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### The European Parliament's quest for representative autonomy: An internal perspective

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## 7. European Political Groups – Channels of Representation

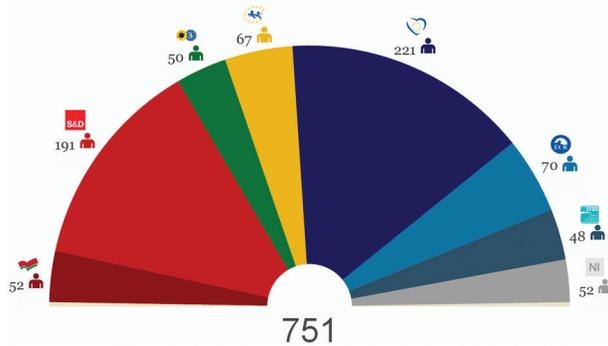
The previous chapters have demonstrated that the national background of representatives, and of the represented, continues to be a matter of relevance in the rules that – together – define the European Parliament’s representative status. The electoral legislation, the provisions regarding members’ immunity, and the rules regulating their indemnity all offer representative claims concerning both the unity of the Union electorate and the different national representative bases of the members. The internal structure of the European Parliament, governed by Parliament’s Rules of Procedure, seems to constitute an exception to this trend. It appears – at first glance – much less ambivalent about whom it is that the European Parliament represents, as it disregards members’ national backgrounds and stresses their political affiliation. The words ‘national group’ or ‘nationality’ are not even mentioned in the Rules of Procedure.<sup>1</sup> Instead, the European Parliament is organised in *European* political groups, bringing together members from different national backgrounds and a similar political denomination. The most important decisions are taken within, and between, these groups.<sup>2</sup>

As a consequence of Parliament’s structure, citizens cannot see themselves represented along national lines. The introductory chapter of this thesis already showed how the composition of the European Parliament is generally visualised instead:

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1 At least, they are not mentioned in relation to the work of the members of the European Parliament. They appear only in relation to the selection of people for the ECB’s Governing Council and in the rules regarding the petitions that citizens can file. See Rules of Procedure of the European Parliament – September 2015.

2 There is a substantial strand of literature that describes the power and functioning of European political groups. See for example Martin Westlake and Leon Brittan, *A Modern Guide to the European Parliament* (Pinter 1994); Richard Corbett, Michael Shackleton and Francis Jacobs, *The European Parliament* (7th edn, John Harper Publishing 2007); Amie Kreppel, *The European Parliament and Supranational Party System: A Study of Institutional Development* (Cambridge University Press 2002); Simon Hix, Amie Kreppel and Abdul Noury, ‘The Party System in the European Parliament: Collusive or Competitive’ (2003) 41 *Journal of Common Market Studies* 309; Simon Hix, Gérard Roland and Abdul Noury, *Democratic Politics in the European Parliament* (Cambridge University Press 2007); Mark Williams, ‘The European Parliament: Political Groups, Minority Rights and the “Rationalisation” of Parliamentary Organisation: A Research Note’ in Herbert Döring (ed), *Parliaments and Majority Rule in Western Europe* (Mannheim Centre for European Social Research, University of Mannheim 1995).



**Graph 1. Visualisation of division of seats in the European Parliament<sup>3</sup>**

Each of the colours above represents a particular European political group.<sup>4</sup> The fact that members are elected in 28 different member states, often on national lists, is glossed over.

The actual issue addressed in this chapter is the channelling of the representative work of members through European political groups, and the consequences of this for Parliament's representative claim. To capture the development well, it is necessary to start at the very beginning: at the constituent session of the Common Assembly in September 1952. This era is not unknown territory for the reader of this study, as the historical roots of the European Parliament have also been a topic in all the preceding chapters. Studying the Rules of Procedure may nevertheless shed new light, as Parliament decides on these alone. Analysing their development from the beginning will enable us to gain better insight in the consecutive representative claims that Parliament offers its electorate when it is at liberty to do so.

The outline of this chapter is as follows. The first two sections analyse the decisions taken during the first months of the Common Assembly's existence. How were the representatives and their electorate framed in the formal decisions taken during this period? Which of their features were polished up, and which ones were swept under the metaphorical carpet? Section 1 studies the decisions with the most visible impact and thus the most explicit claim: the seating-arrangement in plenary, and the election of the first president of the Common Assembly. Section 2 turns to decisions that were less in the public eye: the composition of the Bureau, and the parliamentary committees. Together, these sections illustrate how a balance was struck between highlighting members' different national backgrounds and their different political affinities. Over the years, the balance has shifted. A defining moment

<sup>3</sup> This picture concerns the 8th European Parliament, reflecting the situation in July 2014, just after the elections.

<sup>4</sup> The grey part stands for 52 'non-attached', members who have not joined any of the recognised European political groups. In June 2015, a new European political group was formed: the Europe of Nations and Freedom. Many non-attached have joined that group, which has reduced their numbers. In January 2016, there were only 15 members 'non-attached'. See the website of the European Parliament: <[www.europarl.europa.eu](http://www.europarl.europa.eu)>.

in that process was the decision to grant European political groups a legal status. That choice is the core of section 3. Since then, the European political groups have gradually gained more privileges. As is apparent from section 4, the empowerment of European political groups has accelerated in particular since 1979, the moment when the members of the European Parliament acquired a popular mandate. Existing theories have not been able to provide a satisfactory explanation for this timing. They cannot clarify why such a fundamental change took place at a moment when the power and competences of the European Parliament remained unaltered.<sup>5</sup> What then is the ‘external need’ to restructure Parliament? The added value of the concept of representative autonomy shows itself when tackling this question. The evolution of European political groups cannot be explained solely in the light of a desire for a more efficient and powerful European Parliament. It is (also) linked to Parliament’s need to make a fitting claim about its electorate and itself following its direct election. The content of this new claim is analysed in section 5. Its ingredients can be found in the formal criteria for the formation of European political groups. One could be inclined to dispense with the investigation at this stage. However, an important development would be missed by focusing only on Parliament’s Rules of Procedure. At the same time as the empowerment of European political groups, the role of national delegations *within* European political groups was strengthened. This phenomenon is briefly described and interpreted in the penultimate section. Finally, in section 7, conclusions are drawn, and modest predications for the future made.

## 1. The Decision to Downplay Nationality

The Common Assembly commenced its work in a building rented from the Council of Europe, with ushers borrowed from national parliaments and provisional Rules of Procedure that were drafted by their secretary-generals.<sup>6</sup> The organisation had to be built from the ground up. Some of the decisions taken during the constituent session would have a strong impact on how the organisation was viewed by the outside world for a long time to come. In the account given of two of these decisions, the seating order in plenary and the election of the president, my focus is on the representative claims that these decisions contain: did the Common Assembly show itself as an organisation of national delegations, or did it develop an alternative profile?

### 1.1. *Seating Order by Surname – the Claim of a Neutral and Technical Parliament*

The order in which members sit in plenary is a delicate choice. Existing understandings and preferences will become visible. ‘Who sits with whom’ may seem a prosaic

<sup>5</sup> Kreppel (n 2) 98. For more, see section 4.4.

<sup>6</sup> Draft provisional Rules of Procedure – September 1952 [1952] Doc No 1643. See further Eric Stein, ‘The European Parliamentary Assembly: Techniques of Emerging “Political Control”’ (1959) 13 *International Organization* 233; Roland Bieber, ‘The Evolution of the Rules of Procedure of the European Parliament’ in Wolfgang Wessels, Joseph Jamar and Rudolf Hrbeek (eds), *The European Parliament on the Eve of the Second Direct Election: Balance Sheet and Prospects* (De Tempel 1984) 232; Corbett, Shackleton and Jacobs (n 2) 33.

matter, yet reveals the alliances that prevail and/or that are considered most valuable. In this light, seating orders make assertions about whom members represent, and along which lines they are divided.<sup>7</sup>

On the very first day in session, 10 September 1952, the representatives of the Common Assembly opted for a neutral seating order. Members sat in alphabetical order of their surname. The reason for this decision seems, above all, to have been a negative one, driven by what the representatives did *not* want to happen. They wished to avoid that the members would sit together in the same national groups with which they had entered the building.<sup>8</sup> If members could not liberate themselves from their natural inclination to sit with compatriots, the parliamentary debates and decisions would likely be dominated by national interests and sentiments as well. This prospect ran counter to their ambitions. Many of the Assembly's members hoped to contribute to the shaping of a new reality, in which national particularities were overcome. Therefore, a seating order in national groupings was out of the question. But what could an alternative ordering look like?

In most national parliaments, members are seated together with colleagues from the same party. This can be explained by the relevance of political parties in their election. Political parties serve as vehicles for mobilising voters, and as platforms for the recruitment of representatives.<sup>9</sup> The members of the Common Assembly were faced with a different situation, considering that they were selected by and from national parliaments. European political parties did not play a role in their recruitment and election, as they then did not even exist. There were signals that cross-border cooperation between political parties, sharing similar ideologies, would develop over time. However, their alliances were still at a very embryonic stage.<sup>10</sup> It was far from certain that these entities had the potential to mature. There was thus no credible, developed alternative to replace nationality as the logical dividing line between members. As a result, it was felt best to stress their *individual* representative capacity.

One could argue that the newly adopted seating order placed the Assembly at some distance from the national parliaments. It emphasised that the Assembly was not composed of delegates representing member states or national parliaments. There was no show of different national units and a representation of distinctive national peoples. On the downside, it can be said that the individual-based setting displayed the Assembly as a rather technical organisation. Political representation involves giving expression to different interests and views in society. As the electorate is multifaceted, this requires building and showing credible constructs about what ties the (multifaceted) electorate – and their representatives (see Chapter 2). By organising itself in a neutral manner, the Assembly did not present any of such constructs. It left all options open for the future.

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7 Kreppel (n 2) 179-180.

8 Pascal Fontaine, *Voyage to the Heart of Europe, 1953-2009* (Racine 2009) 48. See also Pierre Wigny, *L'Assemblée Parlementaire Dans l'Europe Des Six* (Communauté Européenne du Charbon et de l'Acier 1958) 12.

9 See Chapter 2, section 2.

10 Peter H Merkl, 'European Assembly Parties and National Delegations' (1964) 8 *The Journal of Conflict Resolution* 51; Guy Van Oudenhove, *The Political Parties in the European Parliament: The First Ten Years (September 1952-September 1962)* (AW Sijthoff 1965).

## 1.2. Insertion of a Political Dynamic

From the first week onwards, members of the same political affinity gathered in European political groups *avant la lettre*. Very soon, these groups gained relevance for the Assembly's day-to-day functioning. One of the most noteworthy moments that confirmed and strengthened this development, was the election of the first president of the Common Assembly on 11 September 1952.<sup>11</sup> In hindsight, we can say that this marked the moment that the development of the Common Assembly diverged from that of the Consultative Assembly.

