximately 200 societal groups, trade unions and academics, ALTER-EU represents members 'concerned with the increasing influence exerted by corporate lobbyists on the political agenda in Europe' (ALTER-EU, 2015). The organisation is open to any group or individual in broad sympathy with its campaigning aims. ALTER-EU has a full time coordinator who actively identifies and approaches potential members [Interview 06 - Societal actor]. Its membership is extremely broad and includes, for example, consumer organisations, environmental groups and NGOs supporting the rights of indigenous people. There is an obvious logic to this arrangement in that it provides mutual benefits. For the individual members, being part of an alliance of societal groups amplifies any single group's voice whilst, for ALTER-EU, presenting itself as representative of a broad membership. This increases access opportunities as it meets the Commission's consultation principles whereby it prefers to engage with those societal groups that can show that they represent a plurality of views.

In the conduct of its role, CEO/ALTER-EU often adopts high-profile tactics to publicise particular instances of perceived over-representation of the corporate sector in the policy forums. Both groups websites' give access to their reports, including *Towards more balanced EGs; Block the revolving door* (ALTER-EU, 2015) and *Exposing the power of corporate lobbying in the EU* (CEO, 2015). The close working relationship between CEO and ALTER-EU was raised by some interview participants:

Their reports look interesting but then I notice that they have the same address, they double-hat at events...the same bunch of activists do the reports but they pass themselves off as a broad coalition [Interview 21 - societal actor].

In O'Neill's work on transparency and trust, she introduces the notion of the 'expert critic': those with the time and ability to grasp information in ways that the wider public does not. She argues that transparency is of particular use to campaigning organisations that:

can discover information that bears on others' performance (whilst they themselves are generally exempt from like transparency requirements). Some...may use that information for partisan purposes<sup>27</sup> (O'Neill, 2004. p.272).

Chapter five shows that, as an 'expert critic', ALTER-EU can be effective. A complaint to the European Ombudsman resulted in DG ENTR introducing changes to the composition of its EGs and addressing inaccurate entries on the registers. Clearly, however, both ALTER-EU and CEO - its parent organisation - have limited resources, so the degree of scrutiny that can be undertaken is necessarily selective. In itself, selective scrutiny is neither unusual nor problematic, and it can be an effective tool to modify behaviour or ensure compliance with regulation - a company's random drug testing regime or the monthly spot checks of expense claims, for example. For ALTER-EU and CEO, however, selectiveness is not random, with the particular Directorates and policy areas selected for attention reflecting the groups' wider interests. To illustrate, CEO's logo includes the strap-line *Exposing the power of corporate lobbying in the EU*. Given this, it is unsurprising that its institutional oversight tends to most closely scrutinise those policy areas and DGs where CEO perceives corporate influence to be most likely.

It seems clear that CEO's published reports raise awareness of an issue and, therefore, they are a successful campaigning tactic. When questioned about the group's role in holding the institutions to account, some interviewees specifically mentioned their reports in the context of particular campaigns:

I went the other month to an event [CEO] organised to launch a report into the arms industry. It [the report] seemed well researched...it showed the lobbying spend of all the big players here in Brussels...BAE, Lockheed, and so on [Interview 11 – MEP].

Other participants - in particular those representing interest groups - had rather more negative views about the CEO reports, however, with some questioning the reports' impartiality and research methodology:

If you read any [CEO] report, you'll find it full of footnotes to make it look academic, but these just refer to other reports of theirs. It's fascinating to see the circularity of this stuff.

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<sup>27</sup> O'Neill highlights one of the perverse consequences of transparency that is central to this case: that the measures taken to facilitate the flow of information to citizens might be used by a proxy group to present a selective picture of the EU. This raises the question as to whether the use of transparency tools for this purpose supports or undermines the institutional understanding of transparency's role: in short, whether using the system to expose perceived wrongdoing can potentially reduce, rather than enhance, citizen trust and institutional legitimacy.

They present themselves as researchers but they don't do objective research [Interview 14 – Interest group representative].

It is apparent that, amongst interest group representatives in particular, the negative views of these core transparency groups extend beyond questioning the integrity of their published reports, with one interviewee characterising CEO as '...anti-globalisers, and therefore fundamentally anti-European' [Interview 14 – interest group representative].

This view is echoed by a Brussels-based interest representative and academic whose *Risk-Monger* blog has hosted an extremely active forum - *Corporate Europe Hypocrisy* - since 2010. Although the blog is publicly available on Euractiv, the European Media network, the majority of forum entries are posted by members of the interest group community. The comments on this blog are overwhelmingly critical of the tactics and motives of CEO and, to a lesser degree, other core transparency groups. At a speech given at an industry event in late 2013 and subsequently made available online<sup>28</sup>, the founder of Risk Monger - David Zaruk - captured the view of many of the forum's contributors:

Groups like CEO, Alter-EU, Friends of the Earth and Greenpeace are anti-globalisation...anti-international trade and the role of industry. What we are seeing today is the growing movement to de-normalise industry (Zaruk, 2013).

During interviews with interest representatives there was a clear view that the nature of the scrutiny provided by CEO and similar groups is selective and that this creates a misleading impression of the EU. However, other actors, including MEPs and other societal groups, saw their role in scrutinising the institutions as essential.

### 6.13 Conclusion.

This group/actor chapter has explored some of the benefits and disadvantages of providing greater transparency of EU policy-making as these are understood by those affected. It has shown that transparency is attributed with multiple benefits and is seen as a means of enhancing the EU in numerous ways. Thus transparency is seen to increase trust in the institutions, to aid in the development of a European identity through increased participation opportunities and to provide greater accountability to ensure balanced representation.

The chapter has argued that these various benefits, rather than being mutually reinforcing, can be contradictory. It has built on the findings of the previous chapter, showing that the lack of oversight systems gives groups an opportunity to exploit the transparency tools to further their broader

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<sup>28</sup> 'The Death of Dialogue' - speech given at the PlasticsEurope industry event on 5 November 2013.

political aims. For this project, the significance of this is not about the political aims of such groups, but about a more troubling aspect: how monitoring groups allocate their limited resources. Because the bulk of scrutiny exercised by such groups is focussed on corporate bodies and the DGs that work most closely with them, the lack of resources they are able to allocate outside the corporate sector mean that certain policy areas and DGs lack any systematic process of oversight.

The next chapter looks beyond the role of the proxy groups, to consider the transparency of the policy process in two areas and to explore the experiences and motivations of members of the EGs that advise EU decision-makers.

## Chapter 7. Process Transparency.

### 7.1 Introduction.

This chapter considers the extent to which the official documentation concerning the appointment process and the procedures of EG meetings reflects the experience of those appointed. It takes as its starting point Heald's 'transparency illusion' (2006, p. 34). This posits that, even where transparency may appear to be increasing, the distinction between nominal and effective transparency means that the reality may be quite different. By examining the individual experiences of those involved, the chapter also provides a first look inside the EGs to understand the motivations of those who apply for membership.

Across the Commission, 12,000 individuals advise in over 900 groups in policy areas with different degrees of EU competence and political sensitivity. Capturing the breadth of such a complex field is clearly beyond the scope of a single study. Instead, this chapter conducts an in-depth comparison of the groups in two distinct policy areas by capturing and comparing the experience of those that attended the relevant meetings.

Given that the research was undertaken in 2012-13 in the context of serious questions over the long-term future of the single currency and during the largest financial crisis since the introduction of the single market, cases were selected which reflected these challenges. The chapter is rooted in the argument advanced and demonstrated in chapter four: that the development of EU transparency processes are demand-driven, and are often introduced in the aftermath of controversy and other external events. For example, whilst access to documents was a requirement of the Treaty of Amsterdam, the Commission's original proposals - which were introduced in the aftermath of the Santer resignation - were significantly strengthened by the EP. Similarly, the negative reaction to the Commission's 1998 decision to suspend Paul van Buitenen for reporting financial irregularity led, ultimately, to the inclusion of a whistleblower's charter as part of the Kinnock reforms.

Repeatedly, the response to actual or perceived wrongdoing has been to introduce measures to enhance accountability, and for the Commission - in the absence of any direct accountability - this has generally involved the provision of greater transparency. Despite the fact that the electronic tools appear to be chiefly used by specialists, perhaps calling into question the extent to which there is a public appetite for greater EU transparency, this remains the default solution. So, if transparency enhancements tend to be introduced in order to counter a negative impression of the EU, it suggests a relationship between the degree of transparency of an issue and its public profile.

This chapter examines whether that relationship applies to the Commission EGs' role in the policy-making process. Conceptually, this is rooted in the literature on the tension between scientific expertise and political accountability considered in chapter two. A number of recent studies by EU scholars have examined this tension, although these have usually considered a particular policy area<sup>29</sup> (Wesselink, Buchanan, Georgiodau & Turnhout, 2013; Selin, Hakkarainen, Partanen, Tammi & Tigerstedt, 2013). There have been a few recent studies into the EU's use of scientific expertise in policy making, but these have focussed either on the Council's working groups (Brandsma, 2013) or the EP Committees (Ripoll Servent, 2013). Through its comparison of two Commission EGs, this chapter considers the relationship between the profile of an issue and its transparency based on the thesis' third initial supposition:

(S3) That where technical rather than political considerations shape the outcome, there is less transparency of the policy process.

The Chapter proceeds as follows. A brief summary of the relevant literature distinguishing political policy areas from the scientific/technical aspects introduces a discussion concerning the choice and context of the case studies. The next section compares the public picture of the appointment processes and the conduct of the EG meetings, before data from a series of in-depth interviews with experts shows whether this public picture accurately reflects the experiences of those involved and considers the motivation of those that apply for membership of these groups. Finally, the chapter discusses the findings and offers a number of ideas for enhancing process transparency.

## 7.2 Political and technical policy-making.

As chapter two discussed in depth, the reliance policy-makers place on specialist knowledge can be traced back to Weber's work on the administration of the modern state. In drawing a distinction between political practice and specialist knowledge, Weber promotes a 'decisionist' model of the state, where the subjective values of politics are distinct from the objective truth of knowledge (Poggi, 2006). This is considered in Weingart's (1999) work on the paradoxes of science in politics in which he argues that, over time, this separation has proved impossible to maintain, as the increased 'scientification of politics' has created a technocratic model so that the politician is frequently fully dependent on the expert. Thus, for Weingart, politics within the state has been replaced by 'a scientifically rationalised administration' (1999, p.154).

In the EU context, however, the distinction between a political policy and a scientific/technical one is problematic, with the complexity of the EU and the relationship between the EU the MSs rendering

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<sup>29</sup> See, for example, Wesselink *et al*, 2013, for environmental policy; Selin *et al*, 2013, for drug policy.

it a false dichotomy. Even at the national level, technical areas such as taxation have great political sensitivity. This is amplified for the EU, where an apparently technical issue concerning an adjustment in the net budget contribution of a MS, or a seemingly innocuous directive concerning food packaging, might be depicted at national level as unnecessary bureaucratic interference or as symptomatic of a loss of national sovereignty.

It could be argued that, for EU policy making, the institutional composition itself nullifies the distinction between the technical and political. Whilst the Commission needs to avail itself of expert advice, it does so simply to develop proposals for others to consider. Here, Weber's ideal model could apply, as it frames a Commission proposal as having been informed by an objective truth of knowledge. However, expertise is not value free and is frequently conflicting and contradictory. In such cases, it is for the Commission to select its preferred expertise, and it is therefore necessary to identify the source of its advice. So understanding the preferences and motivations of those involved is far from an arcane procedural question, but is essential in advancing our knowledge of the EU policy process.

