Ever more or ever better scrutiny?
Analysing the conditions of effective national parliamentary involvement in EU affairs[*]

Prof. Dr. Carina Sprungk
Freie Universität, Berlin, Germany.
E-Mail: carina.sprungk@fu-berlin.de

Abstract: Although one of the arguments for involving national parliaments in the European Union (EU) is to make EU politics more accountable, the literature has made few attempts to analyse under which conditions their involvement does have this impact. This article argues that it is not the sheer level of scrutiny activities, but the quality of national parliamentary involvement that contributes to the accountability of EU politics. Drawing on principal-agent-theory, it will show that national parliaments can make a difference if they hold their governments accountable in an EU-specific way. This requires that both the parliamentary majority and the opposition use accountability mechanisms, which are predominantly invoked by the opposition in domestic affairs. The argument will be illustrated in two case studies, which systematically compare the scrutiny of the French Assemblée Nationale (AN) and the German Bundestag (BT) in the decision-making process of the Water Framework Directive (WFD).

Keywords: national parliaments, accountability, France, Germany, multi-level governance, Europeanization, environmental policy, political science

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1. Introduction

The events of 2009 have once again shown that national parliaments play a crucial role for the democratic accountability of European Union (EU) politics. On June 30th, the German Constitutional Court (GCC) ruling on the constitutional compatibility of the Lisbon Treaty (LT) (2 BvE 2/08) stated that the latter can only be ratified by the Federal Republic of Germany if the Bundestag's and Bundesrat's rights of participation in EU lawmaking and treaty amendment procedures are strengthened. On Dec 1st, the LT, providing itself for new and extended power for the EU-27 national parliaments, eventually entered into force. The developments in Germany and the EU are part of a series of institutional reforms for empowering national parliaments, which had been initiated in the early 1990s. The implicit underlying assumption of these reforms is that providing formal powers makes a difference since stronger parliaments (will) participate more actively in EU affairs (and, thereby, provide more accountability to EU politics).

However, we know that the German Bundestag has already had rather strong formal scrutiny powers, but has not been frequently invoking them (Hansen and Scholl 2002; Hölscheidt 2001; Töller 2004), while the French Assemblée Nationale, for example, is considered to be an active scrutinizer even though it is endowed with weaker formal rights (Rizzuto 2004; Szukala and Rozenberg 2001). In other words, formal institutional power as such does not seem to guarantee active and persistent scrutiny, and vice versa. In fact, the increasing literature on national parliaments in the EU has repeatedly pointed to the significant variation in the willingness of MPs to actually invoke their institutional rights (cf. Auel and Benz 2005; Maurer and Wessels 2001; Norton 1996; O'Brennan and Raunio 2007). While many of the formally stronger parliaments also tend to be active scrutinizers, we still find significant variation with regard to both the institutional contexts and the actual parliamentary behaviour in EU affairs across the EU-27 countries.

However, we know surprisingly little about the conditions under which the provision of formal rights and their active use by national parliamentarians (MPs) actually makes a

difference to the accountability of EU politics. What is "effective" parliamentary behaviour in EU affairs? Even though the main purpose of involving national parliaments in the EU is to hold their governments accountable, few attempts have been made so far to analyse under which conditions parliamentary activities actually do have this impact. In fact, much of the literature makes the implicit assumption that "scrutiny leaders" are doing a better job in holding their governments accountable in EU politics than "scrutiny laggards". Thus, a recurrent theme in both the literature and in political practice is that more activity brings about more accountability, and that the former can be influenced by designing specific formal rules for EU scrutiny.

This paper argues that the focus on the *quantity* of parliamentary scrutiny is misleading: more scrutiny does not necessarily result in more accountability. It will show that it is not the sheer level of scrutiny activities, but the *quality* of parliamentary scrutiny which is likely to result in more accountable EU politics. The main argument of this paper is that in EU affairs, accountability mechanisms are different from domestic ones, and these mechanisms are invoked most appropriately if *both* the parliamentary majority and the opposition hold the government accountable in an "opposition mode" (cf. King 1976). Thus, national parliaments only hold their governments effectively accountable in a way that is appropriate for EU governance, and this mainly involves an adjustment of strategies invoked by the parliamentary majority. This adjustment of strategies can only partly be influenced by the provision of (ever more) formal scrutiny powers.