The election revolved around three main personalities: the German Christian-Democrat von Brentano, the French Christian-Democrat de Menthon, and the Belgian Socialist Spaak. Only the first had officially presented his candidature well in advance. Inevitably, there were differences between the candidates in terms of their experience, views, and personality. However, this was not a determinant factor for their election. What really mattered was the fact that their election presented different *representative claims*.

If the Assembly voted for von Brentano, it would not simply be interpreted as support for the best man for the job. Instead, his endorsement would be seen as a political statement that nationality mattered for the division of posts. At the time of voting, Germany was the only large member state that did not yet have a national as president of one of the institutions. The president of the ECSC High Authority was a Frenchman, and the chairman of the Court was an Italian. A choice to make Von Brentano head of the Common Assembly would be seen as a traditional trade-off: an effort to distribute prestigious positions evenly between the larger member states.<sup>12</sup> This interpretation would have had severe repercussions for the (perceived) autonomy of the Common Assembly. By taking into account the decisions of other institutions for the election of its own president, the Assembly would have compromised its right to freely elect its president. Moreover, it would damage efforts to overcome national rivalries. Both implications were regarded as detrimental to the Assembly's aspirations of developing into a powerful European parliament.

The candidature of De Menthon was also burdened with institutional connotations, on account of another position held by him. He was the president of the Consultative Assembly of the Council of Europe. It was expected that De Menthon would want to continue in this position. Therefore, were he to be elected as president of the Common Assembly, he would combine the functions.<sup>13</sup> Not all members were enchanted with this prospect. A double presidency would bolster the idea that

11 The legal basis by which the Common Assembly was entitled to elect its president can be found in Article 23(1) ECSC.

12 In German newspapers, the anticipated election of Von Brentano was considered 'only fair'. See 'German Editorials' *Information bulletin* (October 1952). See also Jürgen Mittag, 'Die Politisierung Der Gemeinsamen Versammlung Der Europäischen Gemeinschaft Für Kohle Und Stahl: Anfänge Transnationaler Fraktionsbildung Im Europäischen Parlament' (2011) 17 *Journal of European Integration History* 21.

13 Etienne Deschamps, 'François de Menthon and His Draft Federal Constitution for a United States of Europe (June 1948)' (Centre Virtuel de la Connaissance sur l'Europe (CVCE) 2013); Mittag (n 12) 21.

the two assemblies were rather alike, which was precisely a worrying signal for those who had grown disenfranchised with the Consultative Assembly. In their view, the institution had failed to play a strong role in shaping a new Europe.<sup>14</sup> Anticipating his defeat, De Menthon relinquished his place in the race.<sup>15</sup>

Spaak, the third candidate, had been the very first president of the Consultative Assembly. He had resigned from this prestigious post out of frustration with the institution's limited achievements.<sup>16</sup> Spaak's election would therefore offer the opposite claim of that of De Menthon, testifying that the Common Assembly was on a different path to that of the Consultative Assembly. On the eve of the election, Spaak raised the stakes by attaching a condition to his candidature. He was willing to stand, provided that all Socialists would vote for him *en bloc*.<sup>17</sup> If he managed to align all Socialists with his candidature, it would be a strong indicator that the Assembly was more similar to national parliaments than to traditional parliamentary assemblies. It would communicate to the outside world that political affiliation, not nationality, was the dividing line between the members – and thereby also between the electorates. Spaak managed to convince the German Social-Democrats to support him, tipping the balance in his favour. He won by receiving 38 votes in contrast with von Brentano's 30.

The choice for Spaak can be regarded as the strongest possible claim that nationality was reduced to a matter of second-order significance. However, the paradigm shift was, in reality, neither universal nor absolute. Nationality remained a relevant factor in this election as well. While it may be true that the German, Dutch, and Italian representatives had voted along the lines of their European political groups, thereby splitting the support for von Brentano, the primarily French-speaking members from Belgium, France, and Luxembourg had all voted for Spaak.<sup>18</sup> There are no records that indicate that Spaak objected to this bloc-formation which worked in his favour. Moreover, members may have voted for candidates for other reasons than a shared language or political affiliation. As it turns out, most Catholics (except for the French) had voted for von Brentano, whereas Spaak had secured the support of non-Catholics.<sup>19</sup> Nevertheless, it cannot be denied that the battle for the presidency has been vital in bringing a political spark into the Assembly and in accelerating the relevance of European political groups in the Assembly's work.<sup>20</sup> It is for this reason that van Oudenhove qualified Spaak's election a 'political bombshell'.<sup>21</sup> Moreover, through its decision, the Common Assembly positioned itself as an institution that

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14 Stein (n 6) 233; Michael G Schechter, 'Spaak, Paul-Henri, North Atlantic Treaty Organization, 1957-1961', *Biographical Dictionary of Secretaries-General of International Organizations* (2015).

15 Mittag (n 12) 20.

16 Schechter (n 14).

17 Van Oudenhove (n 10) 17; John Fitzmaurice, *The Party Groups in the European Parliament* (Saxon House 1975) 20.

18 Mittag (n 12) 21.

19 Paul JG Kapteyn, 'De Gemeenschappelijke Vergadering Der Europese Gemeenschap Voor Kolen En Staal 1952-1958: Een Proeve in Europees Parlementarisme' (thesis, Leiden University 1960) (original version) 36.

20 Mittag (n 12) 22.

21 Van Oudenhove (n 10) 17.

functioned autonomously from national structures and from the other European institutions.

## 2. The Defining Characteristics of Representatives

The vote on the presidency of the Common Assembly had been a binary choice. Voting for the one candidate was effectively a vote against the other; it was not possible to find a solution in the middle. For other positions, this situation was different. There were several vice-presidents, committee-chairs, and committee members. Having numerous vacancies made it possible to reconcile multiple objectives and to propose trade-offs. The question then arises is: on the basis of what criteria were these positions filled? What type of balance was considered appropriate and/or desirable?

### 2.1. *Nationality: An Implicit Criterion*

On the first day of the constituent session, the members of the Common Assembly composed a provisional Rules Committee.<sup>22</sup> Its most pressing task was to draft proposals for the composition and election of the Bureau. Within a day, rapporteur Struye presented the Committee's proposal, in which it recommended establishing a Bureau composed of six members: one president, and five vice-presidents.<sup>23</sup> The proposal was supported by two arguments. Firstly, the Bureau needed to be of a sufficient size if it were to perform all its tasks, including tasks that were generally – in national parliaments – undertaken by a group of Quaestors.<sup>24</sup> Secondly, the amount of six would give the Assembly the opportunity to select a Bureau in which representatives of all member states were represented. This was seen 'logical and reasonable'.<sup>25</sup> Evidently, it is this choice that is most relevant for the current study.

The drafters of the proposal denied any accusations that they introduced national quotas, stressing that it was for the Assembly itself to judge who would be the most fitting candidates. Struye explained that:

'[T]he European character of the Community should induce the Assembly in the selection of the Bureau to only pay attention to the claims of the proposed candidates.'<sup>26</sup>

22 A permanent Rules Committee was set up two days later. See CA Resolution of 12 September 1952 on the Establishment and Composition of the Committee on Rules, OJ No 1 of 10 February 1953 (in Dutch), 7.

23 Report on the articles of the interim Rules of Procedure regarding the election of the Assembly Executive Committee (Rapporteur: Paul Struye) (CA 1952, AC-0002/52-September 0010 (in Dutch)).

24 CA Debate of 11 September 1952 on Article 6 and 7 on the Composition and Competences of the Bureau, OJ No 1 of February 1953 (in Dutch) Annex, contribution Struye 7.

25 Ibid 8.

26 Ibid 8.

The Assembly should pick the right person, and not the right country. However, it cannot be denied that the magical number of six made nationality an *implicit* criterion in the composition of the Bureau, or at least, it allowed for it. During the debate, some members voiced their concerns about the insertion of a 'national tendency'.<sup>27</sup> Regardless, the proposal was adopted without amendment.<sup>28</sup> The first Bureau of the Common Assembly was indeed composed of members coming from six different member states: Casati (Italy), Fohrmann (Luxembourg), Pünder (Germany), Spaak (Belgium), Teitgen (France), and Vixseboxse (the Netherlands). Based on this alone, one could be inclined to conclude that nationality was of overriding importance for the composition of the Bureau.<sup>29</sup> In fact, as with the election of Spaak, the situation is more complex. The six representatives also happened to stand for different political ideologies. Three of the Bureau members belonged to a Christian-Democrat party (Pünder, Teitgen, and Vixseboxse), two were part of a Socialist party (Fohrmann and Spaak), and one came from a Liberal group (Casati). This ratio corresponded to the relative strength of the European political groups at that moment in time.<sup>30</sup> For the composition of the Bureau, the members of the Common Assembly had thus opted for an intersection of the features nationality and political affiliation. This choice was however not formalised.

## 2.2. *Introduction of National Quota*

Regarding the composition of parliamentary committees, there was considerably less reluctance to institute formal quota. The Rules Committee was the first committee that was determined as such. It was comprised of nine members, of which two representatives from each of the larger member states, and one from each of the smaller ones. For nomination, they were dependent on their *national group* – with which term, I refer to the collective of all representatives of a particular country, regardless of political colours. The composition of the Rules Committee was adopted without debate or opposition.<sup>31</sup>

The so-called 'Organisation Committee' was the second committee that was formed in this manner.<sup>32</sup> Its task was to draft proposals on the number of members, the configuration, and the scope of future parliamentary committees. This committee was also to be composed through national quotas. In the debate about its composition, the use of such quota *an sich* was not questioned. The only controversy was about the precise repartition between national delegations. Rapporteur Struye proposed that the Organisation Committee would count 20 representatives: four each from France, Germany and Italy; three each from Belgium and the Netherlands;

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27 Ibid contribution Blaisse, 9-10.

28 Kapteyn (n 19) 36; Van Oudenhove (n 10) 17.

29 See for instance Hix, Roland and Noury (n 2) 22.

30 Van Oudenhove (n 10) 18.

31 Kapteyn (n 19) 35. CA Resolution of 12 September 1952 on the Establishment and Composition of the Committee on Rules (n 22) 7.

32 CA Resolution of 12 September 1952 on the Establishment and Composition of an Organisation Committee, OJ No 1 of 10 February 1953 (in Dutch), 7.

and two from Luxembourg.<sup>33</sup> Having a minimum of two representatives per member state would allow the national groups to nominate members of different political ideologies.<sup>34</sup> Other representatives put forward alternatives for a larger or smaller committee, and with different systems for dividing the seats per national group. Finally, the amended proposal of the Frenchman Mollet was adopted.<sup>35</sup> He had suggested a committee of 22 persons: five from each of the three large countries; three from both Belgium and the Netherlands; and only one from Luxembourg. This ratio mirrored the composition of the Common Assembly along national lines. The only amendment adopted concerned the single seat for Luxembourg. The members agreed to add another seat for the smallest country, after a strong intervention by the Luxembourg member Margue. Margue did not argue for a larger delegation with a view to enable the participation of members coming from different political parties, as Struye had suggested for his original proposal. Instead, the Luxembourg member held that his country was entitled to a stronger presence in the committee because of its economic importance in the coal and steel sector.