### 7.3 Selection of cases for comparison.

Using publicly accessible data, this chapter compares the availability of information relating to the policy process in two cases: the amendment of the *Regulation on Cross-Border Insolvency* and the workings of the *Erasmus* student mobility scheme, including the introduction of the enhanced programme, originally called *Erasmus for all*<sup>30</sup>. The selected cases share a number of significant features, rendering them appropriate for comparison. Both operated to a clear deadline, which provided a degree of confidence that the entire policy process could be analysed, with both deadlines providing for the legislative process to be complete by early 2014. In both cases, too, the legislative processes were directly affected by wider economic imperatives. In the case of the *Insolvency* amendment, the decision to advance its 2014 review was taken as a direct result of the ongoing financial crisis, with Vice President Reding's announcement that the review was being brought forward designed to demonstrate the Commission's commitment to promoting growth through modernising insolvency laws [Interview 42 – Commission Official]. For the transition from *Erasmus* to its successor programme, the deadline was driven by the tempo of the EU budget. The funding for the legacy mobility programme was to cease at the end of 2013, with the successor programme funded through the 2014-2020 multi-annual financial framework. Section 3.9 contains a detailed discussion of the comparability factors but, for ease of reference, these are summarised in figure 7.1 below:

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<sup>30</sup> Later renamed *Erasmus Plus*.

**Figure 7.1 - Comparability factors for case studies.**

	<b>Erasmus plus</b>	<b>Cross border insolvency</b>
<b>Formal competence</b>	MS	MS
<b>Legislative deadline</b>	2013	2013 (advanced from 2014)
<b>Strategic objective</b>	Europe 2020 (legislative proposal p.2)	Europe 2020 (legislative proposal p.4)
<b>Purpose</b>	Harmonisation/mobility	Harmonisation/mobility
<b>Legislative Instrument</b>	Regulation	Regulation
<b>Procedure</b>	Ordinary Legislative Procedure	Ordinary Legislative Procedure
<b>Legal basis</b>	TFEC 165 (4)	TFEU 81(2)
<b>Budget</b>	High - €14.7 billion	Low - €1.5 million
<b>Impact/numbers affected</b>	High - 5 Million 'mobility activities' predicted	Low – 350,000 businesses [α]
<b>Political Salience</b>	High	Low
<b>Rationale</b>	Response to market success	Response to market failure
<b>Anticipated degree of process transparency</b>	High	Low

#### 7.4 Indicator for political salience.

As the comparability factors in the table above show, in legislative terms there was little difference between the cases save for the size of the allocated budget and the projected numbers affected. However, the projected numbers do not provide a useful indicator in this case. The figure of 350,000 affected by the *Insolvency* amendment relates to the number of firms rather than number of individual employees or, indeed, creditors - a figure that is not projected but would be much higher. Moreover, even at the 5 million estimate, the *Erasmus Plus* policy is projected to impact on only 1% of EU citizens during its 7 year lifecycle. Consequently, size of allocated budget is the indicator selected for a policy's political salience.

#### 7.5 Size of allocated budget.

Financed by its MSs and with highly complex funding arrangements, Council agreement around the EU annual budget and, in particular, its multi-annual financial framework tends to be the result of long and detailed negotiations. Given the complexity of its financial architecture, it is perhaps unsurprising that detail of the EU budget tends to be of interest chiefly to specialists. Insofar as EU citizens engage with this subject at all, it appears that they routinely overestimate the proportion of the MSs budget allocated to the EU, with UK citizens perceiving that 7% of their taxes are spent on the EU, against the accurate figure of 1% (YouGov, 2014). Given the extent of the overestimate of MSs' budget contributions, it seems reasonable to suppose that any move to increase them would be politically charged - a view reinforced by the hostile reaction to the Commission's 2014 request for 'top up' payments from Italy, the Netherlands and the UK (Euractiv, 2014). Whilst this, in itself, suggests that size of budget is a robust indicator of political salience, this is reinforced by the context in which this research was undertaken: the financial crisis affecting both Eurozone and non-

Eurozone MSs. The related austerity measures adopted across the EU have included benefit cuts, tax rises and reductions in the minimum wage, leading to real hardship for many EU citizens. In 2014, one third of EU citizens cited the economic situation as the most important issue facing the EU, followed by unemployment and public finances (Eurobarometer, 2014). Given the strength of public opinion, it seems apparent that the size of budget allocated to an EU policy area is a good indicator of its political salience.

#### 7.6 Background and context of cases.

Applicable to all MSs except Denmark and in force since 2002, *Regulation 1346/2000 on Insolvency Proceedings* provided for the interaction of different insolvency regimes between MSs (European Commission, 2014). The regulation was intended to discourage firms transferring assets between MSs for the express purpose of benefitting from a more benign legal system - a process known as 'forum shopping' (Schlaefer, 2010). Whilst the regulation did not harmonise substantive bankruptcy law which remained - and remains - a MS competence, it established some common rules on issues such as the liquidator's powers and the production of claims.

Article 46 of the 2000 *Insolvency* regulation stipulated that, no later than June 2012, the Commission was required to report to the EP on the application of the regulation together with any proposals for adaptation (EUR-Lex, 2000). In 2010, in preparation for this review process, the EP commissioned a report on the effectiveness of the existing legislation<sup>31</sup>. This was presented to the EP in 2011, and identified that there had been significant shifts in the environment in which companies operated during the ten years since the *Insolvency* regulation had come into force. Many more companies were now incorporated in international groups as a subsidiary of a parent company, applying corporate governance rules and with access to capital in the financial markets (European Commission, 2014). In most MSs, bankruptcy law has been modernised to fit with this changed economic context, but 1346/2000 remained the applicable regulation at the EU level.

With this background, and in the context of an economic downturn increasing the likelihood of market failure and resultant insolvency, a decision was taken to advance the review of the legislative procedures for dealing with insolvency across borders. Whilst this had originally been planned for 2014, the Commissioner for Justice, Fundamental Rights and Citizenship took the decision to bring forward this review to 2012 as part of the Commission's stated commitment 'To promote economic

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<sup>31</sup> Revision of the EU Insolvency Regulation: what type of facelift? By Professor Bob Wessels, University of Leiden.

recovery and sustainable growth, a higher investment rate and the preservation of employment' (European Commission, 2013).

Like the insolvency policy, the EU's formal involvement in HE has always been limited. However, with financial accountability one of the key themes of the ETI, the large and growing budget allocated across the MSs to HE suggests that it - rather than insolvency - would be subject to closer scrutiny. It follows that HE would necessarily require a higher level of transparency. Furthermore, with greater scrutiny afforded to this politically sensitive, high-budget policy area, it seems reasonable to assume that - at MS level - there would be greater resistance to relinquishing sovereignty over HE. This is not entirely clear cut, however. Despite formal competence for HE lying at the national level, there is a long record of the EU acting as a forum for HE cooperation with a 1974 Council meeting, for example, resulting in an 'Action Programme' for the joint delivery of courses by HEIs in different MSs (Pepin, 2006; Corbett, 2006).

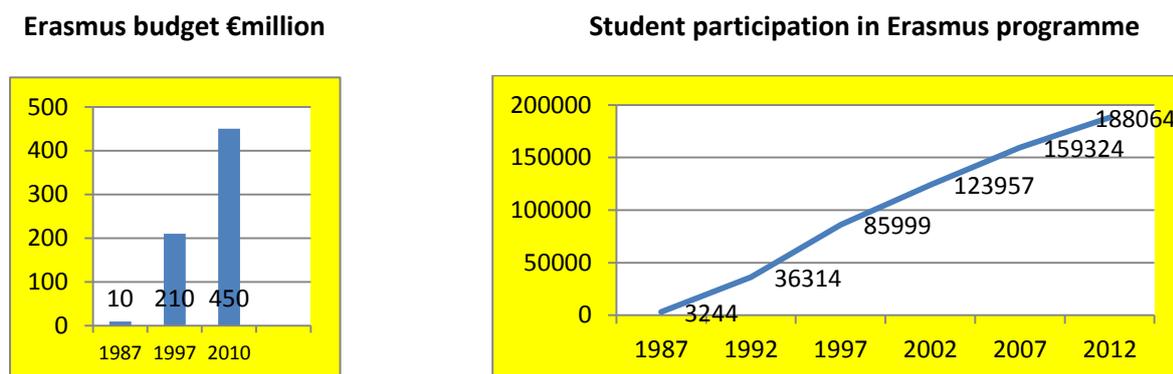
The momentum for increased cooperation was increased during the early 1980s, when a series of ECJ judgements<sup>32</sup> melded the issues of education, vocational training and the variability of course fees based on nationality. These judgements legitimised EU involvement in HE policy by providing a means for it to be framed through the prism of free movement. Following these ECJ rulings, the EU introduced and funded a number of education-related schemes to foster inter-MS cooperation. Generally, these operated as discrete funding programmes to allow particular groups to undertake learning related activities in other MSs, although - arguably - they simply extended the arrangements in place since the 1974 Council agreement. The new programme *Leonardo da Vinci*, for example, funded the exchange of individuals to study vocational programmes in another MS, whilst *Grundtvig* was specifically designed for adult education.

The first of these education-related programmes was established in 1987. *Erasmus* facilitated the exchange of HE students between MSs by providing financial support to those participating. In 1987, MSs agreed that the *Erasmus* budget should be €10 million in the first year (Corbett, 2005, p.145). However, this hugely increased over time and by 2009-10 the *Erasmus* budget was €450 million (European Commission, 2015d). The number of students participating in the programme has likewise increased from 20,000 in 1988 to 180,000 by 2012 (European Commission, 2015d). These increases are depicted in figure 7.2 below.

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<sup>32</sup> See, for example, 1983 Forcheri v State of Belgium [C152/82] 1985 Gravier v City of Liege [C293/83].

**Figure 7.2 - Budget and Participation for Erasmus programme over time.**



Importantly, the various education-related programmes were initiated and implemented independently rather than ‘rolled out’ as part of an overarching strategic plan. One consequence of this rather *ad hoc* development was that each programme had different sets of regulations and unique application processes leading, inevitably, to complex and administratively cumbersome procedures. To address this, under the 2007-13 multi-annual financial framework, each of the individual schemes was subsumed into the umbrella *Lifelong Learning Programme* (LLP). Furthermore, the administration of these individual mobility schemes within the LLP was passed to the *Education, Audio-visual and Culture Executive Agency* (EACEA) - a newly created entity acting under the auspices of three separate Directorates: *DG Education and Culture*; *DG Communication* and *DG Development and Cooperation*. However, whilst this arrangement may have provided some economies of scale, for the *Erasmus* programme it created a rather fragmented structure, with the strategic goals and detailed regulations for the programme determined by DG EAC but the administration of the programme undertaken by EACEA.

To summarise, in selecting the cases consideration was given to ensuring that, so far as possible, the legislative processes would be complete within the life-cycle of this project. Both the *Insolvency* amendment and the successor to the *Erasmus* programmes met this criteria, as both were time-bound. For the former, the amendment came about through the review required by the 2000 legislation, whilst for the latter, the funding for the legacy scheme was to cease in 2013, necessitating the creation of a successor programme.

### 7.7 Framing of policy areas by Commission.

Taken together, both cases responded to features associated with the economic crisis: increased business failure and high youth unemployment. It is interesting to note, however, that the

Commission framed these policy responses quite differently, as juxtaposition of the relevant press releases demonstrates:

With around 200,000 businesses across the EU facing insolvency and 1.7 million people losing their jobs each year as a result, growing number of firms are facing financial difficulties across Europe (European Commission, 2014).