For illustrating that argument, the paper proceeds in the following steps. First, it will briefly review the existing literature on national parliaments in the EU by pointing to its theoretical shortcomings. The latter will be addressed in the next section, which develops a theoretical framework outlining different criteria for assessing the *quality* of parliamentary scrutiny in a multi-level polity by drawing on principal-agent theory. In the following, the theoretical framework will be applied to two case studies, which compare the scrutiny quality of two rather different parliaments, the French Assemblée Nationale (AN) and the German Bundestag (BT), in the decision-making process of the Water Framework Directive (WFD). The empirical analysis shows that despite being generally considered as a very active scrutinizer, the AN's scrutiny was less effective in holding the government accountable than that of the BT. At the same time, the more effective scrutiny behaviour of the BT cannot be fully attributed to its stronger formal scrutiny powers. Thus, neither the sheer frequency of scrutiny activities nor the presence of strong formal rights alone results in effective scrutiny. The paper concludes by arguing that two features of the internal institutional design of legislatures support the effective use of formal scrutiny rights: the involvement of specialized committees in the EU scrutiny process, and the setting up of rules providing for a systematic inclusion of the parliamentary opposition in EU affairs.

2. The literature on national parliaments in the EU and its shortcomings

Both scholars and political actors argue that the legitimacy of EU politics is challenged by the severe loss of competencies national parliaments were facing in the process of European integration. Compared to the effect of EU membership on other domestic institutions, legislatures are unequivocally considered as the "losers" of European integration (Maurer and Wessels 2001; Kassim 2005). As a result, a wide-ranging consensus that national parliaments need to be more fully engaged with EU policy-making emerged in the 1990s (Katz and Wessels 1999; Schmidt 2006; Strøm et al. 2003). Several mechanisms for strengthening

parliamentary participation in EU policy-making were introduced both at the national and at the European level in order to compensate for their disempowerment. They mainly consisted of providing new organizational resources and new powers for controlling the government. This re-empowerment of national parliaments in the EU has triggered a new strand of literature in the early 1990s (for an overview, see Goetz and Meyer-Sahling 2008).

After considering the challenges for national parliaments arising from European integration, the literature has engaged in analysing *how* these institutions respond and adapt to their new European role (Norton 1996; Judge 1995; Raunio 1999; Maurer and Wessels 2001). This included, on the one hand, an analysis of the *capacity* of parliamentarians to engage in scrutiny, and involved a study of which formal scrutiny rights parliaments do have and how they have changed their internal organization. On the other hand, the *willingness* of members of parliament (MPs) to scrutinize EU affairs was analysed by drawing on e.g. how frequently they invoke their new scrutiny rights. Drawing on results of individual country studies, scholars also engaged in comparing parliamentary involvement (Benz 2004; Dimitrakopolous 2001; Hansen and Scholl 2002; Holzhacker 2005). The findings of comparative case studies point to a distinct cross-national variation in scrutiny activities in the EU-15, with Denmark and other Northern European parliaments such as Finland or Sweden being considered as scrutiny leaders (Maurer and Wessels 2001; Raunio 2005; Strøm et al. 2003).[1] This uneven adaptation to Europe has triggered new research on national parliaments, with scholars engaging in explaining cross-national variation. The most prominent explanations for varying active involvement in EU affairs are the power of the parliament in the domestic institutional setting, partisan positions on European integration and the type of government in place (Bergman 1997; Hansen and Scholl 2002; Holzhacker 2005; Pahre 1997; Raunio 2005; Saalfeld 2005).

Given the high number of parliaments with only a weak or a moderate involvement in EU affairs (Strøm et al. 2003), institutional reforms providing for more formal powers have continued in the last decade, culminating in the powers provided by the current LT. However, this line of reasoning actually implies that, theoretically speaking, frequent and intense parliamentary scrutiny would be suited to improve accountability. But while the motivation to invoke scrutiny rights might be potentially be enhanced, and is at least not likely to decrease with the recent enlargements and the reforms based on the LT, it is still questionable whether *ever more* scrutiny makes a difference to the accountability of EU politics in the first place - and whether the frequency of invoking formal scrutiny rights is an appropriate indicator for measuring the effectiveness of national parliamentary involvement in this respect.

In fact, an important shortcoming of the literature is that it tends to focus on quantitative aspects of parliamentary scrutiny, without providing theoretical and empirical evidence as to how and why more formal rights or more active scrutiny translates into more accountability. The way in which "scrutiny leaders" are conceptualized is a case in point. Among the various indicators used in the literature for analysing parliamentary scrutiny (Bergman 2000; Maurer and Wessels 2001; Raunio 2005; Strøm et al. 2003: 175), two factors seem to be important for assigning a scrutiny "leader" or "laggard" position: the potential *intensity* of scrutiny based on the presence and scope of formal mandating rights and the *frequency* of scrutiny in terms of the level of proactive involvement in EU affairs.