'I'm so free to bring in memory that we, Luxembourgers, not just represent a population of 300.000 souls, – which is rather limited – but a steel production of 3 million tonnes a year, which should be taken more into account, considering the interests that are of our concern here.'<sup>36</sup>

The representative claim that is presented here, is that the members of the Common Assembly stand for a national interest as well. The repartition by national quota remained in force for the entire period of the Common Assembly's existence.<sup>37</sup> Decisions such as this one rightfully led Hix, Noury, and Roland to conclude that the proceedings of the Common Assembly suggested that 'the new Assembly would be organised around national rather than ideological or partisan affiliations.'<sup>38</sup>

### 2.3. *Intersection with Political Affiliation*

In January 1953, the Common Assembly met again. At this meeting, it created seven permanent parliamentary committees. Four of these were to have 23 members,

33 Report on the articles of the interim Rules of Procedure (Rapporteur: Paul Struye) (CA 1952, AC-0003/52-September 0010 (in Dutch)) 4.

34 Kapteyn (n 19) 37.

35 CA Resolution of 12 September on the Establishment and Composition of an Organisation Committee (n 32); CA Debate of 12 September 1952 on Article 39 on the Establishment and Composition of Committees, OJ No 1 of 10 February 1953 (in Dutch) Annex, 64. See also Van Oudenhove (n 10) 37.

36 CA Debate of 12 September 1952 on Article 39 on the Establishment and Composition of Committees, Annex OJ No 1 of 10 February 1953 (in Dutch) (n 35) 64 (translation KB).

37 Kapteyn (n 19) 59.

38 Hix, Roland and Noury (n 2) 22.

which was identical to the number of the Organisational Committee.<sup>39</sup> The repartition between delegations would also be the same. Five members would come from each of the larger member states, three from both Belgium and the Netherlands, and two from Luxembourg. Three other committees would be smaller, with only nine members each.<sup>40</sup> Therein, there would be two representatives from the three larger member states, and one from each of the smaller ones.

In his seminal work, 'The Uniting of Europe', Haas has qualified the formalisation of national quota as an indication of 'national representation'.<sup>41</sup> The term suggests the existence of a formal link between the representatives and a national structure. In that sense, it is not a fully adequate description. It is not the case that representatives were formally representing their national groups. During the session in September 1952, the Common Assembly had indeed asked the national groups to nominate candidates for committee membership. However, in January 1953, the matter of nomination was deliberately left open. Formal dependency on national groups was seen as an infringement of the rights of individual members, which were carriers of a free mandate after all.<sup>42</sup> Therefore, members were enabled to put themselves forward, or be nominated by a group of colleagues – including by colleagues from different nationalities, even though in practice the national groups continued to play an important role.<sup>43</sup> Upon the reception of all nominations, it was the Bureau that had to piece together a suitable, balanced composition of each committee. Due to this open procedure – at least formally –, members cannot be seen as officially acting in the name of their national groups. Instead, the quota should be seen as referring to nationality as a relevant characteristic of individual representatives (and of their electorate), which had to be *made present* in the composition of the committees.

This interpretation is supported by an amendment to the Rules of Procedure that was adopted simultaneously. It charges the Bureau with taking into account both the national background and the political affiliation of members when deciding on the composition of a committee.

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39 This concerned the following committees: the Committee on the Common Market, the Committee for Investments and the Financing and Development of Production, the Social Affairs Committee, and the Committee on Political Affairs and External Relations of the Community. See CA Resolution of 10 January 1953 on the Number, the Composition and the Competences of the Committees that are Necessary for the Functioning of the Assembly, OJ No 1 of 10 February 1953 (in Dutch), 8.

40 This concerned the Transport Committee, the Accounts and Administrative Committee and the Committee on Rules of Procedure, Petitions and Immunities. *Ibid.*

41 Ernst B Haas, *The Uniting of Europe. Political, Social, and Economic Forces, 1950-1957* (University of Notre Dame Press 2004) 409.

42 Kapteyn (n 19) 41.

43 Van Oudenhove (n 10) 16.

‘Nominations shall be forwarded to the Bureau, which shall submit the necessary proposals to the Assembly, due consideration being given to an equitable representation of the participating States and of the various political concepts.’<sup>44</sup>

The provision addresses the diversity that exists within *national groups*,<sup>45</sup> and aims to accomplish an ‘equitable representation of Member States and political tendencies’.<sup>46</sup> It acknowledges the multifaceted nature of representation by members. They represent national citizens, as well as citizens who adhere to a particular ideological view. By formally recognising the relevance of political diversity in the repartition of positions, next to the relevance of nationality, the provision can be regarded as ‘a watershed’.<sup>47</sup>

### 3. Formal Recognition of European Political Groups

The relevance of members’ political backgrounds was fostered by the emergence of European political groups. Initially, the organisation of these groups was rather loose. However, they developed at an astonishingly rapid pace into political platforms, thereby strengthening the claim of the Common Assembly, and its successor the European Parliament, of being a *political* representative body, comparable to national parliaments.

#### 3.1. Creation of a Legal Basis

The Common Assembly discussed the need and desirability of a legal basis for allowing the formal establishment of European political groups for the first time in March 1953.<sup>48</sup> Three months later, on 16 June 1953, the members agreed that this would indeed be the right course to take. Therefore, they amended the Rules of Procedure with the following provision:

1. The delegates may form groups according to political affiliation.
2. Groups shall be formed by handing a declaration of formation to the President, which declaration shall include the name of the group, the signatures of its members and the composition of its bureau.

This declaration shall be made public in the *Official Journal of the Community*.

<sup>44</sup> Rule 34 Rules of Procedure of the European Parliament – March 1953. See also Van Oudenhove (n 10) 14.

<sup>45</sup> Kapteyn (n 19) 38-42.

<sup>46</sup> Common Assembly Proceedings, OJ No 1 of 10 January 1953, 146. See also Van Oudenhove (n 10) 14; Hix, Kreppel and Noury (n 2) 312.

<sup>47</sup> Hix, Kreppel and Noury (n 2) 312.

<sup>48</sup> Van Oudenhove (n 10) 20; Mittag (n 12) 18.

3. No person may be a member of more than one political group.
4. The number of members necessary to be able to form a group is nine.<sup>49</sup>

The three existing groups – the Christian Democratic Group, the Socialist Group, and the Liberal Group – complied with the rules already, and could therefore be constituted officially. Within months, they counted 38, 23, and 11 members respectively. Six members remained ‘non-attached’.<sup>50</sup> The groups were eligible for secretarial support and funding from the Assembly’s budget. This enabled their members to function more independently from the structures of the national parliaments, and to intensify their mutual cooperation.<sup>51</sup>

The decision to introduce formal criteria for European political groups had been unanimously approved in Parliament.<sup>52</sup> However, the question of their financing provoked resistance, in particular by Dutch members.<sup>53</sup> The ‘non-attached’ Korthals, for one, objected to the proposal because he believed that parliamentary groups should be the result of the expressed will of the people, and not an invention that is implemented top-down.<sup>54</sup> However, the majority of his colleagues disagreed with this view. They felt entitled to exploit their organisational autonomy and encourage the development of new structures. In other words, they believed that it was *appropriate* to stimulate new channels for representation.

During the debate on amending the Rules of Procedure, some argued that the formal recognition of European political groups would be of little significance.<sup>55</sup> Providing a legal basis would only bring the *de jure* provisions in line with the *de facto* situation. Retrospectively, we can say that this view does not hold. Van Oudenhove, who wrote his eminent work upon the tenth anniversary of the Common Assembly, observed that ‘in the parliamentary practice which evolved *de facto* the political groups gradually became the leading force’.<sup>56</sup> The formalisation of the political groups served as a catalyst for organising the institution (and in particular its successor) more and more along the lines of these groups. One can say that obtaining a legal basis was a driving motivation, and once achieved, it served as a vehicle for change.

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49 See Report on the insertion of a provision regarding the creation of Political Groups in the Rules of Procedure (Rapporteur: Paul Struye) (CA 1953, AC-0010/53-May 0010 (in Dutch)). The adopted text was incorporated as Rule 34. See Rules of Procedure of the Common Assembly – March 1954.

50 Van Oudenhove (n 10) 26.

51 Van Oudenhove (n 10) 23-26; Stein (n 6) 235.

52 CA Resolution of 16 June 1953 on the formation of political groups, OJ No 10 of 21 July 1953 (in Dutch), 155; Van Oudenhove (n 10) 23.

53 Kapteyn (n 19) 47-51.

54 CA Debate of 16 June 1953 on the budget of the Common Assembly, Post 105, concerning funding of the European political groups, OJ No 4 of September 1953 (in Dutch) Annex contribution Korthals.

55 Van Oudenhove (n 10) 22.

56 Ibid 32.

### 3.2. *The Seating-Order Re-Visited*

The decision to formalise the role of political groups did not immediately affect the seating order in the plenary room. Members remained seated in alphabetical order.<sup>57</sup> Only within the confinements of the committees did a ‘seat-revolution’ take place. There are no recorded discussions that provide a clear answer as to why the changed practice in committees was not transposed to plenary. An often-heard explanation is that the reason should be ‘sought in the eternal difficulty of determining which groups should sit on the right’.<sup>58</sup> Yet, at the level of the parliamentary committees, this issue was apparently overcome.

A more plausible explanation for the difference may be linked to the fact that members operate much more in the public eye in plenary than in committees. Whilst the public may not even have noticed the seat-swapping in committees, changing the seating order in plenary would have an external effect. It would amend the representative claim that was enshrined in the rules regarding the Common Assembly’s composition. Members may have been unsure whether they were in the right position to do so. After all, they were appointed by national parliaments and their free mandate was only implicit (see Chapter 3, section 1.2). Also, there existed no treaty provision (yet) that mandated the Assembly to change or propose amendments to its composition. Evidently, the Assembly was formally at liberty to determine the seating arrangement by virtue of its organisational autonomy. However, its *substantive representative autonomy* for taking decisions altering the Assembly’s representative status was still rather limited (see Chapter 2, section 4.1).

The angle of representative autonomy also helps us to understand why, in 1958, the European Parliament managed to overcome the impasse that had existed in the Common Assembly for many years. In March of that year, the European Parliament had assumed the responsibilities of the Common Assembly, and the ones assigned to it by the EEC and Euratom Treaties in 1958.<sup>59</sup> It too was an appointed body. However, the new Treaties made reference to holding direct elections by universal suffrage in the future.<sup>60</sup> The European Parliament was even given the right of initiative to draft the electoral procedure for this. Hence, it was asked to engage in shaping and *reshaping* the electoral relationship. This new situation may explain why members already pushed for a new seating-order on the first day of the European Parliament’s constituent session, 19 March 1958.