Erasmus is one of Europe's soundest successes. Now we would like to build on the success of Erasmus and offer such opportunities to all young people (European Commission, 2013b).

So, whilst the *Insolvency* proposal openly acknowledged that its purpose was to address market failure, the *Erasmus* case was presented as the expansion of a successful student mobility programme to encompass those involved in vocational training.

The Commission's framing of the *Erasmus* expansion in wholly positive terms is unsurprising. Research has shown that it has consistently viewed student mobility as a driver of integration and European identity (Gornitzka, 2009; Klose, 2013)<sup>33</sup>. Since the launch of its *Erasmus* scheme, the public position of the Commission has continued to place great store in its capacity to facilitate the integration process.

Erasmus stands out as one of the most concrete and popular examples of the progress achieved during fifty years of European integration (Europa, 2015d).

In interviews for this project, this view continues to be expounded, with officials linking the programme to the furtherance of a European demos, and openly acknowledging that the age profile of *Erasmus* students is seen as an important factor in promoting European identity:

For sure, the Erasmus programme is one of our successes, and we say so. Not in all member states I know. In your country [the UK], maybe not so many people take part. But it is one of the ways that we use to help young people to understand what it is to be European now...what it means to belong to Europe. We will not have an identity - a European identity I mean - without people who think like this [Interview 60 - Commission Official - Erasmus].

The rationale for the Commission's long-standing practice of presenting *Erasmus* as a highly successful policy is well captured in the statement above. It seems that the Commission openly acknowledges that the student mobility programmes are a means to achieve ever closer union through an evolutionary process. By promoting the notion of unhindered mobility amongst that group most able to benefit from it - the mobile young - a subtext of cooperation and a shared European identity is transmitted to a receptive group. Seen in this way - as the normalisation of

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<sup>33</sup> Although some studies show that Erasmus students undertaking the programme do so because they already identify as European (Mitchell, 2012; Beerkens & Vossensteyn, 2011).

mobility - the broader scope of the successor *Erasmus plus* programme has significance for the wider issue of EU integration. The next section considers degree of process transparency in the two cases.

#### 7.8 Transparency of the formal procedures.

Given the Commission's practice of presenting the two policy amendments so differently, it seems likely that the transparency of expertise would be greater in the *Erasmus* case, both because of the scope of the programme and its associated resources, and also because - from its outset - the Commission presented the *Erasmus* successor as a new opportunity for a wider range of young people to enjoy the mobility previously restricted to students. To test whether this positive message did result in greater process transparency, this section compares the information available on the use of expertise in the two policy areas.

#### 7.9 Rationale for creation of groups.

As part of the review process for the *Insolvency* regulation, DG Justice - the lead DG - commissioned a number of work strands. These included a comparative legal study led by the Universities of Heidelberg and Vienna, an impact assessment conducted by Consortium GLK/Milieu and a public consultation through the website of DG Just [Interview 42 - Commission Official - *Insolvency*]. Simultaneously, DG Just launched a call for experts on a review of cross-border insolvency regulation. Given that the legislative review had been advanced at short notice, there was an unusually compressed timeframe for this group to be established - the call was published in March 2012 with a deadline for applications of April.

For the successor *Erasmus* programme, there was no such compressed timeframe. Indeed, no review was required as such, because the life-cycle of the legacy *Erasmus* programme was driven by its budget, which in turn was a function of the multi-annual financial framework. A successor programme was always going to be needed from 2014, with the Commission's proposed *Erasmus for All* programme presented as an expansion of the existing programme, and with a much higher budget.

#### 7.10 Requirements of membership.

For the *Insolvency* group, the application process involved the submission of an online form and a CV/resume. The formal requirements were that applicants should have the necessary skills and knowledge, have five years of experience in the field of insolvency law and a demonstrable ability to work in English - this latter requirement necessary because translation facilities are generally not available for EG meetings.

The *Erasmus* arrangements were rather more complex than the *Insolvency* case, as there were a number of different groups involved. With a proposed €14.7 billion budget, the successor *Erasmus* scheme was clearly a MS issue. So, for the *Erasmus for All* group, the Commission stipulated no formal requirements for membership as its 28 members were directly appointed by the MSs, and it was for the MSs to ensure that those appointed had the requisite expertise<sup>34</sup>.

For the *Erasmus-Mundus* EG - which had been in operation since 2005 - this was not the case. Like the *Insolvency* group, its members were appointed in a personal capacity, but the language requirement stipulated for this group which went beyond an ability to work in English, with preference given to applicants able to work in English, French and German. This difference may be attributable to the application process itself, as the *Erasmus-Mundus* membership was selected from a list of experts provided by EACEA - an important difference discussed in section 7.13.

#### 7.11 Call for Experts.

Since 2010, the mechanism for creating an EG requires that the relevant DG informally consults the Commission services in order to ensure that the relevant expertise is not available 'in-house'. Subject to approval following this consultation, an application is made to the Secretariat-General. The call follows a standard template and is published in the OJEU and, usually, on the website of the DG concerned: both procedures visible to public scrutiny. For the groups in both case studies, this was the process followed. However, across the groups, there is no information concerning the measures taken to ensure that relevant individuals are made aware of the call, but given the somewhat limited audience for the OJEU and the DG websites, it seems reasonable to expect that informal means exist through which calls for experts are publicised - processes not visible to public scrutiny. As section 7.15 shows, this was certainly the case for the EGs examined for this study.

Whilst information on the requirements for membership is made available through the call for experts - and is therefore in the public domain - there is no requirement to provide information concerning the numbers of responses received. Formally, then, there is no transparency of the application process for the *Insolvency* group. Similarly, there was no record of responses to the *Erasmus-Mundus* call, although there was some visibility of the potential membership, as this was drawn from a publicly available database. Individuals had responded to an earlier general call for expressions of interest for the LLP, which fell under the purview of the financial framework

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<sup>34</sup> Rule 10 of the horizontal rules for EGs places the onus for appointing representatives of national administrations on the MSs. However, the Commission is able to refuse a representative if it considers the nomination inappropriate.

agreement. Whilst seemingly technical, this distinction is important because members of the framework groups are at a significant financial advantage.

The standard call for experts for groups outside the framework agreement - such as the *Insolvency* group - includes a statement that experts are not paid for their time, but are just reimbursed travel and subsistence expenses (European Commission, 2015b). By contrast, the 2014 contract<sup>35</sup> offered to individuals applying to EGs operating under the framework agreement provides those selected with those expenses and a €450 daily allowance (EACEA, 2015). Unsurprisingly, calls for expressions of interest under the framework agreement tend to have a high response rate and, as the call has no deadline but is open-ended, EACEA was able to maintain a large and ever-growing database of potential EG members. With a larger pool of potential experts, EACEA can be more selective in its requirements, perhaps explaining why it has more demanding language requirements (EACEA, 2015).

Unlike the insolvency amendment which drew its expertise from a single EG, a number of groups advised the Commission on various aspects of both the existing and successor Erasmus programmes, again indicating the breadth of the programme and demonstrating the extent to which the Commission views Erasmus as a high priority. Members of the *Erasmus for All* group were appointed specifically to represent the views of national administrations, with the group membership drawn from public authorities in the MSs. An appointment made under this procedure allows the MS to appoint either a permanent or an *ad hoc* representative, although the framework rules provide the Commission with an opportunity to veto an individual appointment and to require the organisation to appoint a different representative (European Commission, 2015b).

#### 7.12 Record of the meetings.

The Commission regulations stipulate that agendas and minutes of EG meetings should be made available either through the electronic register, or through a dedicated website with a link made available on the register (European Commission, 2015b).

As the date for the *Insolvency* amendment was advanced at rather short notice, the EG involved had an unusually short life-cycle. It met frequently over a five month period with its final meeting held in October 2012. In total, six meetings took place and a formal agenda was produced before each meeting [Interview 42 - Commission Official - Insolvency]. The register contained all six agendas. No formal minutes of the *Insolvency* meetings were available on the register because no minutes were

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<sup>35</sup> The figures from the 2014 contract are used to illustrate this point because figures from earlier years are no longer available.

published. Instead, a summary of discussion points was included in the agenda for the next meeting. All agendas were available on the register.

For the *Erasmus for All* group, the register contained no agendas and only one set of draft minutes relating to the first meeting. Similarly, for *Erasmus Mundus*, there was no documentation concerning meetings. The register does include a link to the dedicated *Erasmus Mundus* website, however, but a thorough search of this failed to reveal any records of EG meetings.

A full comparison of the documentation available through the register of EGs is at figure 7.3 below:

**Figure 7.3 - Summary of information available in EG register.**

	<b>Cross Border Insolvency</b>	<b>Erasmus Plus</b>
Background and rationale for creation of group	Yes	No
Selection criteria	Yes	No
Rules of procedure	Yes	No
Number of applicants	No	No
Name/details of selected members	Yes	No
Record of number of meetings	Yes	No
Record of dates of meetings	Yes	No
Detail of discussion and/or decisions taken	No	No
Summary of agreed position	Yes	No
Agendas of meetings (Number/of total)	Yes (6/6)	No (0/6)
Minutes of meetings	None produced <sup>36</sup> (0/0)	Yes (1/6) <sup>37</sup>

### 7.13 Discussion on process transparency.

This audit shows a number of gaps in the information available in the public domain. For example, the register gives no indication of the numbers of applicants responding to a call for experts, nor an explanation as to why agendas and minutes of meetings are not promulgated. The following amplifying information is drawn from interviews with the relevant Commission officials.

As section 7.11 discusses, the selection and appointment procedures for the *Erasmus-Mundus* and *Erasmus for All* groups were taken by the EACEA and MS respectively. For the *Insolvency* group, however, the selection was made at the Commission. The Commission's guidelines suggest that consideration be given to convening a committee including external peers to help select suitable experts. For the *Insolvency* group this did not happen, however, with the selection process instead conducted by the Commission official responsible for producing the amendment. When asked to explain why this process was used, the official remarked that the short timescale available precluded the establishment of a committee [interview 42 - Commission official - Insolvency]. Fifty-five

<sup>36</sup> No minutes of insolvency group meetings were produced, but a summary of meeting included with agenda of next meeting.

<sup>37</sup> Register contains draft minutes of first Erasmus for All meeting only. No others were available.

applications were made for twenty-five places on the group, although several more individuals were granted observer status and were therefore present at meetings. The twenty-five full members were a mix of academics and legal practitioners, including judges and other senior members of the judiciary. Thirteen MSs were represented, although this is perhaps unsurprising given that a broad representation of legal systems was fundamental to the cross-border nature of the group's work.

Commission officials from both groups were asked about meeting documentation. For the *Insolvency* group meetings, no formal minutes were produced [Interview 42 - Commission Official - Insolvency]. Instead, after each meeting, notes of discussion points were forwarded to the members, together with a new iteration of the amendment as a working document. Interestingly, when asked to explain why notes rather than minutes were produced, the official concerned stated that this was a conscious decision taken to bypass the Commission's regulation that requires minutes of meetings to be published on the register.

With regard to the missing information on the *Erasmus* groups, the Commission Official concerned stated that this was an administrative oversight that would be addressed at the earliest opportunity [Interview 60 - Commission Official - Erasmus]. However, although the register was regularly checked for several months following this interview, the agendas and minutes of the *Erasmus* meetings remained unavailable.

This analysis of publicly available information concerning the EG appointment processes has shown that a substantial amount of information that should be published is not, and that the information that is provided simply shows the formal procedures undertaken, rather than the informal, hidden mechanisms that are used to augment the process. Somewhat counter-intuitively, it appears that - in terms of the process of the policy advice - the *Erasmus* amendment is less transparent than the *Insolvency* one.