First, given their at least moderate formal power to mandate Cabinet ministers, parliaments of countries such as Denmark, Finland, Sweden, Austria and Germany are usually considered to

be the leaders in rankings of parliamentary scrutiny (Bergman 2000; Raunio 2005; Strøm et al. 2003). However, the capacity to have a substantial impact on EU legislation is severely reduced by the specific features of multi-level governance, such as the use of qualified majority voting (QMV), the involvement of the European Parliament (EP), or the use of package deals. Thus, even intense scrutiny in terms of mandating government members does not necessarily result in substantial impact. Moreover, the literature has shown that these formal mandating rights are not frequently invoked (Janowski 2005) and that a more frequent use is generally unlikely, since it is incompatible with the logic of parliamentary systems (Auel 2007). Finally, Benz convincingly argues that issuing tight voting instructions could have the contradictory effect of undermining the output-legitimacy of the EU by constraining the adoption of effective policy solutions (Benz 2004).

Second, as Auel shows, the presence of formal rules is not necessarily related to actual parliamentary activity (2007: 488). This has been acknowledged by the literature, which also includes the degree of proactive involvement in EU affairs in their analyses (Strøm et al. 2003; Raunio 2005). In fact, the variation *within* the group of parliaments of scrutiny "leaders" and "laggards" in terms of their formal mandating power is explained, respectively, by the degree of active involvement in EU affairs. This is why the German BT is usually ranked at the lower end of scrutiny leaders, since it is considered to have a rather passive stance on EU scrutiny despite its strong formal powers (Hölscheidt 2001; Hansen and Scholl 2002; Töller 2004). In contrast, as a result of their more active engagement in EU affairs, the French and Italian parliaments are located at the upper end of the legislatures having fewer formal scrutiny powers (Bergman 2000; Maurer and Wessels 2001; Maurer 2002; Strøm et al. 2003; Raunio 2005). Indicators for the degree of involvement entail the actual use of formal mandating rights, but also go beyond it by including the involvement of MPs outside of the EACs or of the plenary as a whole, the level of engagement in inter-parliamentary activities or the proactive management of incoming EU documents (Maurer 2002; Saalfeld 2005; Strøm et al. 2003). Yet, the relevance of these indicators for holding governments effectively accountable in EU politics is hardly discussed. They are often attributed the same causal weight when assessing the overall performance of parliaments in EU affairs, or differences in their causal weight are not explicitly discussed. Thus, we do not know how important the involvement of the plenary as compared to the proactive management of incoming documents is for providing accountability, or how "much" specialised committees have to be involved for effective scrutiny, and why. Finally, while some scholars have opened the "black box" parliament and identified the scrutiny strategies of majority and of opposition party groups (Benz 2004; Auel and Benz 2005), we still know little about the extent to which they succeed in holding the government effectively accountable in EU affairs.

In fact, only little attempts have been made to discuss under which conditions scrutiny is likely to provide that effect, and to thereby provide a theoretical underpinning to the empirical focus of the literature (but see Auel 2007; MacCarthaigh 2007). The following section seeks to fill this gap by drawing on insights from principal-agent theory.

3. Principals, agents and accountability

One of the most distinct features of representative democracies is that those who govern can be held accountable (Grant and Keohane 2005). In their seminal volume, Strøm, Bergman and Müller conceptualize accountability in representative democracies by drawing on principal-agent theory (Strøm et al. 2003). Representation can be thought of as a process of delegation,

in which those authorized to make political decisions – the *principals* – conditionally designate others – the *agents* – to make such decisions in their name and place, be it because they lack the capacity or competence necessary to make decisions, or because they want to solve collective action problems (Strøm 2003). Yet, delegation has to be conditional in the sense that principals still wield power over the agent and can, as a last resort, de-authorize and replace her if she deviates from or exceeds the authority delegated to her. A means to prevent this "agency loss" is to establish mechanisms by which agents can be held accountable for their actions. The presence of effective accountability mechanisms contributes to the legitimacy of political systems (Grant and Keohane 2005).

In the various chains of delegation in representative democracies, parliaments perform both as agents for the voters as the ultimate principals, and as principals for the government, to which they delegate executive powers (cf. Strøm 2000: 269). The literature on national parliaments in the EU usually focuses on their role as principals, which have to hold their governments accountable as agents. Before discussing the respective accountability mechanisms, we have to bear in mind that we are dealing with collective agents and principals. In fact, the parliament is a collective actor, with MPs being usually organized in different political parties who mediate and control the delegation process to the government (Müller 2000; Saalfeld 2000: 356). This process is dominated by the parliamentary majority, who selects the government and also retains the formal power to de-authorize it. Much of the delegation literature actually focuses on this relationship (cf. Laver and Shepsle 1999; Müller et al. 2003), while the role of the opposition is hardly systematically discussed (but see Auel 2007). Yet, governments are not *exclusively* accountable to the parliamentary majority. In accordance with the principle of representation, and in their role as agents of the voters as the ultimate principals, even MPs of opposition parties (have to) hold certain rights vis-à-vis governments (Holzhacker 2005: 428; Saalfeld 2000: 365). But what does accountability of the government imply, and how does it differ between the two constituent parts of the principal?