Lapie, the president of the Socialist group, then stressed the need to revise the seating order with a view to highlight the political and parliamentary character of the new Parliament.

57 Ibid 138-140.

58 Ibid 28.

59 The Treaties only refer to the institution as ‘the Assembly’. In 1958, it was renamed the European Parliamentary Assembly by the representatives. The name was changed to European Parliament four years thereafter. See for an elaboration about the name change Chapter 3. As explained I will use the name European Parliament instead of European Parliamentary Assembly.

60 See Chapter 4.

'No doubt it would have been spectacular, and consequently useful for how this Assembly is regarded, when today the political groups would have been seated, on the very first session, as teams, and when the Assembly, rather than showing off this alphabetical pointillism, would have looked like a painting with large groups of different colours, consisting of the different political groups where internally Members would be seated on alphabetical order. The socialists, the liberals and the democrats would then be seated in different parts of the Assembly. The press, the public and you yourself, Mr. President, could envisage more clearly the political value of our Assembly.'<sup>61</sup>

The desire to emphasise the parliamentary credentials of the new organisation did most likely not only spring from Parliament's enhanced representative autonomy, but also from a conflict with the Council that arose two months earlier. This made it necessary for Parliament to draw a line, and assert its *institutional independence*, as we will see below.

The conflict evolved around the presidency of the new Parliament. During a meeting in Paris in January 1958, the Council agreed that it would be most desirable if an Italian member became the first president of the European Parliament. The reason for this was Italy's relative underrepresentation in the distribution of important international posts.<sup>62</sup> The Council informed the (then still acting) Common Assembly's Bureau about its wishes through a communiqué. As can be imagined, the governmental interference regarding a sovereign right of (the future) Parliament was not well received.<sup>63</sup> It is fascinating how tactless the Council acted, and how little it seemed to have reflected on the defeat of von Brentano (see section 1.2). It was therefore not a very effective intervention. Like in 1952, the members of the Common Assembly, and its successor the European Parliament, refused to take part in an inter-institutional deal. They insisted on Parliament's autonomy to make its own choice for a president. In the given situation, it was politically impossible to elect an Italian member from among their ranks. Instead, the three European political groups nominated the Frenchman Schuman. He was elected on 19 March 1958.<sup>64</sup>

Two days after his election, the European Parliament decided to change its seating order. The chosen wording implies that the decision was prompted by a desire to show the parliamentary credentials of the new institution more prominently.

61 EP Debate of 19 March 1958, Opening Statements, Minutes of the European Parliament of May 1958 (in Dutch).

62 The president of the EEC Commission was the German Hallstein, and the head of the Euratom Commission was the Frenchman Armand.

63 Wigny (n 8) paras 44, 74. See also Franz C Heidelberg, *Das Europäische Parlament* (Verlag August Lutzeyer 1959) 28; Van Oudenhove (n 10) 147.

64 Van Oudenhove (n 10) 144-148.

'The Parliament, *Considering the need to underline its political character* and to facilitate its work, decides: that Members registered with the same political group shall sit together in the Parliament; that within each group Members shall sit in alphabetical order; that the places to be occupied by the political groups and the unaffiliated members shall be determined by the Bureau each year.' (italics added)<sup>65</sup>

It seems evident that the timing for the new seating order is related to the institutional conflict with the Council, as well as the adoption of the Rome treaties in which Parliament was given the explicit task to re-shape the electoral relationship. At any rate, 21 March 1958 is the day that the European Parliament offered a new representative claim to the public. By rearranging the plenary, the members show that the dominant characteristic that divides, and ties them together, is their differences in political views, not their different national background. That is the construct that is offered to the electorate. The European Parliament poses that, for this electorate too, the division along political affiliation may (in certain respects) be more relevant than the division along national lines.

#### 4. Empowerment of European Political Groups

The European political groups have become highly important for the work of members in the European Parliament. For essential representative functions, such as speaking in plenary or participating in committees, members have grown dependent on their political groups.<sup>66</sup> This development will be sketched below, in sections 4.1 and 4.2. Section 4.3 describes the impact of this development on the representative capacity of the 'non-attached' members. Finally, in section 4.4, we will turn to the justification for structuring Parliament in this manner. This justification is often sought, and found, in Parliament's need to function effectively and efficiently.<sup>67</sup> The present investigation, however, studies the empowerment of European political groups in the light of Parliament's need to shape its own representative status.

##### 4.1. *Speaking Time: A Timeslot of European Political Groups*

The European political groups started as loose organisations. Members of these groups remained at liberty to act in their capacity as individual representatives. They could intervene in debates in order of registration, and for as long as they wanted.<sup>68</sup> Sometimes, they spoke in the name of other members. However that was always a

65 EP Resolution of 21 March 1958 on the seating of Members in the plenary chamber, OJ No 1 of 20 April 1958 (in Dutch), 10.

66 See for instance Simon Hix, Abdul Noury and Gérard Roland, 'Dimensions of Politics in the European Parliament' (2006) 50 *American Journal of Political Science* 494, 496.

67 Williams (n 2).

68 Van Oudenhove (n 10) 45.

personal choice and happened on a case-by-case basis.<sup>69</sup> The figure of spokesperson was not formally recognised. In practice, members tried to formulate positions together with others, and they did so increasingly within the framework of their European political groups.<sup>70</sup> Soon, it became routine for the presidents (or vice-presidents) of these parliamentary groups to take the floor as first speakers to state their group's position.<sup>71</sup> This development found *de jure* recognition in 1959. The rule-change followed a complaint by an Italian member of the European Parliament, Carboni.<sup>72</sup> He was unhappy about the fact that six colleagues spoke before him, whilst he had been registered as third speaker on the list. In Carboni's view, the privilege of the groups' presidents to always speak first in a debate constituted a violation of the equality between members. The Rules and Legal Affairs Committee, which the matter had been referred to, concluded that Carboni was right by the applicable formal standards. Consequently, the European Parliament was faced with the choice: 'either abolish the practice or legalise it'.<sup>73</sup> Parliament chose the latter, introducing a new Rule 32 in its Rules of Procedure.

'On the request of the presidents of the political groups acting as their group's spokesmen, or of the speakers deputising for the presidents in this task, such persons may be granted priority.'<sup>74</sup>

As a result of this provision, the formal representative capacity of the presidents of the European political groups expanded. It transformed them from only being individual representatives to being representatives of their European political group *as well*. One could even argue that the presidents were transformed into being political representatives of a transnational electorate. After all, the privilege to speak by priority was not granted to them so that they could voice the concerns of their 'own' national electorate; it was given to them so that they could speak in the name of the sum of the national electorates of their group's members.

In the period that followed, another development took place: individual members' right to speak was put under increasing pressure. The Treaties of Rome had raised the number of representatives to 142, and increased Parliament's responsibilities. As a result, the meetings needed to be conducted more efficiently and effectively. The existence of European political groups turned out a useful instrument for this rationalisation.

In 1962, members agreed to limit the overall speaking time.<sup>75</sup> Initially, this decision did not entail a formal role for European political groups. Members remained

69 Kapteyn (n 19) 70.

70 Kapteyn (n 19) 67-76; Van Oudenhove (n 10) 33-34.

71 Van Oudenhove (n 10) 33.

72 Ibid 143.

73 Ibid.

74 The change was adopted, unanimously, on 25 September 1959. In the revised Rules of procedure, it was incorporated in Article 31(2).

75 Rule 31(2) Rules of Procedure of the European Parliament – December 1962.

equally entitled to speak within the overall time-slot set (albeit with a privileged position for the presidents of the groups). The procedure changed in 1967. As a new rule, the European political groups divided the available speaking time between them through negotiations.<sup>76</sup> Subsequently, each group internally decided who would speak in plenary, and for how many minutes. The reason for this was that:

[A]ccording to experience, some debates are unnecessarily prolonged because many speakers belonging to the same group put forward completely similar arguments'.<sup>77</sup>

Almost ten years later, in 1976, the criteria for the division between the parliamentary groups were fixed and incorporated into the Rules of Procedure.<sup>78</sup> They were formulated as follows:

'The president shall allocate speaking time in accordance with the following criteria: (a) a first fraction of speaking time shall be divided equally among all the political groups; (b) a further fraction shall be divided among the political groups in proportion to the total number of their members; (c) Members not attached to a political group shall be allocated a total speaking time equal to the fraction allocated to the political groups under subparagraph (a).'

Rationing the plenary debates in this manner had important consequences. Not only did it benefit the efficiency of meetings, it also had an impact on how the interventions of members could be framed. European political groups were made the new 'owners' of speaking time. Members had voluntarily given away their privileges to speak on their own account.<sup>79</sup> Under the new system, the opportunity for members to speak in plenary does not only depend on their own representative mandate, it is also linked to that of their colleagues. Therefore, when members speak in the time-slot that is given to their European political group, they assume an additional

76 Rule 28 Rules of Procedure of the European Parliament – January 1968. See also Report on the Revision of the Rules of Procedure (Rapporteur: Joseph Bech) (EP 1967, A0-0131/67 0010).

77 EP Motion for a Resolution tabled by Esteve and others on a Modification of Article 31 of the Rules of Procedure, HA PEO AP PR B0-0020/65 0010 (in Dutch) (send back to committee). This report was later integrated in the Report on the Revision of the Rules of Procedure (Rapporteur: Joseph Bech) (n 76).

78 It was part of a more general revision of the rules of procedure. New Rule 28(2) Rules of Procedure of the European Parliament – December 1976. See also Report on the amendment of chapters I to X, XIII and XIV of the Rules of Procedure (Rapporteur: L Martin) (EP 1976, A0-0198/76 0010) 12-13.

79 Williams (n 2) 394.

responsibility. Besides being a representative of their own electorate, they represent the European political group to which they belong. This point is underlined by the use of a possessive noun in the parliamentary report that regulated the division of speaking time:

'[G]roups should be required to notify the president of the speaking time allocated by them to *their* speakers'. (italics added)<sup>80</sup>

It is noteworthy that the described change was formalised in 1976, the year in which the Direct Election Act was adopted. A hypothesis on the link between these events will be presented in section 4.4.

Speaking under the banner of European political groups contains a strong representative claim, suggesting that the electorate can be represented by members from another country. Yet, it should be noted that members are not obliged to voice the group's common position. It is political reality that fellow group members make conflicting statements. What has changed however, is that a speech no longer only implicates an individual member. Members are, in principle, free to underline the common position, or to voice a dissident opinion. However, in case of the latter, it will be evident – to colleagues, other institutions, and the public – that the parliamentary group in question is divided on this issue. The implications of a member's speech thus have to be carried by the whole group.

Unlike what one may expect, the nationality of members has continued to be a relevant factor for the division of speaking time. In 1967, the Parliament agreed that the chair of a debate should balance between speakers of different political views and people using different 'languages'.<sup>81</sup> It is a curious provision, as the European political groups were simultaneously given the responsibility to determine the list of 'their' speakers. This can only be understood if these groups are seen as the addressees of the norm. They have to ensure that not only speakers from a single nationality are enlisted for a particular debate.