This transparency gap is increased by a change in the regulations that has caused a decline in the transparency of the *Erasmus* expertise since 2012. Prior to that date, the names of the LLP experts held on the EACEA database was published in a publicly available document on the agency's website, although additional information such as the nationality, organisation or contact details of the individuals was not available. In 2012, however, the introduction of the financial budget regulation stipulated the conditions under which the names of the beneficiaries of public funds should be published. Outside of these conditions, this regulation gives precedence to the rules on the protection of personal data<sup>38</sup>. As a result, the EACEA now publishes only those names of experts

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<sup>38</sup> Commission Delegated Regulation 1268/2012 on rules of application of 966/2012

with contracts and remuneration exceeding €15,000. This effectively masks its database from public view as - meeting infrequently - few experts will reach this €15,000 criteria. By way of evidence, the EACEA's website listed approximately 300 LLP experts in 2012 but only one in 2014 (EACEA, 2015).

To summarise, this audit has revealed that *Erasmus* has lower levels of process transparency than the *Insolvency* programme. Interestingly, it shows a diminution of process transparency in a policy area that the Commission presents as a great success story coupled with a more general lack of openness concerning the informal procedures employed to appoint experts. Considered through this project's conceptual lens, the audit shows low transparency for completeness of information, with only limited data available. It is important, therefore, to establish whether the information that is placed in the public domain is accurate. Clearly, however, this cannot be assessed simply with reference to the register itself. To test for the accuracy of the rather limited information that is available, the next section analyses data collected from a series of in-depth interviews with members of the groups concerned in order to establish the extent to which the information on the electronic registers accurately reflects the experiences of those involved.

#### 7.14 Experience of EG members.

The *Insolvency* group met frequently during the summer of 2012, with the final meeting held in October. Interviews commenced shortly after this, allowing a near contemporaneous account of individuals' experiences to be captured. In-depth interviews were conducted with thirteen participants, representing sixty percent of the group's membership, and also with the relevant official in the civil justice policy unit at DG Justice, and Commission officials in DG Secretariat-General.

The *Erasmus for All* group was established in early 2012, with its final meeting held in mid-2013. As members represented national administrations, identifying the individual participants was challenging, a factor discussed in section 3.9. Nine members of this group were interviewed, representing 32 percent of its members. Interviews were also conducted with the relevant Commission officials and with five members of the associated *Erasmus-Mundus* group. Members of this group were appointed to act in a personal capacity and met between 2005 and 2011, although the group was not formally closed until 2014.

Interviews took place during 2012-13. All participants were assured that their anonymity would be preserved both to outsiders and to other members of the groups. To that end, interviewees' names

and specific positions are not shown. Instead, a general indication of a participant's profession is included <sup>39</sup>.

Firstly, the appointment processes are examined. The formal means of inviting applications for membership of an EG involves publication of a Call for Experts in the electronic journal OJEU. This is an open access journal and, therefore, this formal process is entirely transparent. OJEU is something of a specialist source, however, and is unlikely to be routinely perused by those outside the EU institutions. As such, it seemed likely that informal methods were used to augment the formal processes. The next section investigates whether this applied to the case studies and, if so, whether the methods used differed between the groups.

#### 7.15 Formal and informal appointment procedures.

The Commission's 2010 principles and guidelines on the collection and use of expertise state that:

Departments should cast their net as widely as possible by including individuals outside the department's habitual circle of contacts (European Commission, 2015b).

In order to understand how widely this net was cast, members of each group were first asked to describe the process through which they came to apply for membership. Without exception and across all the groups involved, individuals were unaware of the publication of the formal call in OJEU, suggesting that informal methods were more important. Initially, this seemed to indicate that in both policy areas applicants became aware of the call only through the relevant DGs informal mechanisms. There was an important difference, however.

In the case of the *Erasmus for All* group, the members represent - and are appointed by - national administrations. The relevant MS departments are alerted to the Call for Experts by the DG concerned, and no further measures are taken by the Commission to promulgate the Call within the MSs. Interestingly, however, interviews with national representatives revealed some significant differences in the methods of appointment within the MSs.

I didn't put my name forward for the group. I have Europe within my portfolio, so it just fell to me to attend. It was part of the job, if you like. [Interview 59 - National official - Erasmus]

Within the department we have an internal system for things like this. I saw an e-mail asking for people interested in working with the EU on Erasmus, so I applied for the role. It is not really within my normal job, but it's interesting to be part of this. I was an Erasmus student many years ago, so I thought it would be nice to put something back. [Interview 62 - National official - Erasmus]

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<sup>39</sup> To illustrate, a number of Judges were interviewed. Given that there were few Judges involved in the expert group, in order to preserve their anonymity they are cited as 'Lawyers'.

So, whilst the relevant departments in some MSs simply assigned an occupant of a particular post to the EG, others were more flexible, and operated an internal application process. This creates an intriguing situation where, within an EG representing national administrations, there may be a smaller sub-group of individuals who are self-selecting.

Members of both *Insolvency* and *Erasmus-Mundus* groups were appointed in a personal capacity. Whilst the Commission's framework document stipulates the procedures, it offers no rationale for such appointments. This point was raised during interviews with relevant officials who indicated that the Commission places greater value on the advice proffered by those appointed in this way, as their views are seen as objective and removed from the official position of a MS [Interview 24 - Commission official].

It was considered that individuals acting in a personal capacity would have less access to the secondary methods of promulgation provided by a professional organisation or a MS Government, and were therefore the most likely to be subject to informal appointment procedures. To test this for the case studies, there was an important consideration. Members of *Erasmus-Mundus* were drawn from the EACEA's large database of individuals who had responded to an earlier general call for expressions of interest in LLP, so in this case no direct measures were taken to promulgate the specific call - although such measures may have been taken to promulgate the general call for LLP experts.

The *Insolvency* group provided the clearest case for testing whether informal methods were used to augment the formal processes. Unlike *Erasmus-Mundus*, there was no large pool of potential candidates from which to draw, meaning that the *Insolvency* group members became aware of the call mainly through direct contact with DG Just. This is not apparent through the transparency mechanisms however, as these contacts go unrecorded. But, for the appointment of the *Insolvency* group, these informal processes were crucial, with virtually every respondent stating that s/he became aware of the formation of the group as a result of receiving a direct e-mail from the Secretariat within DG Just. The recipients of this informal call were also drawn from a database of contacts maintained within the Directorate [Interview 42 - Commission Official - Insolvency]. However, unlike the EACEA database, this was not populated with the details of individuals who had responded to calls for expression of interest, but only of those who had previously contacted DG Just - sometimes to arrange attendance at an event but often through previous participation in an EG.

Logically, this is unsurprising. For the *Insolvency* experts, with little or no access to the national forums through which a call would otherwise be publicised, DG Just was the obvious conduit. As a

consequence, it seemed likely that applications would be made by those familiar with the EU working practices in general, and at DG Just in particular. This is supported by interview responses, with a majority of interviewees from the *Insolvency* group stating that they had previous professional experience at the Commission or other EU institutions:

I have worked a lot in this area and, from time to time you will meet people from the Directorate. One of them sent me a link to the application form [Interview 44 - Lawyer - Insolvency].

They knew me because I had represented my government, although at the Council rather than the Commission...but I had worked with the Commission officials during this time. I was contacted and told about the group [Interview 38 - Academic - Insolvency].

However, although most individuals were approached and contacted directly by representatives of DG Just, in two instances individuals had been encouraged to apply by MS governments:

My government told me that the Commission was forming this small group of specialists and they wanted me to apply...they said not to miss the deadline [Interview 40 - Lawyer - Insolvency]

I responded to a prompt from [national insolvency agency]. They suggested that I would be a good person to represent [MS] interests [Interview 38 - Lawyer - Insolvency].

Here MS governments prompted particular individuals to apply, suggesting that the formal distinction between individuals appointed in a personal capacity and those representing national administrations may be unclear at times. It became apparent that this blurring of the boundaries was not confined to MS governments, with a similar experience cited by an academic:

I am appointed in a personal capacity but everyone knows that I represent the [University name]. Actually, it was the University that told me about the group and they wanted me to apply. I think they wanted the University to be known at the EU [Interview 35 - Academic - Insolvency].

Here, then, an individual apparently appointed in a personal capacity, actually applied as a result of encouragement from the parent University, for which involvement of a member of staff provided both an esteem indicator and a means of raising the University's profile at the Commission.

For both lawyers and academics, then, there was some blurring of the boundary between individual and national/organisational representation. These instances were rare, however, and it seemed that for the majority, there was no external encouragement to apply.

In terms of the transparency of the appointment process, it is clear that for all those appointed as individuals, it was the informal - non-recorded - processes that were crucial in determining the composition of the group. For those involved in the *Insolvency* group, this was usually just through direct contact between the individuals and an official within DG Justice, whilst for the *Erasmus-*

*Mundus* group it was through a short-listing process conducted within EACEA, with the conduct or criteria used in this short-listing not clear.

It is evident that those appointed in a personal capacity are far more likely to be pre-known by the Commission or other EU institutions than those appointed as representatives of an organisation or MS department. Importantly, the views of individuals appointed in this way seem to be particularly valued by Commission officials, who see them as providing more objective advice. Nonetheless, despite the terms of reference for the *Expert Group on Cross-Border Insolvency* requiring its members to act 'Independently and in the public interest', it was clear that some of these individuals were encouraged to apply by their national governments or parent organisations.

As this section has shown, even for those acting as national representatives on the *Erasmus for All* group, there were different appointment procedures between MSs, with some members taking on the role because it was within their professional remit, whilst others actively sought the appointment and applied for membership through an internal competitive process. This raises the question as to what prompts an individual to apply for membership of an EG, an issue examined in the next section.

#### 7.16 Motivation of those applying for EG membership.

The previous section has shown that it was overwhelmingly informal, unofficial mechanisms that ultimately determined the composition of the EGs. However, whilst publicly available information suggests that individuals were appointed following a call for experts published in the *Official Journal of the European Union*, the informal processes were revealed only through contact with the individuals involved, with no public record of this. Clearly, with no possibility to scrutinise the informal measures taken by both the Commission and national agencies to encourage particular individuals to apply for EG membership, the transparency of the appointment processes remains opaque. This raises legitimate questions concerning the motivation of those individuals who choose to apply for membership of the groups.

As section 7.12 explains, an appointment to an EG has some financial benefit where the group is established under the multi-annual financial frameworks. There are comparatively few such groups, however, and membership of a Commission EG is usually an unpaid role, with individual's financial recompense restricted to a limited reimbursement of travel expenses<sup>40</sup>. Of the 26 experts interviewed across these two case studies, only the five members of *Erasmus-Mundus* EG were paid

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<sup>40</sup> Travel expenses are refunded on production of receipts, although this is limited to public transport only - no expenses are paid for taxi fares, an issue raised by a number of interview participants.

for attendance at meetings, suggesting that, for most participants, attendance at meetings may be financially disadvantageous. Somewhat surprisingly, however, the financial aspect of group membership was hardly raised by interviewees, with only two of those appointed in a personal capacity mentioning it, and to make different points. The first statement was made by one of the six interviewees from groups established under the financial framework, and therefore in receipt of a €450 daily allowance, whilst the second was made by a senior lawyer in the *Insolvency* group.

I was very glad to have been selected because it is my subject area and I want to help the Commission. But I was also glad because I know it [the selection process] was competitive. So being chosen is good for my resume and the money is very good [Interview 52 - Academic - Erasmus]

I was happy to put my name forward because this is important work but I checked that it was only a few meetings. The difficulty is turning away clients, you see. We [barristers in a law chamber] are all self-employed. If we lose clients, we lose income. We all take pro-bono cases, of course, but not like this [Interview 40- Lawyer - Insolvency].