The European political groups channel the representation of members in legislative debates. However, even today, there are still possibilities for members to ask for the floor in an individual capacity – simply on the basis of the own representative mandate. For example, members may give an oral voting explanation on their own behalf at the end of the voting time, or comment on a matter of political importance at the beginning of the session.<sup>82</sup> Moreover, since 2009, the European Parliament has two new procedures, in line with a proposal by rapporteur Corbett.<sup>83</sup> The first is

80 Report on the amendment of chapters I to X, XIII and XIV of the Rules of Procedure (n 78) explanatory note, 29.

81 Report on the Revision of the Rules of Procedure (Rapporteur: Joseph Bech) (n 76) rule 31.

82 Rule 183 and Rule 163, respectively, Rules of Procedure of the European Parliament – September 2015 (n 1).

83 Report on the general revision of Parliament's Rules of Procedure (Rapporteur: Richard Corbett) (EP 2009, A6-0273/2009 0010).

a catch-the-eye procedure.<sup>84</sup> Depending on the parliamentary agenda, the president may decide to open the floor to those who request it, once the scheduled speakers of the European political groups (and one non-attached per round) have finished their contributions. The second innovation is that members may put a question to a colleague.<sup>85</sup> To this end, they have to raise a special blue card. Both provisions aim to introduce more drama and more critical exchanges into the plenary room. In relation to the two innovations, Rule 162(6) calls upon the president to ensure that ‘speakers holding different political views and from different Member States are heard in turn.’ It would be most interesting for political scientists to monitor the development of this balancing act, and to test whether individuals are really equally at liberty to take the floor. It can be assumed that the European political groups continue to regulate the order of speakers between them, *de facto*, and again at the expense of the rights of individual members and the role of the president.

#### 4.2. *Committee Seats: A Group’s Appointment*

Not all parliamentary action takes place in the plenary room. Committees are the locus where resolutions are initiated, discussed and amended; sometimes even resulting in final decisions.<sup>86</sup> Determining the composition of committees, with their central importance, therefore involves a heavy responsibility. From a democratic perspective, it is necessary that committees reflect the composition of the European Parliament at large. However, this raises the question of how this composition should be defined, and who determines what a balanced composition entails.

Section 2.3 has described the nomination process in the early years of the Common Assembly. We have seen that, formally, they were entitled to nominate themselves or be nominated by a group of colleagues. In practice, they were put forward by their national groups. European political groups were not privileged with nominating members, as they did not yet exist *de jure*. Barely two years later, the national groups were stripped of their (only) privilege in the nomination procedure. The European political groups were attributed the responsibility to nominate members in their stead. The European Parliament confirmed this in a resolution of 20 March 1958.

‘The political groups appoint their representatives for the committees that will be formed.’<sup>87</sup>

84 Rule 162(6) Rules of Procedure of the European Parliament – September 2015 (n 1).

85 Ibid Rule 162(8).

86 Gail McElroy, ‘Committee Representation in the European Parliament’ (2006) 7 *European Union Politics* 5, 8-10. See also Corbett, Shackleton and Jacobs (n 2) 126-145.

87 EP Resolution of 20 March 1958 on the number, the composition and the competences of committees [1958] Doc No 1, OJ No 1 of 20 April 1958 (in Dutch), par 3.

As this resolution was not laid down in the Rules of Procedure, it has been overlooked by many scholars. Kreppel, for example, concludes that there was an *unofficial norm* that allowed political groups to submit lists for committee assignments, while – in fact – this was based on a formal agreement.<sup>88</sup>

The policy adopted by the members of the European Parliament, and the effect thereof on the representation, are similar to what we have seen regarding speaking time. The European Parliament established a formal link between the committee seat of individual members and the representative mandate of all the colleagues from the same European political group: members are now officially assigned a seat in committee by their European political group. On that account, they can be regarded as *representatives* of their European political group. Members are attributed an additional responsibility. Bowler and Farrell have found that members are well aware of this extra responsibility: ‘the individual members may specialize in their own favoured areas, but they do so under party-group scrutiny and control’.<sup>89</sup>

The new privilege of European political groups puts restrictions on the rights of individual members. They are dependent on the endorsement of their group for obtaining a committee seat. Of course, it should be remembered that the loss of power is not as absolute as it seems. After all, political groups are *composed* of individual members. Their decisions are the result of internal group processes, in which members are actively involved. Thus, while members’ rights were curbed at the level of the overall organisation of Parliament, they were – increasingly – exercised at the level of the European political groups. More accurate would be to say that their influence *shifted* from the primary to the secondary level.

In case a member has no seat on a committee, the possibility exists to participate in committee meetings as a substitute member. The decisions on the nomination of substitutes were not taken in conjunction with those regarding full members, and are also not fully identical. Therefore, they are described here separately.

The figure of substitute did not exist in the Common Assembly. It was only introduced in the European Parliament, in March 1958. Initially, members were free to ask colleagues to replace them in a committee meeting, provided that they had informed the chair of the committee beforehand.<sup>90</sup> There was no obligation for the substitute to have the same political background and/or the same national background as the full member concerned. In 1981, the concept of substitutes became more institutionalised. To each committee, a number of permanent substitutes was appointed that equalled the number of full members. Concurrently, a change in ‘ownership’ of the nomination took place. European political groups were given the privilege to appoint the substitutes for its members.<sup>91</sup>

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88 Kreppel (n 2) 95.

89 Shaun Bowler and David M Farrell, ‘Legislator Shirking and Voter Monitoring: Impacts of European Parliament Electoral Systems upon Legislator – Voter Relationships’ (1993) 31 *Journal of Common Market Studies* 45, 243.

90 Rule 41(3), Rules of Procedure of the European Parliament – September 1958.

91 Non-attached did not have the possibility to appoint permanent substitutes until 1993.

'The political groups may appoint a number of permanent substitutes for each committee equal to the number of ordinary members representing them on the committee.'<sup>92</sup>

The introduction of this provision was part of a general revision in which the overall position of European political groups was substantially strengthened.<sup>93</sup>

In 1991, the demarcation line between representatives from different political groups was drawn more sharply. 'Clarifications' were added to then Rule 111, which stressed that 'a committee member cannot in any circumstances be a substitute for a colleague who belongs to another political group', and that 'the status of permanent substitutes depends exclusively on membership of a given political group'.<sup>94</sup> The representative claim that is made by these provisions, is evident: in the context of his/her functioning in the European Parliament, the crucial characteristic of a representative is political affiliation.

While European political groups now determine the list of full and substitute committee members, members have not lost all individual entitlements to a seat. If they change political group or become 'non-attached', they can hold on to the seat. It has become 'theirs' to some extent.<sup>95</sup> This rule limits the control that a European political group can exercise over a member. It diminishing the threat that a member's rebellion will be paid by eviction from the seat of a desirable committee. This limitation on the power of European political groups is a necessary one, as it supports the exercise of the free representative mandate.

#### 4.3. *The Disadvantaged Status of 'Non-Attached'*

The trend to attribute privileges and powers to European political groups has serious repercussions for those members who wished to remain 'non-attached'.<sup>96</sup> Evidently, non-attached can exercise, like other members, those rights that are given to individual members. This means that they can provide explanations for their votes, table amendments and motions for resolution, and put written or oral questions to the European Commission. They may also participate in actions that can only be undertaken by a group of members. For instance, there is a provision that regulates that

92 Rule 93 Rules of Procedure of the European Parliament – December 1981. See also Report on a General Revision of the Rules of Procedure of the European Parliament (Rapporteur: Rudolf Luster) (EP 1981, A1-0926/80 0010) 111.

93 Kreppel (n 2) 114.

94 Rule 111 Rules of Procedure of the European Parliament, as amended in March 1991.

95 This provision is nowadays laid down in Rule 199(1) Rules of Procedure of the European Parliament – September 2015 (n 1).

96 The number of non-attached has remained low. Since 1979, their percentage is usually between 1.4 and 4.8 per cent. Only in 2014 was the group of non-attached substantially larger, at 6.9 per cent. However, already in June of the following year, most of these non-attached together formed the Europe of Nations and Freedom group, dropping the percentage of non-attached back down to 1.8 per cent.

40 members can put a question to the Council or the European Commission for oral answers with discussion.<sup>97</sup> However, the non-attached remain empty-handed when privileges are attributed to European political groups or to members as representatives of their political group. In that case, they are hindered in performing their representative mandate in the same manner and by the same means as their colleagues.

Sometimes, an objective justification exists for the disadvantaged position of non-attached. This is for instance the case regarding the rules determining the composition of the so-called conciliation committees. Members thereof need to make compromises with the Council delegation on particular pieces of legislation. In order to succeed, negotiating members must be able to adequately assess whether a deal with the Council has a good chance to be supported by a majority in the European Parliament, and they must be in the position to foster that support. The members of the European Parliament who are *not* involved in the negotiating process, but vote on the final result nonetheless, should feel represented by the delegation acting on their behalf. This representation can only be adequately undertaken when it is channelled through the European political groups, or this is at least the view of a majority in the European Parliament. Therefore, since the general revision of the Rules of Procedure of 1993, non-attached members are barred from participating in the conciliation committees.<sup>98</sup> The committees need to reflect 'the composition of Parliament by political groups'.<sup>99</sup> Just as members can only be substituted by colleagues from the same political affiliation (see section 4.2), they can only be represented by their groups' colleagues in the negotiations with the Council. Parliament's reasoning was upheld by the Court of First Instance in the so-called TDI-case (see, for more on this case, section 5).

'It is then necessary for the Parliament's delegation entrusted with the task of negotiating with the Council in the Conciliation Committee to be made up of Members able to reflect the political composition of the Parliament, authorised to speak on behalf of other Members and in a position to be supported once an agreement is found with the Council; to that a political group can effectively contribute, unlike a group consisting of Members who do not share political affinities.'<sup>100</sup>

Excluding the non-attached from the negotiations with the Council can thus be justified. In other cases, this justification was not well founded and the disadvantaged

97 Article 128 Rules of Procedure of the European Parliament – September 2015 (n 1).

98 There are minor exceptions to this. If non-attached members are president of a committee, or the responsible rapporteur, they are part of the delegation *qualitate qua*.

99 Rule 75(2) Rules of Procedure of the European Parliament – October 1993. See also Report on the amendment of the Rules of Procedure of the European Parliament subsequent to the Treaty on European Union, Part I Proposal for a decision (Rapporteurs: Christopher Prout, Willi Rothley, and Luciano Vecchi) (EP 1993, A3-0240/93 0010) 27.

100 Joined Cases T-222/99, T-327/99 and T-329/99 *Martinez, De Gaulle and others v Parliament* [2001] ECR II-2823, para 147.

position of the non-attached could well be perceived as discrimination. The rules on the investiture of the European Commission show such discriminatory practice. In 1993, the European Parliament decided that *only* European political groups could draft resolutions in this process.