Again, it is important to state that these two examples were the only instances of interviewees raising the issue of financial recompense, and of these, only one participant stated that EG membership was financially disadvantageous. Presumably, however, individuals appointed in a personal capacity and those organisations providing expertise to the Commission see some benefits to membership of the group. An appointment to a Commission EG may be considered professionally prestigious, for example. In order to understand whether this is so and whether this prestige affords practical benefits, interview participants were asked to reflect on the reasons that they chose to apply to the Commission for membership of the group.

Within both groups, responses showed marked differences. For the *Insolvency* group, the most obvious difference was between those who identify themselves chiefly as legal practitioners and those self-identifying as academics, with the practicing lawyers explicitly stating that there were professional benefits to membership of the group:

I knew that I being considered for partnership [of a law firm] and, by joining the EG, I was able to present this aspect of my work to my colleagues. It gave me some leverage as none of them had much experience at the EU level and, well, I got appointed [Interview 39 - Lawyer - Insolvency].

For this individual, membership of the group had a direct career benefit, suggesting that acting in an advisory capacity at the Commission level carries with it a degree of professional prestige, despite the fact that this expertise is proffered in an area of national competence. In some instances, however, membership of the group was used to enhance the European credentials of a law firm which, in reality, conducted limited business outside of a MS:

It's really good for us that our clients see us involved in EU policy. A lot of them operate across the EU or have wider interests in the EU...it gives us a lot of credibility [Interview 47- Lawyer - Insolvency].

This notion of credibility with clients is significant as it suggests that, for those involved, membership of a Commission EG - while enhancing the prestige of the individual lawyer - simultaneously provides his or her firm with a competitive advantage by allowing it to present membership of the group as evidence of its EU reach.

In both policy areas, academic members also identified some professional benefits to membership of an EG, but these considerations appeared to be of less importance than personal interest or a wish to be involved in shaping regulation. In both groups, academics mentioned that they enjoyed the experience of spending time discussing the issues and particularly valued the opportunity to be involved in the policy process:

I believe we must create the best insolvency system and, instead of writing an article or teaching a class, I can change the main source...the legislation [Interview 38 - Academic - Insolvency].

I had done some work on barriers to mobility [in HE], so when I found out that the Commission wanted to develop Mundus 1 [Mobility of postgraduate students], I wanted to get involved. I wanted to help to shape this because, like all Universities, we encourage mobility of staff and students, but take up is too low. [Interview 51 - Academic - Erasmus].

However, whilst the chief motivation of academic members appeared to be a wish to improve EU policy, most openly acknowledged that applying to the Commission for membership of the group was not an entirely altruistic act. Academic members in the *Erasmus* area stated that they considered involvement in the EG would carry future benefits, particularly when included in funding applications:

These days, we [in academia] need to show that what we do makes a real difference. We need to show this in [funding] applications. So this is interesting and important work, but it is also about bringing in income for my University [Interview 52 - Academic - Erasmus].

The imperative for academics to show the impact of their work was not raised by the academic representatives working on the *Insolvency* amendment, although a small number of these individuals were 'dual-hatted', having both an academic and practitioner profile.

Another area where the academic perspective differed between the two policy areas concerned the extent to which the experience informed - and was informed by - the individual's research interests. In particular, two academic participants of the *Erasmus* group suggested that the experience of contributing to the policy mechanism would directly contribute to research outputs:

I have been commissioned to write a chapter on how student and academic mobility differs between EU MSs, so the chance to be involved in this process came along at the right time. So I had something to offer, I think, but I got a lot from it too...it gave me the right access at the right time [Interview 55 - Academic - Erasmus].

The downtime for coffee was good, because we were together with only a shared interest. I think it [the Erasmus group] has fixed some new collaborations [Interview 53 - Academic - Erasmus].

Here, membership of the *Erasmus* group provided its members with research opportunities, an element that stood in contrast to the *Insolvency* group where there was no mention of the opportunity for publication or of academic collaboration. Again this may reflect the fact that most academic members of the *Insolvency* group also practiced law, and were thus following a twin career path. Alternatively, it might be because of the vocational nature of law as an academic subject. This is not to suggest that such members of this group did not identify benefits to collaboration, but they did not see these in terms of academic outputs, with one academic interviewee divulging that membership of the *Insolvency* group provided a potentially beneficial networking opportunity:

I knew [name of an ECJ judge] would be part of this group and I wanted to work with him. Law is a competitive world but it is small. So it is important for ones career to be known by the people at the top [Interview 46 - Academic - Insolvency].

For this interviewee then, EG membership provided an opportunity to meet with - and gain the recognition and respect of - a senior player. But again, this shows that membership was expected to confer a degree of career-enhancing credibility on the individual.

For a small number of participants, the personal or professional gains afforded by appointment to an EG were less conspicuous than the opportunity membership provided for working in an EU setting. When asked to describe their view of the EU, all interviewees expressed broad support for the principle of EU membership, although some were less positive about its institutional arrangements. Four respondents, however, cited the opportunity to serve the EU as their main reason for applying to join the EG. Interestingly, this included one participant appointed to represent a national interest:

I was asked by [national agency] to apply...“asked by my country”, if you like. But I am very pro-European - a Euro-fanatic, you might say - and this work is for the good of Europe [Interview 40 - Lawyer - Insolvency].

I am from [a new MS] and so much has changed for us [since joining EU]. In [ministry] we have much more chances now. I asked to go join because the EU gives us so much more chances we had not before [Interview 57 - National official - Erasmus].

With only four participants citing an ideological rationale for applying for membership, it is clear that it was mainly the policy area rather than the EU forum that was most important, save where the EU

factor is seen to carry commercial benefits or to provide an opportunity to enhance a professional reputation. Interestingly, the differences between the interview responses given by *Erasmus* and *Insolvency* group members appear unrelated to the professional interest of the participant, with the rationale cited by academic members of the *Insolvency* group closer to the lawyers in the same group than to the academic members of the *Erasmus* group. For the *Erasmus* participants, expert membership chiefly provided an opportunity for collaboration and potential research outputs, whilst both the lawyers and academic members of the *Insolvency* group were more likely to cite explicit career benefits.

#### 7.17 Previous experience.

In publicising the call for experts, it is perhaps unsurprising that professional networks, together with previous contact at the Commission, should prove so significant a feature. By definition, there are a limited number of individuals with a level of knowledge commensurate with membership of an EG. However, as both insolvency and HE are areas of MS competence, it was important to consider the extent to which professionals in these sectors operate across borders, and here there was a clear contrast.

It was assumed that there would be less collaboration amongst the legal practitioners interviewed for this project, not least because different laws and jurisdictions mean that they are usually restricted to practicing at the national level. In order to test whether this was the case, interviewees were asked to what extent they had previous personal contact with other members of the group. For the *Insolvency* group, responses showed a marked distinction, with academic members more likely to have had previous contact with other members.

I had met quite a lot of them through seminars and so forth. I probably knew about sixty per-cent of the group. [Interview 34 - Academic - Insolvency].

By this interviewee's estimate, approximately fifteen members of the EG were pre-known. This finding is probably explained by the large number of opportunities for cross-border contact amongst the academic community. Legal practitioners, by contrast, tended to know members only from their own MS, reflecting the somewhat limited administration of insolvency matters across judicial systems:

I had met two of the members before, but they were both from [my MS] [Interview 44 - Lawyer - Insolvency].

For HE, cross-border working is driven by both the EU mobility programmes and the numerous collaborations and partnerships between Universities based in different MSs. Taken together, the *Erasmus* groups had a higher proportion of academic and national representatives and, again,

members tended to be pre-known to one another, often through EU sponsored events and professional collaborations:

I had worked with most of the group before. We are all Erasmus experts so we meet at Erasmus events. I have collaborated with some of them [Interview 55 - Academic - Erasmus].

It seems clear that, in both policy areas, certain expert advisers had a stronger international network than others. Legal representatives generally had less previous contact with members of the group, and even that limited contact tended to be confined to those from own MSs, reflecting fewer routine opportunities for cross-border working. By contrast, in both groups academics and national officials knew more members of the group at the outset and were more likely to know those from other MSs.

#### 7.18 Views of the conduct of EG meetings.

In each group, a question about language and the lack of translation prompted wider comment on a lack of facilities:

Everything is run on a shoestring. It's always the same [at DG Just] so I knew what to expect, but the meeting room was rather primitive with few modern facilities. In a way, it's an impressively low budget affair but, on the other hand, they're dealing with half a billion people...trillions of Euros...you would expect decent facilities [Interview 36 - Lawyer - Insolvency].

Our first [Erasmus for All] meeting had some high level people from the Commission, so we were in a big conference facility...it's what you would expect at this level. But when we did the detailed work, we were in a small room. There were no microphones, no facilities at all, really [Interview 56 - National official- Erasmus].

Two participants expressed surprise at the lack of translation facilities for EG meetings although this was - again - stated in terms of the somewhat limited facilities:

We were told that the meetings would be in English and not to apply unless we were confident in the language and that was not a problem for me. It just seems limiting. Especially because there is a whole section of the Commission that deals with language, but still they cannot translate [Interview 55 - Academic - Erasmus].

One common theme emerging here is that the participants seemed to assume that the Commission EGs would be better resourced than they are. Arguably, this may simply reflect the 'bloated bureaucracy' caricature of the Commission, but it is telling that this view seems to persist even amongst those with previous experience at the institutions. In reality, however, the resources allocated to the EGs are limited. To illustrate from the case above, despite its €127 million budget, DG SCIC/interpretation's 600 staff interpreters and 400 freelance interpreters service all the EU

institutions except the EP and ECJ (DG SCIC, 2015). With the 24 official languages of the EU providing over 550 language permutations, it is clearly not possible to provide full translation facilities for every EU meeting. That notwithstanding, although interviewee 55 did not find the English language requirement for EG membership problematic, it did raise a wider language issue.

#### 7.19 Language issues.

Section 7.10 describes the different language requirements stipulated for membership of the group, with *Erasmus-Mundus* giving preference to those able to communicate in English, French and German, whilst the *Insolvency* group required a command of English. As EG meetings are conducted in English and no translation facilities are provided, experts were asked whether they had observed or were aware of any language barrier. Here the responses between the groups differed markedly. For the *Insolvency* group, the majority of the twelve participants stated that there were no language difficulties in the group:

I didn't see anyone having difficulty expressing themselves - English is the international language of insolvency [Interview 41 - Lawyer - Insolvency].

Clearly, however, this view is self-reinforcing. The requirement to have a good command of English was a pre-requisite for application, but this raises some questions about the balance of membership. In Robert's (2010) research, she identified examples of French experts owing their appointment in an EG solely to their fluency in English in a profession where such a skill is rare. Whilst English fluency may be more common in the insolvency field, stipulating it as a requirement of membership might inadvertently skew the group to reflect certain views - a point raised by one interviewee:

An English-speaking Italian liquidator is much more likely to work for a big firm which, in turn, is much more likely to have corporate clients - to represent the banks, I mean. I wonder if there was some bias in the representation because of this [Interview 38 - Academic - Insolvency].

Whilst it was anticipated that there would be no language issues for the *Erasmus* groups, there was actually something of a divide. Where participants worked in groups that were appointed in a personal capacity, the English language requirement posed no problem - again, this was a pre-requisite for application. By contrast, a number of those appointed to represent national administrations felt that, through a lack of command of the English language, certain members were unable to fully participate or to follow the discussion.

Well, there were 28 members plus the observers and the Commission official. Some people didn't have good English and didn't get to speak. So how much did the officials understand their country's position, I wonder. [Interview 61 - National Official - Erasmus].

Independently, two participants commented on language difficulties encountered by the representative of one particular [new] MS and the measures taken to address this:

I think [MS] had some problem here. They send someone who was an Erasmus expert but had lousy English and they saw this is a problem. So next meeting they send some different official who spoke great English but knew next to nothing about Erasmus [Interview 01 - National official - Erasmus].

Given the responses above, it is clear that the lack of translation facilities, whilst not central to participants' concerns, posed something of a barrier for EG membership. The point raised by interviewee 38 above is particularly telling, suggesting as it does that the requirement to have strong English competence filters out a number of otherwise well-qualified experts from membership.

#### 7.20 Group composition.

Although not specifically related to language, a number of interviewees raised an issue concerning composition of the group. Rule 10 of the Commission's framework provides for MSs to appoint experts as either permanent or *ad-hoc* representatives, the latter intended to allow MSs to provide suitable expertise to meet a particular agenda. It was clear, however, that assimilating *ad-hoc* members caused some frustration:

Most of the members were present for each meeting - their department sent the same individual, I mean. But for some, it was someone different each time. So the first hour of the meeting was spent on introductions and explaining the rules of procedure and so on, which was frustrating for the rest of us. And of course, new members are often less willing to speak up. And it was hard to know the people who kept changing [Interview 59 - National official - Erasmus].

With the limited data available, it appears that the issue of *ad-hoc* representation was particularly prevalent in those groups composed of national representatives, with the issue not raised amongst those *Erasmus* groups appointed in a personal capacity nor by members of the *Insolvency* group. Importantly, however, the remark above links back to the wider issue concerning the importance of being 'known' in the group. As section 7.19 shows, a number of interviewees mentioned that they valued the networking opportunities afforded by EG membership. For several members of the *Erasmus* group - although none of the *Insolvency* group - these networking opportunities were specifically mentioned in the context of discussions during 'pre-meeting' social activities. In the *Erasmus* group, the Commission official involved arranged dinner at a local restaurant for those members of the group who were staying overnight in Brussels prior to the meeting. Where this was mentioned by participants, it tended to be in relation to networking, however one interviewee mentioned that discussion often related to the agenda of the formal meeting and took the view that this was significant in terms of the conduct of the meeting itself:

Sometimes we would end up discussing the agenda for the meeting, often in quite a lot of detail. I think it really helped because we knew everyone's position when we went into the meeting [Interview 61 - National Official - Erasmus]

It is telling that the official above stated that the dinners provided the opportunity for members to become acquainted with all positions because not all members attended them, with those having easier access usually travelling to Brussels on the morning of the meeting instead. Given that the participant quoted above clearly took the view that the dinners provided a valuable additional forum for discussion of the agenda items, it raises the question as to whether those who did not attend - those from the Benelux countries, for example - were at a disadvantage during the discussion during the formal meeting.

For the *Insolvency* group, no pre-evening social activities were arranged, although this may be because few members of the group were in Brussels the night before the meeting, travelling on the morning of the meeting instead. As a result, a number of the 'travelling' members routinely arrived late and often had to leave early to catch flights. Here it may suggest that - unlike the *Erasmus* group - it was these travelling members who were disadvantaged in terms of having the opportunity to contribute to group discussions.

#### 7.21 Perceived transparency of process.

Finally, members were asked to consider whether they felt the EG meetings were transparent, although this term was not defined. For the *Insolvency* group, there was a somewhat mixed response. Overall, a majority of members expressed a positive view of the transparency of the process. Several interviewees commented on the lack of formal minutes following a meeting, although these comments tended to be within broader remarks concerning the somewhat informal meeting style.

There were some negative views concerning a perceived lack of transparency regarding the use of the advice proffered, with several members commenting on the lack of feedback:

We give up time to go there and it is interesting, for sure. But it would be good to know what the Officials actually think - none of them took a position or gave any indication of whether they agreed with us...whether they valued our ideas. There was no follow up. There should be some sort of feedback loop [Interview 41 - Lawyer - Insolvency].

That notwithstanding, a follow-up question about whether members felt that their contributions led to changes in the draft proposal received a positive response, with a majority of interviewees stating that, collectively, the group's discussions directly led to changes in the draft amendment.

Everyone had the opportunity to make their views heard and [Official] would scribble away whilst we were speaking. If [Official] agreed with our arguments, the ideas would find their way into the next version (Interview 37 - Lawyer - Insolvency).

For the *Erasmus* groups, there was little negative comment regarding a lack of transparency. Most members stated that they were satisfied that their views were taken into account and were content that the formal minutes accurately reflected the discussion of the meetings, although unfortunately these minutes were not made available through the expert register. The few negative comments about the transparency of the *Erasmus* process, did not directly relate to the EGs, but referred to a decision taken in Council to change the replacement programme's name from the Commission proposal *Erasmus for All* to *Erasmus Plus*:

The name emerged as a surprise and I think that few are happy with the compromise *Erasmus Plus*. I suppose it helped the Irish [Presidency] get it through, but we have heard nothing back from the Commission about this [Interview 63 - National Official - Erasmus].

Although not directly related to the transparency of expertise, this issue was raised a number of times by *Erasmus* group members and was therefore followed up. The extract below suggests that - in terms of an official position - this apparent disquiet was confined to EG members, rather than shared by Commission officials involved:

The Commission has no objections to the new name. The "plus" indicates that it is a bigger and better programme covering several sectors, with more resources and increased impact [Personal communication, November 2013].

Overall, for the experts involved in each policy area, the contributions and advice were seen as directly affecting the proposal. Importantly, however, members across both policy areas also commented on the lack of feedback from the Commission, although this was a more important issue for members of the *Insolvency* group. Likewise, the lack of formal minutes was raised by members of this group, which would appear to suggest that - for those inside the policy process - the *insolvency* group was the less transparent. In terms of public access, however, this was not the case, as the minutes of the *Erasmus* meetings were not made available through the electronic register.

With no public access to meeting minutes in either case, the legislative proposal lacks an audit trail. Given the closed nature of the EG negotiations, the provision of such an audit trail is one of the few mechanisms open to an EU citizen wishing to monitor the integrity of the EG advice. As such, it is considered that the provision of minutes of meetings is an essential pre-requisite to maintaining - or building - public confidence in the policy-making system.

## 7.25 Conclusion.

In order to compare the process transparency of expertise in the selected policy areas, this chapter has investigated three areas. Firstly, it has explored the differences between the extent of publicly available information concerning the appointment processes and the conduct of the EG meetings. Secondly, it assessed the informal mechanisms used to augment the official Commission appointment procedures and finally it examined the motives and experiences of those involved in advising the Commission in the policy areas.

On the first question, it was clear that the Commission provides less public information about the process of determining the replacement *Erasmus* programme than for the *Insolvency* amendment, despite the fact that *Erasmus* is a policy actively promoted and celebrated by the Commission. Furthermore, the audit showed that the degree of transparency of *Erasmus* has declined. Whilst the requirement to ensure the protection of personal data is understood, when considered purely in terms of process transparency, this is a retrograde step. Further, it would seem to lack logical consistency as the names or organisations of individual members of EGs are still published, but it is no longer possible to establish the size of the pool of available experts, reinforcing the sense that the selection process is opaque.

On the second question, it is clear that, in both policy areas, where individuals were appointed in a personal capacity the appointments came about almost entirely through the informal practices used to augment the formal procedures. This is perhaps unsurprising: reliance on the formal mechanisms alone would limit applicants to those who routinely peruse the OJEU and relevant DG websites. However, the opaque nature of these informal processes rather undermines the Commission's stated commitment to openness in the appointment process and devalues the electronic register's published information on the process used for EG selection.

On the final question, it is clear that membership of an EG is considered prestigious and, for those on an upward career trajectory, it brings tangible career benefits. For those members formally appointed in a personal capacity, they are often seen within the group as representing a particular organisation and, certainly, an individual's parent organisation will sometimes use its connection with a Commission EG to gain a competitive advantage. For the more senior members of the group, however, the professional benefits may be more limited, with the opportunity to be involved in contributing to the modernising of legislation rewarding in itself.

In terms of the language issue, there is a potential imbalance in the group where the requirement to speak English is a pre-requisite for appointment. Whilst this did not appear to cause major problems

for the *Insolvency* group, the observation made by one participant - that the requirement to speak English may bias the representation - is understood and supported. For some in the *Erasmus* groups, the English requirement appeared to be more of an obstacle, perhaps because some of those concerned were appointed automatically by the MSs because they held a particular professional role, without due regard made to their degree of English competence. Clearly, this has implications for representation for those groups composed of members drawn from national ministries and - more broadly - for the appointment processes.

However, it is in the process of publicising and appointing expert members that the gap between the Commission's guidelines and its practice is at its most stark. Whilst the framework document requires DGs to add specific information concerning the selection of experts, the informal arrangements for publicising the establishment of the EG remain hidden from view and seem to privilege access to those with previous experience at the Commission or other EU institutions. However, the alternative mechanism - publicising the vacancies through professional bodies or MS agencies - seems equally likely to skew the application process at the national level toward certain favoured individuals. Further, the practice whereby the Commission official responsible for the delivery of the draft legislation selects the expert advisers, whilst seemingly logical, may also undermine the Commission's efforts to increase transparency by creating the impression of potential for bias in the provision of expert advice.

## Chapter 8. Conclusion.

### 8.1 Summary.

From its outset, this project questioned the meaning of Bentham's dictum '*The more strictly we are watched, the better we behave*'. Originally used in the literal sense in Bentham's design for a prison, this quotation is often used as a metaphor by transparency scholars (Hood, 2006; Prat, 2006; Bannister & Connolly, 2012). This thesis has tested whether the philosophy underpinning the phrase's literal origins - that it is the potential for observation that drives good behaviour - applies to those processes designed to prevent maladministration in public office, or whether a system of oversight is necessary: in short, whether transparency - without scrutiny - succeeds.

This project has examined the transparency of the EU's policy process through three lenses - institutional, actor and process - but its principal research question has been constant: how and why is the expert advice used in the EU's policy process made transparent? The thesis has consistently argued that there are multiple transparencies, and so the term defies a single meaning within the EU polity. This was explored in some detail in chapter four's analysis of the changing nature of EU transparency, which maps the various conceptual frameworks advanced in the literature to the transparency measures introduced by the EU institutions. The chapter argues that, with the term used so broadly, no single conceptual approach will suffice for this project. To illustrate, the features of a transparency mechanism designed to increase participation - ease of use and multiple access points, for example - are quite different from one intended to enhance trust, where a system to ensure the visibility of potential conflicts of interest would be needed. So, as no single theoretical approach is sufficient here, Heald's (2006) work on 'varieties of transparency' is used throughout. This provides sufficient flexibility for the multiple transparencies identified in chapter four, allowing for aspects such as the timeliness, completeness or usability of information to be analysed as appropriate.

For the institutional analysis in chapter five, the project investigated whether the public's view that the EP is the most transparent institution (Eurobarometer, 2014) is warranted. By conducting a test of the transparency that the Commission and EP provide through their electronic registers, the chapter assessed the extent of compliance with the rules and guidelines on the provision of information. For the EP case, the test analysed compliance with the Code of Conduct for members. Rule four of this requires that an MEP provides a declaration of financial interests and that this be published on the EP's website (European Parliament, 2015). Detailed analysis of 150 declarations showed significant gaps in the completeness of information in nearly one third of cases, with some

MEPs publishing no declaration at all and many failing to complete entire sections. By way of explanation, the check showed that some questions were ambiguous, with MEPs' responses reflecting their different interpretations, save where, in one instance, a member simply made a frivolous entry which was then published verbatim on the EP's website. In the test for usability of information, the check showed that transparency was hampered because declarations are published only in an MEP's chosen language, with no single searchable register and with individual entries sometimes illegible or unclear.