‘In order to wind up the debate, any political group may table a motion for a resolution which shall contain a statement as to whether Parliament approves or rejects the nominated Commission.’<sup>101</sup>

In this provision, non-attached were effectively withheld the privilege to set the tone through own resolutions. Naturally, also non-attached could vote on the resolutions that were put forward by the European political groups. In that way, they could express their support for, or disapproval of the proposed Commission. However, they could not themselves frame the team, and formulate demands or expectations by way of a resolution. There is no objective reason for only European political groups being given this privilege. If the intention was merely to reduce the workload, and avoid a pile of different resolutions, one could well imagine the introduction of a threshold for signatories. This could be instead of, or in addition to, the right of European political groups to introduce such resolutions.

In 2000, the European Parliament recognised that the existing rule was an ‘anomaly’ and that the dominance of European political groups had gone a step too far.<sup>102</sup> To settle the problem, it was agreed that besides European political groups, also a collective of 32 individual members was entitled to introduce a motion of investiture.<sup>103</sup> That number is nowadays set slightly higher, at 40 members minimum, due to the enlargement of the Union and subsequent increases in Parliament’s size.<sup>104</sup> The new provision ensures that membership of a European political group is no longer a precondition for tabling motions on the investiture of the Commission. Still noted should be that the criteria for political groups and individual members are not identical. Currently, the minimum requirement for the establishment of a political group is set at 25 members.<sup>105</sup> This is substantially lower than the threshold of 40 individual signatures. Consequently, a European political group consisting of 25 members can put forward a motion on the Commission’s investiture, but 39 non-attached (or single members who disagree with their groups’ resolution) cannot. This is yet another example of how the European Parliament encourages representation along the lines of European political groups. Now that it has been established that the activities of members are increasingly channelled through European political groups, a question arises about Parliament’s motive for this.

101 Rule 33(4) Rules of Procedure of the European Parliament – October 1993 (n 99).

102 Report on amendments to Parliament’s Rules of Procedure to ensure balanced rights between individual Members and Groups (Rapporteur: Richard Corbett) (EP 2000, A5-0252/2000 0010) 12.

103 Rule 33(4) Rules of Procedure of the European Parliament – November 2002.

104 Rule 118(5) Rules of Procedure of the European Parliament – September 2015 (n 1).

105 Ibid Rule 32(2).

#### 4.4. *Representative Autonomy: Explaining Groups' Empowerment*

The most authoritative text on the development of the European political groups since 1970 is 'The European Parliament and Supranational Party System' by Kreppel.<sup>106</sup> Her work stands out, as she has analysed the Rules of Procedure of the European Parliament in combination with the Rules of Procedure of the European political groups. Kreppel points out that the evolution of the European political groups was a consensual affair for a long time. Most members were in favour of empowering groups in order to raise Parliament's efficiency. This objective also explains the timing of the empowerment, as substantial revisions of the rules were undertaken just after new treaties were ratified or after other major external changes had taken place.<sup>107</sup> However, to Kreppel's astonishment, the rules also underwent significant and wide-reaching reform following the first direct election of the European Parliament in 1979.<sup>108</sup> She finds this odd, as the European Parliament was not given any new competences at that time. And yet, it is since those elections that the European political groups have become 'a significant force in the activities of the plenary' (see also section 4.1-4.3 above).<sup>109</sup> European political groups were given more responsibilities, while the possibilities for members to take action in their individual capacity reduced correspondingly.

This shows that the empowerment of European political groups can be fully explained by neither the traditional focus on Parliament's battle for ever more (legislative) powers, nor the attempts of individual members to maximise their ability to achieve their goals. Kreppel cannot find 'any objective need of the Parliament as a whole' that induced the empowerment of European political groups, and cannot explain why the shift occurred in the period 1979-1986 either.<sup>110</sup>

'These reforms, though often made in the name of greater efficiency, were in no way clearly mandated by environmental shifts occurring at the time (the implementation of direct elections and the adoption of the SEA).'<sup>111</sup>

It is therefore useful to study the development of European political groups from the angle of representation as well. The concept of representative autonomy has an *added value* in explaining Parliament's actions. It highlights that, in fact, there *was* an objective drive for Parliament to restructure, and position, itself as a representative body of a single, unitary electorate. This necessity was not related to the acqui-

106 Kreppel (n 2). The importance of Kreppel's work is highlighted in an analysis about existing scholarly research on party politics in the European Parliament. Tapio Raunio, 'Political Parties in the European Union', *Handbook of European Union Politics* (SAGE Publications 2006) 253.

107 Kreppel (n 2) 212.

108 Ibid 97. See Report on a General Revision of the Rules of Procedure of the European Parliament (Rapporteur: Rudolf Luster) (n 92).

109 Kreppel (n 2) 97.

110 Ibid 98.

111 Ibid 99.

sition of any new powers or competences, but rather to the increase of Parliament's representative autonomy as a result of the election of 1979. This election entrusted the members with the formal task to shape new representative claims, and to seek support for the latter. The explicit free mandate that the representatives were given, explains the *timing* of Parliament's actions to empower European political groups. Making full use of its representative autonomy was the 'public good' that Parliament strove for.

## 5. The Content of Parliament's Representative Claim

The creation and the empowerment of European political groups have altered the representative status of the European Parliament. On account of its structure, Parliament can no longer be seen as only the representative body of national peoples. Instead, members are formally charged with representing (as well) their European political group and, implicitly, a derived electorate, composed of the electorate of colleagues in their group. The question is what this construct actually entails. What should the channel look like? They are 'European' and 'political' in name. But is the issue of nationality and national interests fully overlooked? And is it possible to set-up European, non-political groups? Answering this question requires an analysis of the formal criteria that are set for the establishment of groups. These criteria concern the minimum number of members required, their national diversity, and their political affiliation. They are studied in sections 5.1-5.3 respectively. Section 5.4 continues to explain how Parliament's constructs – its representative claim – relates to the electoral provisions through which members are elected on national lists.

### 5.1. *Representative Channels of Substantial Volume*

European political groups must have a sufficient number of members in order to be formally recognised. Most national parliaments are familiar with numerical thresholds, the exact level whereof varies considerably from country to country. On one side of the spectrum lie the Austrian Bundesrat, the parliaments of Luxembourg and Cyprus, and the Polish Senate. They work with very high requirements of 12, 8.5, 8.1, and 7 per cent, respectively. On the other side of the spectrum lie the Portuguese and Dutch parliaments. The former prescribes a minimum of only 2 representatives for the formation of a group, and the latter does not set any threshold at all.<sup>112</sup>

From the beginning, the Common Assembly had opted for a relatively high threshold in order to avoid a proliferation of small groups.<sup>113</sup> The number of representatives that was minimally required to form a political group was initially set at nine.<sup>114</sup> As the Common Assembly consisted of 78 members, this translates to

112 Report on amendment of Rule 29 of Parliament's Rules of Procedure – Formation of political groups (Rapporteur: Richard Corbett) (EP 2008, A6-0206/2008) Annex I.

113 Report regarding the Rules of Procedure of the European Parliamentary Assembly (Rapporteur: Adrien van Kauenbergh) (EP 1958, A0-0017/58 0010) 11-12. Van Oudenhove (n 10) 132.

114 Secretariat Committee for Rules, Legal Affairs and Immunities, 'Communication to the Members about the Rules of Procedure of the European Parliament' [1958] AO-0017 58, APE 144, 11-12. See also Van Oudenhove (n 10) 22.

11.5 per cent. In 1958, the European Parliament, with its 142 members, more or less maintained the percentage, adopting a numerical threshold of 17 members. Since then the percentages have lowered. This trend mainly occurred due to the numerical threshold holding stable, whilst Parliament grew in size. On one occasion, the European Parliament has actually lowered the requirement. This decision was taken, in 1965, to accommodate the formal recognition of a group of 14 members that already functioned as a European political group *de facto*.<sup>115</sup>

In 1973, the percentage fell to around 5 per cent. The minimum number of members was set at 10, provided that these came from at least three different member states (the nationality criterion will be further analysed in section 5.2).<sup>116</sup> The number of 10 as an absolute minimum was maintained after 1979. Considering the European Parliament augmented to 410 members in that year, the percentage effectively dropped to 2.3 per cent.<sup>117</sup> Currently, the minimum number of members required to form a political group is set at 25, which equals 3.3 per cent of all component members.<sup>118</sup>

## 5.2. *Requirement of National Diversity*

Until 1999, it was possible that all members of a particular 'European' political group held the same nationality. This situation has actually occurred twice. The first time was in 1965, when the French Gaullists separated from the Liberal group and formed the European Democratic Union (with only 14 members, see above).<sup>119</sup> The second time was just after the 1994 European election, when an all-Italian group was set up under the banner Forza Europa.<sup>120</sup> Most members considered the foundation of intra-national groups undesirable.<sup>121</sup> In their view, the requirement of multinationality within a single group is indispensable for the fulfilment of Parliament's tasks. In the words of rapporteur Vernaschi, it 'provides a means of shaping, within our groups, that European awareness so necessary to countries within the Community'.<sup>122</sup> Why this European awareness is so essential, is well explained by the Socialist member Corterier.

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115 Corbett, Shackleton and Jacobs (n 2) 71.

116 Article 36(5) Rules of Procedure of the European Parliament – January 1974; Report on an amendment to Rule 36(5) of the Rules of Procedure of the European Parliament on the minimum number of members necessary to form a political group (Rapporteur: Vincenzo Vernaschi) (EP 1973, A0-0190/73 0010) 5-6.

117 Rule 26(5) Rules of Procedure of the European Parliament – December 1981 (n 92).

118 Rule 32(2) Rules of Procedure of the European Parliament – September 2015 (n 1).

119 Corbett, Shackleton and Jacobs (n 2) 71.

120 *Ibid* 70.

121 Report regarding the Rules of Procedure of the European Parliamentary Assembly (Rapporteur: Adrien van Kauwenbergh) (n 113) 12; Report on an amendment to Rule 36(5) of the Rules of Procedure of the European Parliament on the minimum number of members necessary to form a political group (Rapporteur: Vincenzo Vernaschi) (n 116) explanatory statement, 7.

122 EP Debate of 16 October 1973 on amending rule 36 of the rules of procedure, Annex OJ No 167 of October 1973 (in Dutch), Annex contribution Vernaschi, 51.

‘As member of the European Parliament we do not primarily represent our own countries, but the various political tendencies which exist within the European Community. For this reason we have joined together into plurinational groups in the European Parliament. If there were only national groups and no plurinational ones in this Parliament, a genuine European policy would certainly be hardly possible in this Assembly. For this reason the principle of the plurinational composition of the groups is of special importance to us and we cannot abandon this principle.’<sup>123</sup>

It would be impossible for the European Parliament to perform its functions, such as evaluating whether the European Commission is acting in the European interest, were the members of the European Parliament to be focused on pursuing national interests. It is an interesting observation by Corterier. The underlying assumption is that Parliament’s structure – its internal organisation – has an impact on how members undertake their representative tasks. The structure conditions which issues will be raised, in what manner, and even how representatives look upon them. The outcome of a vote by members who function in multinational parliamentary groups is likely to differ from that by members who function in national groups.