For the Commission case, the check studied the register of EGs for compliance with the rules on gender balance and the selection and activities of the groups. For the former, a complete analysis of those groups where members were appointed in a personal capacity showed that only 20 per-cent met the Commission's own guidelines on gender balance. For the latter, the results of a complete check of documentation relating to the EGs showed wide variation across DGs, with some providing no documentation on EG appointment processes, nor making the agendas and minutes of meetings available. In other cases, some documentation was available but this was often incomplete.

Taken together, the transparency check found significant inaccuracies or gaps in both registers. To explain this, the chapter mobilised data from interviews with those in DG Secretariat-General responsible for the maintenance of the registers. This showed that there is no coherent, standardised QA process to ensure the accuracy of the information placed in the public domain. For the EG register, this responsibility lies at DG level, with each group's *chef de cabinet* charged with ensuring the accurate and timely provision of information. In practice, however, this task is often delegated, resulting in patchy QA processes. For the register of MEPs declarations, there appears to be no QA procedure whatsoever. Completed documents are provided to the EP Secretariat, and are then simply scanned and posted onto the EP's website. The accuracy and completeness of this information is left - in the words of one interviewee - to a system of 'self-control and public control' [Interview 24 - Commission Official]. The thesis has consistently drawn attention to this statement because it is considered that the lack of a scrutiny process to oversee the provision of information is a material weakness in the EU's transparency regime.

The group/actor perspective in chapter six builds on the themes emerging from the institutional analysis. Contributing to an embryonic body of empirical studies into transparency, it provides the first analysis of the benefits and disadvantages of transparency as these are understood by those within the policy-making process. The chapter mobilises data drawn from a series of qualitative

interviews with Commission officials, MEPs and representatives from Brussels-based societal and public affairs groups. It delineates the stated rationale for enhanced EU transparency by actor type, to show that there are differing perspectives on the purpose of transparency at both institutional and actor levels and that - even within the institutions - there is little agreement concerning the benefits and disadvantages of greater transparency. It follows that identifying the appropriate tools for measuring the effectiveness of transparency measures must vary, with some required to provide citizens with access to decision-makers and others to allow citizens to scrutinise the activities of those decision-makers.

The chapter shows wide variation in participants' views concerning the rationale for greater transparency, with it seen to enhance - variously - good governance, legitimacy and accountability, and simultaneously to improve levels of citizen participation and public trust in the EU. The chapter argues that, although individual actors overwhelmingly frame transparency in wholly positive terms, collectively they bestow it with multiple attributes. This suggests that it acts as something of a panacea for EU policy-makers. The thesis has argued that the various transparency processes - far from providing multiple benefits - are in fact mutually exclusive. Reflecting the findings of the previous chapter, the group/actor chapter posits that there is an EU transparency paradox, where transparency is seen as leading to better decisions in principle, but is considered to impede the quality of the advice on which these decisions are based in practice. To illustrate this point, interview data showed that - in the abstract - Commission officials take the view that transparency enhances the quality of decision-making. In more concrete terms, however, they saw this differently, with no Commission support for the opening up of EG meetings to the public: a campaigning aim of a number of societal groups. Officials had two main objections here. The first involved the 'space to think'. This argument posits that experts should be free to propose imaginative or radical ideas for discussion with their peers, and that this would be stifled if meetings were opened to the public gaze. The second objection was that it would negatively impact on experts' objectivity, a view predicated on the notion that experts may be reluctant to assume a public position that runs counter to that of his or her national government's policies.

Chapter seven addressed these considerations directly, in its analysis of the Commission's use of expertise in the policy process in two contrasting areas, one case technical and the other political.

The rationale for delegating consideration of technical issues to a small group of specialists is that these specialists alone have the knowledge to understand the subject area (Skogstadt, 2003; Schmidt, 2013). It seems reasonable to infer, therefore, that there is little public demand to

scrutinise such a group's deliberations and so little public pressure on the institutions to provide full disclosure of the deliberative process through the transparency mechanisms.

Although distinct in terms of their political/technical aspects, the selected cases did share important features, not least that both were clear responses to aspects of the economic crisis. The technical case - the *Cross-Border Insolvency Amendment* - was a means to address the increased incidence of business failure. The political case - the successor to the Commission's *Erasmus* programme - broadened the scope of its legacy programme to provide exchange opportunities for those undertaking vocational training courses; a response to high and stubborn rates of youth unemployment in some MSs.

The chapter showed that, whilst the Commission has consistently presented the *Erasmus* scheme as a 'European success story', its rationale for doing so extends beyond the programme's capacity to provide mobility opportunities for students, with Commission officials openly acknowledged that the student mobility programmes are a means to achieve 'ever closer union' through an evolutionary process. The thesis argues that, by promoting the notion of unhindered mobility amongst the mobile young, the subtext of cooperation and a shared European identity is transmitted to a receptive group. The process chapter argues that, for the Commission, *Erasmus* normalises mobility and, as such, that the broader scope of the successor *Erasmus Plus* programme has significance for the wider issue of EU integration. However, the chapter showed that, in process terms, the *Erasmus* amendment was actually the less transparent of the two cases. Given that the Commission consistently presents *Erasmus* positively, this initially appeared somewhat counter-intuitive. The chapter argues, however, that the lack of process transparency of the *Erasmus* amendment reflects its higher degree of political sensitivity, operating with a far higher budget than its predecessor project, despite the strictures of the economic downturn. An alternative explanation is that *Erasmus*' lack of transparency simply reflects its widespread support. This posits that, lacking opposition, *Erasmus* legitimacy is assured and thus that the process does not need to be transparent. Whilst this explanation is understood, the notion that there is an inverse relationship between the support for a policy area and its degree of transparency is not supported by evidence. There is, for example, an extremely high degree of transparency in the field of consumer safety, a policy area where the EU's legitimacy is assured.

The second part of chapter seven compared the public picture of the appointment processes and the conduct of the EG meetings with the experience of those involved. Drawing on a series of interviews

conducted with Commission experts, this is the first research to examine the workings of the Commission EGs from the perspective of EG members and the first research that investigates the motivations of the individuals that apply for membership of an EG.

In terms of the transparency of the appointment process, it is clear that for all appointed as individuals, it was the informal - non-recorded - processes that were crucial in determining the composition of the group. Moreover, those appointed in a personal capacity are far more likely to be pre-known by the parent DG, Commission or other EU institutions than those appointed as representatives of an organisation or MS department. As section 7.20 argues, this propensity to appoint individuals who are pre-known is important, as it appears that the views of individuals appointed in a personal capacity are particularly valued by Commission officials. In terms of the workings of the groups, it was noteworthy that a high proportion of experts expressed disappointment at the lack of internal process transparency, commenting on poor feedback from the Commission officials. Further, a number of interviewees commented on the rather basic facilities and noted that, despite a requirement for those seeking appointment to have a good working knowledge of English, language barriers posed an obstacle for some individuals.

## 8.2 Recommendations.

This study into the transparency of expertise in EU policy-making has identified a number of areas where the institutions do not adhere to the transparency regulations and guidelines. Although the nature of this non-compliance varies across institutions and registers, for the most part it can be easily resolved. To that end, this thesis proposes a number of recommendations for consideration by DG Secretariat General and the EP Secretariat. Each of the recommendations are both low cost and easily implemented and, together, provide a means of improving levels of EU governance without requiring a significant uplift in resources.

- Recommendation one: Introduce an oversight process for the electronic registers.

Chapter five's institutional audit argued that, in its failure to provide any system of independent oversight or even of spot-checks, the EU has abdicated its responsibility for ensuring the accuracy of the data it puts in the public domain. The chapter showed that the assumption that public control will ensure accuracy of the data is misguided, as the external QA processes are instead conducted by a small number of societal groups acting as a proxy for public scrutiny. A brief case study of changes in the EGs at DG Entr showed that monitoring by a societal group can be effective, but the chapter

argued that this effectiveness is partial, constrained by the limited resources and ideological positions of some groups.

This poses two transparency problems, undermining both trust and accountability. On trust, delegating the scrutiny of public control to societal groups with the time and expertise to undertake this provides some of these groups with an opportunity to identify and collate fairly minor transgressions, but to then adopt high profile measures to publicise them. Here, the transparency tools intended to increase public trust in the EU are used instead to undermine that trust. On accountability, the limited resources available to these monitoring groups mean that some policy areas and DGs are effectively exempt from any oversight and thus have no incentive to ensure the accuracy of the information they provide. This perhaps explains why chapter five's institutional audit found DG DEVCO to be least compliant with rules and guidelines for EGs.

It is crucial, therefore, to ensure oversight is conducted objectively and as thoroughly as possible, and it is recommended that an independent body be appointed from outside the institutions. It is recognised, however, that this would inevitably need to be resourced from within existing budgets and that any move to establish such a body would be unlikely to garner much support. As a minimum, therefore, it is recommended that the registers be subject to a formal system of peer oversight, with scrutiny conducted by officials from a different DG. Whilst this lacks the distance of a fully independent body, it provides an opportunity for inadvertent errors to be identified and corrected early. For example, a review by an official from outside DG ENTR may have noted and questioned the categorisation of the European Automobile Manufacturers Association as an NGO, before this was identified and publicised by a societal groups.

- Recommendation two: Standardise measures to identify and inform potential members of EGs.

Although EG meetings are almost always held behind closed doors, this thesis does not support public access. The reluctance of Commission officials to open the workings of the experts to the public gaze is understood, and the 'space to think' argument, in particular, is convincing. Nonetheless, given the Commission's practice of using transparency to enhance its legitimacy and accountability, the current 'closed door' practice poses something of a problem. One way of addressing this would be to take measures to standardise and render transparent the informal appointment process and to better balance the composition of the groups.

Although there are governance arrangements for appointing members to EGs, in practice DG's have considerable discretion concerning the appointment procedures, resulting in various *ad hoc* arrangements. Tellingly, not a single EG member interviewed for this project had chanced upon the call for experts that had been published in the *Official Journal of the European Union*. Rather, each had been directed to the call through some sort of informal mechanism. Sometimes this took the form of a national association informing suitable individuals that the call for experts had been published, but often it took the form of an informal e-mail or phone call originating from the EG's parent DG. But, as the recipients of these informal communications were individuals already on the DGs database, it rather gives the appearance of a 'usual suspects' system, with certain experts favoured and granted privileged access to the Commission. Furthermore, such arrangements run counter to the Commission's own guidelines, which state that:

Departments should cast their net as widely as possible by including individuals outside the department's habitual circle of contacts (European Commission, 2015b).

The interview data in chapter seven shows, however, that the Commission favours 'repeat players' and 'EU-insiders', with those appointed to an EG in a personal capacity overwhelmingly likely to be already known at the DG concerned. Arguably, this provides a certain 'logic of access' (Bouwen, 2002), as a system where EG membership is partially a function of existing institutionalised ties to the Commission provides more certainty for the officials involved. In that sense this is an efficient use of limited resources, but for those outside the institutions it does rather reinforce the impression of EU policy-making as technocratic, insulated and elitist (Heard-Lauréote, 2010; Rhinard, 2002).