The policy of the European Parliament to foster multinational groups was initially one of *encouragement*. In a decision in 1973, it eased the criteria for the establishment of a European political group should this group be composed of members from at least three member states.<sup>124</sup>

‘A group shall consist of no less than fourteen members. However, it may consist of not less than ten members where these come from at least three Member States.’

Just five years later, following the direct elections of 1979, prominent members aimed to annul this rule. They pleaded for a single numerical criterion, regardless of members’ nationality. This may seem a surprising development, as the new legislature attached no less importance to the development of a ‘European awareness’. However, in their view, the situation had fundamentally altered. The direct elections had transformed the European Parliament, politically and legally, into a representative body of all people living in the European Communities. In this context, it was considered unfitting and counterproductive to stress members’ national backgrounds in formal provisions, as the British member Patterson argued.

<sup>123</sup> Corterier, *ibid.*

<sup>124</sup> Rule 36(5) Rules of Procedure of the European Parliament – January 1974 (n 116).

'[T]his Parliament is an elected Parliament and is not like its predecessor ... [T]his Parliament is not based on nationality. This Parliament is based on the whole European electorate and it was therefore felt symbolic that it did not matter how many countries you came from, the minimum size of a political group was going to be the same.'<sup>125</sup>

Nevertheless, the majority in the European Parliament decided to uphold the earlier policy of encouragement.

'A minimum number of twenty-one Members shall be required to form a political group if all the Members come from a single Member State. The corresponding number shall be fifteen if the Members come from two Member States and ten if they come from three or more Member States.'<sup>126</sup>

Patterson's argument has not been reiterated since. Between 1979 and 1999, the numbers were regularly adjusted as a result of enlargements of the Communities, and subsequent increases in the size of the European Parliament. Thereby, the general policy remained intact.

In 1999, the European Parliament took the step from encouragement to obligation. It decided to preclude the legal recognition of groups that were composed of members of one nationality only. National heterogeneity became a *conditio sine qua non*.

'A political group must comprise Members from more than one Member State.'<sup>127</sup> Currently, groups should consist of 25 members coming from at least 25 per cent of the member states.<sup>128</sup> This means that regardless of their size, groups have no legal rights when they comprise members from less than 7 countries. While Parliament has argued that there are good arguments in favour of this decision, it also holds an inherent downside. To a certain extent, it undermines the role of Parliament as the forum where different political views are expressed and exchanged.<sup>129</sup> Several of the smaller political groups are composed of members from less well established political parties. They risk losing their legal status in Parliament when their election result decreases with only a small margin. In order to avoid becoming a 'non-attached', members may feel forced to team up with colleagues from different political denominations, thereby compromising the representative claim that they want to propagate.

125 EP Debate of 13 November 1979 on amendment of certain rules of procedure of Parliament, OJ No 309 of December 1979, Annex contribution Patterson.

126 Rule 36(5) Rules of Procedure of the European Parliament – November 1979.

127 Rule 29(2) Rules of Procedure of the European Parliament – June 1999; Report on the amendments to be made to the Rules of Procedure (Rapporteurs: Richard Corbett, Antoni Gutiérrez Díaz, and Ana Palacio Vallelersundi) (EP 1999, A4-0070/99 0010).

128 Rule 32(2), Rules of Procedure of the European Parliament – September 2015 (n 1).

129 Williams (n 2) 398.

### 5.3. Shared Political Affinity

The mushrooming of all kinds of ‘technical coalitions’ could be expected, considering the legal rights that European political groups are entitled to and the requirement of multinationality to establish such a group. Random groups of members would seek registration as a European political group, simply to enjoy all privileges. Several national parliaments are familiar with this phenomenon. In Italy and Spain, those members who do not belong to a political group, are automatically part of a technical group.<sup>130</sup> The European Parliament has however shown itself opposed to such a development. From the start, it laid down in the Rules of Procedure that members belonging to the same European political group ought to share a similar political vision.<sup>131</sup>

Despite this formal policy stand, technical groups were tolerated for a long time. In 1979, the European Parliament legally recognised the Group for Technical Co-ordination and Defence of Independent Groups and Members (CDI). This was composed of a colourful crowd, including the Danish People’s Movement against the EEC, the Irish Fianna Fáil, and the Italian Radicals.<sup>132</sup> Other heterogeneous umbrella groups, such as the Rainbow Group, obtained legal status in 1984, 1987, and 1989. They benefitted from the same facilities, and had the same rights as other groups. The European Parliament never demanded that the members involved shared similar political views.

A new situation arose in 1999. On 19 July of that year, the Technical group for Non-attached Members-Mixed Group was set up, known by the abbreviation TDI. The core thereof consisted of members of the French Front National, the Italian Alleanza Nazionale, and the Italian Radicals, whose political ideas were diametrically opposed. The latter can be placed on the far-left of the political spectrum, while the former two are regarded as (extreme) right-wing.<sup>133</sup> In order to avoid that the wider public would think of them as political allies, the members decided to distance themselves from each other formally.<sup>134</sup> To that end, they attached an annex to the group’s letter of constitution, which stated:

‘The individual signatory members affirm their total political independence of one another. And hence: freedom to vote independently both in committee and in plenary session; each member shall refrain from speaking on behalf of the Members of the group as a whole; the purpose of meetings of the groups shall be to allocate speaking time and to settle any administrative and financial matters concerning the group; the Bureau of the group shall be made up of representatives of the individual members.’<sup>135</sup>

130 Pierpaolo Settembri, ‘When Is a Group Not a Political Group? The Dissolution of the TDI Group in the European Parliament’ (2004) 10 *The Journal of Legislative Studies* 150, 163.

131 Rule 34 Rules of Procedure of the Common Assembly – March 1954 (n 49). See for more Van Oudenhove (n 10) 23.

132 Corbett, Shackleton and Jacobs (n 2) 72-73.

133 Settembri (n 130) 174.

134 Dell’Alba in Settembri (130) 161.

135 *Martinez, De Gaulle and others v Parliament* (n 100) para 7.

The sole objective of their cooperation was to put themselves in a position to exercise their mandate under the same conditions as other members in the European Parliament. Actually, the TDI-members only wanted the same *privileges*: they were unwilling to carry the same *responsibilities*. By making an explicit statement of dissociation, they asserted that they would not function as representatives of their European political group when speaking in plenary, or when participating in committees (see section 4.1 and 4.2).

Because of this statement, the constitution of the TDI-group was not in conformity with Rule 29(1) of the Rules of Procedure.<sup>136</sup> The Committee on Constitutional Affairs informed Parliament of this conclusion by letter on 28 July 1999. Additionally, it proposed to add the following interpretative note to Article 29(1):

'The formation of a group which openly rejects any political character and all political affiliation between its Members is not acceptable within the meaning of this Rule.'

Parliament endorsed the committee's interpretation, and annulled the official recognition of the TDI Group, on 14 September 1999.<sup>137</sup>

Until today, no legal norm has been developed to monitor and guarantee that representatives within European political groups share coherent political views. It is within the purview of groups themselves to establish criteria for membership, and to ensure sufficient internal cohesion. The one element that is imperative, and that concerns the Parliament as a whole, is that members are willing to be formally viewed as representatives of their group, and in that sense, of each other's electorate.<sup>138</sup>

#### 5.4. *Alternative to and Stepping-Stone for European Political Parties*

The previous sections have shown that through consecutive actions, the European Parliament has reduced the capacity of certain individual members to exercise their representative mandates in full. This has been qualified as discrimination, in particular by the non-attached, as the members of the European Parliament are all elected equally. However, as explained in section 4.3, there could be legitimate reasons for Parliament to facilitate certain alliances and discourage others.

The first legitimate objective is most well-known and concerns the contribution of European political groups to an efficient and effective managing of their affairs. By curbing the rights of individual members, the work is rationed, and Parliament's capacity to act thus enhanced. Fostering that members cooperate in *European* political groups – rather than any other type of alliance – ensures that Parliament can best fulfil its particular tasks (see section 5.2). If the European Parliament subsequently

136 Joined Cases T-222/99, T-327/99 and T-329/99 *Martinez and De Gaulle v European Parliament* [1999] Opinion of Ruiz-Jarabo Colomer 6293-6295.

137 *Martinez, De Gaulle and others v Parliament* (n 100) paras 9-11. See also Settembri (n 130) 160.

138 Rule 32(1) Rules of Procedure of the European Parliament – September 2015 (n 1).

wants to encourage European political groups, it is bound to simultaneously discourage the existence of technical groups. Were technical groups to provide equal benefits, members would be tempted to find shelter in these less demanding structures, and the organisation of Parliament along political lines would be undermined.<sup>139</sup>

The second – often less explicated – objective of organising the European Parliament in European political groups concerns the link with the public. On a national level, this link is provided by both national parties *and* parliamentary groups. At the European level, the political parties are not well developed (yet). In 1992, a legal basis for ‘political parties at European level’ was inserted in Article 191 EC.<sup>140</sup> Since 2003, criteria have been established by which European political parties are eligible for funding of European election campaigns.<sup>141</sup> Still, national parties continue to play the pivotal role in the campaigns. For a large part, this can be attributed to the current electoral system, which neither allows for Europe-wide lists, nor foresees a uniform procedure. The linkage of national parties to European parties is often not even observed by citizens, and does not seem to determine their voting behaviour.<sup>142</sup> In comparison to these European political parties, the European political groups in the European Parliament are more visible in the public debate. Therefore, they are in a position to partially compensate for the immature role of the first. They can provide a better link between the European civil society and the European institutions, and serve as a stepping-stone for the further development of European political parties. The Court has recognised the relevance of European political groups in this respect:

‘[P]olitical groups contribute to the attainment of the political objective pursued by Article 191 EC, that is to say the emergence of political parties at European level as a factor for integration within the Union, contributing to forming a European awareness and to expressing the political will of the citizens of the Union.’<sup>143</sup>

In his 1994 report on the Rules of Procedure concerning the formation of European political groups, Wijsenbeek even asserts that European political groups can compensate for the absence of a uniform election procedure.

139 Settembri (n 130) 164.

140 This is nowadays laid down in Article 10(4) TEU.

141 Currently, the legal and financial framework of European political groups is regulated in EU Regulation of the European Parliament and of the Council of 22 October 2014 on the Statute and Funding of European Political Parties and European Political Foundations [2014] OJ L317/1.

142 Chapter 3, section 2.2 describes that this is subject to change. In 2014 European political parties each presented a candidate for the Presidency of the European Parliament, which led to a relatively high number of cross-European political debates.

143 *Martinez, De Gaulle and others v Parliament* (n 100) para 148.

'Thus there are strong reasons to preserve this transnational political element, particularly because (thanks largely to the reluctance displayed by the representation of the United Kingdom in the Council) there is still no uniform election procedure as provided for in Article 138(3) of the Treaty of Rome, which would be equally capable of providing such an element.'<sup>144</sup>

In Chapter 4, we have seen that Parliament has only limited opportunities to change the electoral provisions. For this, it depends on the Council and the member states. However, by means of its organisational autonomy, it can shape the electoral relationship nonetheless. By fostering the functioning of members in European political groups, members transform (to some extent) into European representatives, charged with expressing the voice of Union citizens (as well). Most remarkable, it is well possible that Parliament's representative claim would be progressively accepted by the citizens concerned. This is for example the case if citizens feel represented by members from other countries or if they consider that members of the European Parliament represent more than a national electorate alone. If this is the case, citizens themselves transform, equally progressively, into a more European electorate.

## **6. National Delegations – a Counterclaim**

The previous sections have shown that the European Parliament has chosen not to extend privileges to national groups in relation to Parliament's managing of their affairs. Some minor references were included in the Rules of Procedure on the *nationality* (or language) of members as a relevant characteristic of individual representatives. However, we have not witnessed that the European Parliament is *structured* along national lines. There are no formal constructs that reveal members as representatives of a national electorate. At least, not at the level of the plenary. This section moves beyond the Rules of Procedure of the European Parliament and takes a look at the internal rules of the European political groups. At this secondary level, important decisions are taken about the distribution of positions, money, staff, and speaking time. It raises the question of what the formal role is of *national delegations* within these groups, and how they interact with the public.<sup>145</sup> The development of this role is still underexplored and requires further research.<sup>146</sup> For the present investigation, it will suffice to establish whether these internal rules present

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144 Report on amendment of Rule 29 of Parliament's Rules of Procedure concerning the formation of political groups (Floris Wijsenbeek) (EP 1994, A3-0172/94 0010) 6. The report was not adopted by Parliament.

145 National delegations are made up by members from the same country, participating in the same European political group. I use the term national groups to refer to all members from one country, irrespective of their political affinity.

146 My conclusions are based on the rules of procedure of the three main political groups. The data is not readily available and incomplete. Kreppel is one of the few scholars who has studied the internal development of the political groups. See therefore also Kreppel (n 2). For more on the *practical* functioning of national delegations, see Raunio (n 106) 255.

a different picture than we have seen above, and if they amend Parliament's representative claim accordingly.

A first observation concerns the membership of European political groups. Membership is only open to individual members, not to national delegations. This may seem an obvious choice, as members have a free mandate rather than being mandated by their national party. However, in turn, it also stresses their independence. Individual membership also existed in the first years, when members were still appointed by national parliaments. Members are automatically entitled to join a particular European political group if they are affiliated to a national party of that same denomination. Alternatively, in the absence of a link with such national party, they can join a European political group if their membership is endorsed by the other group's members.<sup>147</sup> Because of this individual membership, European political groups cannot be defined as umbrella organisations of national delegations.

A second conclusion that can be drawn from studying the internal Rules of Procedure, is more surprising and seemingly contradicts the first. Members are increasingly approached as subjects of national delegations. In the initial years, this was not yet the case. Then, the words 'national delegation', which implies an organised structure, was (deliberately) absent from the rules. The first explicit reference to national delegations can be found in the Christian-Democrat Statutes of 1975.<sup>148</sup> Since 1986, also the Statutes of the Social-Democrats include references to national delegations, for example in a rule that instructs the group's bureau to ensure a fair division of positions between national delegations.<sup>149</sup> In both European political groups, the position of larger delegations has been strengthened over time at the expense of smaller ones. Notably, the number of members which a national delegation may appoint to the group's bureau depends on its size.<sup>150</sup> The bureau of the Christian-Democrat group is composed of one person per national delegation, and an additional member for every ten members. Also for the division of important positions in the European Parliament, such as the chairmanship of a committee, a national delegation's size is a dominant factor.<sup>151</sup>

The Rules of Procedure of the Liberal group do not refer to national delegations, but to 'national political party delegations' instead. The latter are composed of members from the same national party. In case of two competing liberal lists in a particular country (such as in the Netherlands), members are not obliged to form a national delegation together. In the internal rules of the Liberal group, nationality matters as well. This shows in the set-up of their bureau in which each national party has a representative.

147 See for example Rules of Procedure of the Christian-Democratic Group – February 1962. See also Kreppel (n 2) 192.

148 Rule 9 and Rule 14 Rules of Procedure of the Christian-Democratic Group – February 1975.

149 Rules of Procedure of the Group of the Progressive Alliance of Socialists & Democrats in the European Parliament – June 2009 (n 149) Rule 16(1).

150 Article 15(1) E Rules of Procedure of the Group of the European People's Party (Christian-Democrats) – October 2013.

151 Rules of Procedure of the Group of the Progressive Alliance of Socialists & Democrats in the European Parliament – June 2009 (n 149) Rule 16(2).

'The number of votes of the representatives of each national political party delegation corresponds to the number of Members of the respective party in the Group. A party delegation which has more than one representative in the Bureau must indicate to the President which representative will assume the number of votes of the Members of his party.'<sup>152</sup>

The legal provisions regulating the operation of the groups of the Christian-Democrats, the Social-Democrats, and the Liberals, all stimulate that members of the same country (or of the same national party) act as if they form a distinctive unity. The claims contained in the latter provisions and those of the European Parliament are therefore not identical. At the primary level, the European Parliament shows itself as a representative body of Union citizens, divided along political lines. Yet, at the secondary level, it appears as a body of national political delegations: a representation of national peoples.

The findings above are in conformity with analyses of other studies on European political groups. According to Hix and Lord, national delegations *within* European political groups are even 'as important an organisational focus as the transnational party groups themselves'.<sup>153</sup> In her book on the European political groups, Kreppel traced back to when the empowerment of the national delegations had started. The year 1979 was again pointed at as a defining moment.

'Although the national delegations may have remained an informal aspect of at least one of the groups until 1985, most of those interviewed stated that they became significant actors within the groups after direct elections.'

As before, Kreppel tried to explain this evolution, and the timing thereof, by looking at its potential beneficial effect on the position of individual members and/or on the development of Parliament's *powers*. However, she concluded that this approach was not fully satisfactory in the end. Whether the evolution 'was due to the technical difficulties incumbent with increased membership or a concerted effort on the part of the delegations leaders remains a mystery'.<sup>154</sup> In the concluding section, a complementary explanation will be put forward in order to solve part of this mystery.

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152 Article 9(2) Rules of Procedure of the Alliance of Liberals and Democrats for Europe – February 2009.

153 Simon Hix and Christopher Lord, *Political Parties in the European Union* (Palgrave Macmillan 1997) 97.

154 Kreppel (n 2) 210.

## 7. Conclusion

This chapter has indicated three different developments that shaped the representative claim of the European Parliament, as presented through its internal organisation. The first concerns the organisation of the European Parliament along the lines of political affiliation. Already from the very first week, the members of the Common Assembly (the forerunner of the European Parliament) met in European political groups. They made a conscious decision not to be grouped along national lines, as they felt that this would constitute an inappropriate representative claim. In June 1953, the European Parliament adopted a legal basis for the formal recognition of European political groups, and agreed to provide them with funding and a secretariat. Increasingly, members came to coordinate their work through these groups. The privileges of European political groups as *actors* radically increased after 1976, the moment that the Direct Election Act was decided. Important instruments for carrying out a representative mandate, such as speaking time in plenary and participating in (conciliation) committees are, since then, formally regulated in, and between, European political groups. As a result, members have acquired an additional responsibility. When they exercise their parliamentary work, they (also) represent their European political group, and, by implication, the electorate of their colleagues to a certain extent.

The second development that took place is related to the criteria for European political groups. Since 1973, the threshold for obtaining legal recognition (and therefore with benefits) was lowered, provided that the group in question was composed of members from different member states. In 1999, the European Parliament decided that ‘uninational European political groups’ were in fact a *contradictio in terminis* and should not exist. Over the years, the number of different nationalities required for the composition of a group substantially increased, reaching the current 7. The derived electorate in whose name most members act in addition to their own (see above), is thus increasingly and necessarily pan-European.

In these two developments the European Parliament presents itself to the public as a representative body of Union citizens, and suggests that among these citizens ideological differences form the dominant dividing line (as far as relevant for the parliamentary work). The claim deviates from the one captured in the electoral provisions, which send the message that Parliament is essentially a representative body of national citizens, given that members are elected on national lists and by a system of degressive proportionality. Parliament could adjust this claim through the use of its organisational autonomy. The *substantive liberty* to do so emanated from the free representative mandate that members of the European Parliament obtained in 1979. Parliament’s direct election positioned it formally to redefine itself and whom it represent. That is why the year 1979 is so pivotal in terms of Parliament’s development.

The third development that this chapter points at, is the enhancement of the privileges of national delegations *within* European political groups. Since 1979, national delegations have become formal actors at the secondary level of Parliament’s organisation. It can be assumed that, *because* national delegations increased their control on the organisation of the European political groups, it was acceptable for them to vest more powers in these groups at the primary level. But there is a second conclusion that can be drawn. The role that national parties and nationality undoubtedly

play within European political groups is less visible to the public – and therefore a feebleness claim – than when this role was explicated on the level of the plenary. Apparently, the European Parliament wants to make the European political groups the most visible platforms of representation.

This choice contributes to the European Parliament offering a different type of representation than national parliaments. It positions itself as the appropriate institution for providing decisions on the Union level with democratic legitimacy. As member states have recognised its claim (or at least its potential), the European Parliament has managed to expand its powers in subsequent treaty changes. Most likely, it would not have succeeded at this, had it organised itself along national lines or no lines whatsoever.

Nowadays, the European Parliament is one of the most powerful assemblies of the world. Positioning itself for more power and competences is therefore no longer (or should not be) the main motive guiding Parliament's organisation. Legitimacy is the more pressing matter now. The European Parliament needs to ensure that the electorate *recognises* its representative claim as being an appropriate and effective representative body. There are two, very different, strategies that could contribute to this. Each has a different impact on Parliament's organisation.

The first strategy would be to invest more in building a European public space. People may feel more represented by the European Parliament were they to be more aware of their Union citizenship. This could be encouraged by strengthening the role of European political parties, for instance by presenting European lists at the next European election. Making the presidency of the European Commission one of the stakes at this election, fits in this strategy as well. A second approach is to stop hiding the relevance of nationality in Parliament's organisation. The link with citizens may be enhanced if national diversity shows itself more prominently. The recognition of national delegations at the primary level could be an option to achieve this end.

Most likely, we will see elements of both in the coming years. At differing moments in time, different decisions will be made – sometimes even conflicting ones. We now know that this is not a reason for concern. After all, politics is not about shaping a linear development, but rather about conflict and ongoing creation. About claims – and adaptation.