In order to address this, it is considered appropriate that - so far as possible - no expert appointed in a personal capacity should serve on more than one group, nor should s/he serve on another EG within a set period after a group has been abolished. It is recommended, therefore, that a procedure be adopted that mirrors the conflict of interest regulation<sup>41</sup>, so that no individual appointed in a personal capacity can join another EG within two years. It is recognised, however, that there are only a limited number of individuals with the requisite skills and experience for membership of the group, and that there will be occasions when preventing a suitably qualified individual from joining a group simply because this falls within two years of previous membership is neither practical nor desirable. It is considered, therefore, that a two year cooling-off period should be a default situation but that a formal and standardised mechanism should be put in place to

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<sup>41</sup> Former Commission officials must inform the Commission of any new occupation for two years after leaving office (Staff regulation 16).

circumvent this where necessary. Adopting this proposal would address the issue of experts as ‘usual suspects’, whilst providing sufficient flexibility for Commission officials to appoint a suitably qualified person where no other equally qualified candidate is available.

- Recommendation three: Provide limited interpretation facilities for EG meetings.

As recommendation two noted, in some policy areas in particular, the pool of available expertise is extremely small - a situation exacerbated by limiting applications through the imposition of a language requirement. As section 7.1 shows, the stipulations concerning language vary between groups and DGs, but it is almost always the case that a working knowledge of the English language is a pre-requisite for application. With the exception of a small number of groups in DG Agriculture (DG AGRI), EG meetings are always conducted in English, and no interpretation facilities are available. Similarly, agendas and minutes are produced and distributed in English, and are not routinely translated. This long established practice is clearly cost effective and was rarely remarked on during interviews. However, a small number of participants did state that they had seen examples of the conduct of EG meetings being hampered by language difficulties and that, for some individuals, this posed a barrier to participation in the EG’s work.

In terms of the workings of the groups, the language issue has two elements. Firstly, the requirement for applicants to be able to communicate effectively in English prevents otherwise well qualified experts from applying. Given the prevalence of English speakers, this may not seem a significant problem, but it potentially skews the group’s membership. This point was well made by a member of the *Insolvency* EG who pointed out that an English speaking Italian liquidation lawyer would be more likely to work for a large law firm rather than a small one, and would therefore be more likely to represent the interests of banks and major financial organisations rather than small businesses. If this interviewee’s suggestion that the language requirement affected the balance of the *Insolvency* group was correct, it seems likely that this is the case in other policy areas too, suggesting that EG membership privileges better resourced organisations. This rather supports the argument of societal groups such as CEO that publicly criticise the composition of the Commission EGs as being disproportionately representative of the interests of the corporate sector.

Beyond the EG appointments, the second element of the language issue concerns the workings of the meetings themselves. In interviews with experts, a number of participants stated that they had seen instances where individuals appeared to have difficulty following the discussion or in expressing themselves. Although it is not suggested that this poses a major barrier, responses

seemed to indicate that it is more prevalent amongst those experts appointed to represent national authorities rather than those appointed directly by the Commission to operate in a personal capacity. This creates a potential problem of representation, with two interviewees in this study citing an instance of a national official unable to present his/her MS's position on the *Erasmus* programme.

Whilst this may point towards the need for interpreters to be made available, it is recognised that that is problematic. Unlike the United Nations which provides translation and interpretation facilities into its six official languages, the EU has 24 official languages providing over 550 language permutations. Despite an apparently large €127 million budget, DG Interpretation's (DG SCIC) resources are limited. Its 600 staff interpreters and 400 freelance interpreters provide services for 11,000 meetings annually and work across all the EU institutions, apart from the EP and ECJ (DG SCIC, 2015). To routinely provide interpretation for the EGs would increase this number to approximately 15,000 meetings annually<sup>42</sup>. Nonetheless, it is considered that some provision of interpretation should be made available where this would enhance the smooth running of the group. It is therefore recommended that the appointment procedures for EGs be modified so that a working knowledge of English becomes a desirable rather than an essential attribute. This would widen the pool of available expertise, and allow the appointment of a uniquely well qualified candidate in exceptional circumstances, in which case interpretation facilities should be provided.

### 8.3 Limitations of the study.

Like all research projects, this study has its limitations. Firstly, by adopting an inductive approach, the research direction was partly driven by the interests and experiences of its participants. For this thesis, all the participants were involved in some way in EU policy-making. In addition, all the interviews were conducted during a period when the EU was addressing the biggest financial crisis since its inception. It follows that the EU's economic downturn acts as the constant backdrop to this thesis, raising the issue as to whether the views expressed by the participants in this study are shared by those operating in other settings. At this stage, this is an open question, but a potentially interesting one for future research.

The second limitation relates to the thesis' findings being based on the interpretation of the single researcher responsible for all data collection and analysis. This is potentially problematic because qualitative data can, of course, be interpreted in different ways. To mitigate the problem of interpretation bias, qualitative data needs some form of triangulation. Ideally, such triangulation

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<sup>42</sup> Based on the 781 active EGs (February 2015) meeting four times per year.

should be achieved through the use of multiple observers (Bryman, 2009, p.379). Clearly, however, this approach would bring its own problems in the context of a Ph.D thesis. So, whilst this study's findings are based on the interpretation of a sole researcher, triangulation is achieved from its relatively large number of participants, with the 63 interviewees providing 'multiple sources of data' (Bryman, 2009, p.379).

The third limitation of this thesis relates to the generalizability of the EG findings. This is the first research into the workings of the Commission EGs to focus on the views and voices of EG members. It is recognised, however, that an in-depth examination of two EGs cannot be generalized to more than 780 such groups operating across 30 DGs. Importantly, however, generalizability was not the intention of this research. Rather, the interviews aimed to provide a first glimpse into the experiences and motivations of EG members, adding to our understanding of this hidden element of EU policy-making.

#### 8.4 Contribution to knowledge.

By analysing the transparency of expertise in EU policy-making from different perspectives, this thesis makes an original contribution to knowledge in three distinct areas. Firstly, its institutional audit of electronic data provides a comparison of the Commission and EP's compliance with transparency regulations and guidelines to test the veracity of the view that the EP is the more transparent institution. It finds both institutions wanting in a number of areas. In addition, this thesis uses data from interviews with the officials and administrative staff directly responsible for the provision and maintenance of the electronic registers. This provides a first-hand explanation of the procedural failures that lead to the shortcomings in the registers. In doing this, the thesis demonstrates a gap in the institutional processes and identifies a modest and cost effective solution.

Secondly, the thesis analyses a series of qualitative interviews conducted with Commission officials, MEPs and representatives from Brussels-based societal and public affairs groups. It shows that, whilst individual actors overwhelmingly frame transparency in positive terms, collectively they bestow it with multiple attributes. The thesis presents these findings as a transparency typology and argues that the numerous transparency processes used by the EU institutions - rather than providing multiple benefits - sometimes have the opposite effect. In mobilising evidence to support this, it shows that the online transparency tools designed to enhance citizen trust in the institutions are used chiefly by campaigning groups in such a way as to undermine - rather than improve - public trust in the EU. The thesis shows that, where these campaigning groups focus their resources, this system of oversight can be effective. However, this leaves entire policy areas and DGs subject to no

outside scrutiny and thus exempt from the standards of governance required in both public and corporate sectors. Again, the thesis recommends a simple solution that, if adopted, would improve levels of governance at little cost.

Thirdly, the thesis examines the transparency of the expert advice proffered in two policy areas - one political and the other technical - to test the assumption that, through greater public interest, policy areas of high political salience would be the more transparent. Drawing on further analysis of the electronic registers, plus a series of interviews conducted with members of Commission EGs, the thesis shows that the requirement for DGs to provide information concerning the formal appointment procedures to the groups is routinely flouted. Moreover, even where the formal data is provided, individual experts overwhelmingly apply for membership as a result of informal approaches. The thesis shows that, for those appointed in a personal capacity, this informal process favours repeat players and EU insiders, and it explores - for the first time - the motivations of those applying for membership. The thesis argues that, whilst the informal appointment process may be attractive and cost-effective, they lack transparency and give the impression that policy-making is undertaken by a select coterie. Again, the thesis recommends the introduction of a modest and inexpensive procedural change to address this.

#### 8.5 Concluding remarks.

Section 8.3 acknowledges that the findings from an in-depth study of two EGs cannot be generalized to nearly 800 groups operating across 30 DGs and explains that this was not the intention of this research. Nonetheless, when considered purely from a transparency perspective, this lack of generalizability is actually significant in itself. The EU's own transparency rules and guidelines are clear about which documents should be placed in the public domain. Yet this thesis has demonstrated a wide variation in the extent to which DGs actually meet these requirements. It is, of course, understood that it is chiefly the different working practices at DGs that lead to the variations in the transparency of expertise. This bureaucratic fragmentation is well established and is neatly captured in Kassim's (2008) portrayal of the DGs as independent fiefdoms. However, whilst this fragmentation is well recognised, it is an important element of this thesis' findings, because it acts as an obstacle to the good governance that the EU consistently champions.

Within DGs, too, the level of transparency compliance varies. This is demonstrated in section 7.14, which discusses the Commission official who consciously decided against producing minutes of meetings simply to avoid having to place these in the public domain. The official involved presented this as a legitimate means of bypassing time-consuming administrative procedures, and justified it

by suggesting that few outside the institutions would be interested in the contents of the minutes anyway. Here the official may be correct but s/he is also missing the point. Whilst there is surely little public enthusiasm for reading agendas and minutes of EG meetings, that does not justify bypassing the transparency rules, not least because transparency is one of means the EU uses to increase its legitimacy. More importantly - from a governance point of view - whilst most EG members give their services freely, their expenses are paid by the public purse<sup>43</sup>. It is therefore incumbent on EU officials to ensure that they comply with the regulations and guidelines on transparency, regardless of how irksome these may be.

From the start, this thesis has stressed that the issue of transparency is not associated primarily with the EU and its MSs, nor is it a recent innovation introduced as a response to the economic crisis. Rather, transparency is both championed and used as a tool of conditionality by organisations such as the IMF and World Bank, and is used by governments and NGOs across the world as both a mechanism and a measure of good governance. This thesis argues, however, that whilst transparency is not particular to the EU, the EU does use transparency in a particular way. The thesis has shown that EU actors tend to see transparency as a solution to all manner of problems. Thus, it is seen as a way to improve trust in the EU institutions, to enhance the EU's complex accountability arrangements, to boost EU legitimacy and so forth. In analysing these 'multiple transparencies' through the prism of expertise, the thesis has captured the fundamental tension between collective decision-making operating at the EU level, and the political accountability for that decision making which resides with the MSs. By exploring this tension with specific reference to the role of expertise, this thesis is particularly timely. The severe austerity measures imposed by Troika-appointed experts have caused poverty and hardship for EU citizens in a number of MSs. Unsurprisingly, public support for the EU has dwindled in these countries since 2008 (Eurobarometer, 2014), and there has been an increase in support for groups such as *Golden Dawn* and *Plataforma per Catalunya*, and electoral success for *Syriza*.

The EU's use of expertise here is both a solution to the economic problem and a threat to the EU's long term stability. Transparency is one of the few tools available to mitigate this threat. This is hampered, however, by the EU's weak transparency management, where a lack of formal oversight allows transparency to be exploited by groups with an anti-EU agenda. Lack of oversight does not, of course, indicate wrongdoing, but for an EU threatened by growing public disquiet and increasing hostility, perception is crucial.

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<sup>43</sup> It is estimated that EG expenses exceed €12 million annually. This figure is based on each EG member attending four meetings and claiming a nominal €100. Given the proportion of EG members who fly to Brussels, this is probably a significant under-estimate.

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