According to Lupia (2003: 35), accountability can be thought of in two ways: as a *type of outcome* or a as a *process of control*. On the one hand, an agent acts in an accountable way if the outcome of her actions meets the principal's preferences. This convergence of preferences is usually given between the government and the governing parties (for exceptions, cf. Laver and Shepsle 1999), which usually form the parliamentary majority[2]. Thinking of accountability as a process of control, on the other hand, agents are accountable to principals if the latter can exercise control over the agent and influence her actions. For being in a position to affect the agent's behaviour, principals must have the right to a) demand information and b) impose sanctions, the most salient ones being i) blocking or amending decisions made by the agent, ii) deauthorizing the agent, or iii) imposing specific penalties (Strøm 2003: 62). One of the most important reasons for agency loss is actually information asymmetry in favour of the agent (Kiewiet and McCubbins 1991; Krehbiel 1991; Lupia 2003; Strøm 2003). The literature suggests that two problems might arise if the principal knows less than the agent: adverse selection of the agent or moral hazard.[3] For reasons of scope, we focus on moral hazard problems, i.e. we assume that problems of agency loss occur because of an informational advantage of the government once it is in office. For containing agency loss resulting from moral hazard problems, agents can employ the measures of monitoring and reporting requirements, on the one hand, and of institutional checks, on the other (Kiewiet and McCubbins 1991; Lupia 2003).[4]

For parliaments, monitoring and reporting requirements include various devices, ranging from legal obligations of the government to regularly report on its actions to own parliamentary monitoring activities aimed at detecting any violation of legislative goals (Saalfeld 2000: 363). While monitoring and reporting requirements generally resemble the mechanism of "police patrol" oversight identified by McCubbins and Schwartz (1984), in which the principal acquires information by herself, the mechanism of institutional checks shares commonalities with the mechanism of "fire alarms" oversight, in which the principal invokes third party testimony for obtaining information (Lupia 2003). This can both lower the costs of monitoring the agent by providing (additional) information, and help to improve the quality of the one already obtained. For parliaments, these third parties could be constitutional courts, second chambers, sub-national governments, interest groups, executive agencies or even supranational bodies (Saalfeld 2000). Tab. 1 summarizes the accountability mechanisms in parliament-government relations.

Table 1

Looking now at the distribution of these rights among the two constituent parts of our principal, we find that in an ideal-type representative democracy, the parliamentary majority disposes of all these rights. It can ask the government to give regular reports on its activities, has the ultimate veto power over the adoption of binding decisions, and, most importantly, it has the power to remove it from office. The parliamentary opposition, on the other hand, mainly disposes of the right to demand information about the government's activities. Rights to impose sanctions can usually be exerted, but hardly have that effect. In short, while the majority has the right to "make and break government" (Laver and Shepsle 1999), the opposition has the competence to demand information from the government about its activities. Yet, both types of activities are suited to exercise control over the agent. While the government's actions are constrained by the majority's threat of removing it from office should it not act on its behalf, they are also restricted by the opposition's right to demand information, since its purpose is to request explanations of the government's actions. This is why their information rights are usually designed for *formal* oversight and use in *public*, and opposition MPs typically invoke these "voice" strategies to control the government (cf. Benz 2004). Yet, acquiring information is also crucial for the majority, since it can only impose sanctions or credibly threat to do so if it has the necessary information.

Generally speaking, however, we could argue that the parliamentary majority is less dependent on third party information for effective oversight than the opposition. It does not only have a structural informational advantage given its direct access to the government, but is also having more (human, financial and organizational) resources at hand for exerting "police patrol" oversight. Thus, given the *internal* information asymmetry between majority and opposition, it is the latter which has to rely more on "fire alarms" oversight, and to therefore more frequently invoke third party information. In sum, the discussion has shown that both parliamentary majority and the opposition hold the government accountable, though they do so to various extents and by drawing on different accountability mechanisms. The findings are summarized in Table 2.

Table 2

However, all this holds true when analysing parliament-government relationships in *domestic* affairs. As Grant and Keohane (2005) argue, accountability mechanisms of democratic states

are unlikely to be simply replicated in governance beyond the nation-state. To which extent are these mechanisms appropriate for holding governments accountable in *EU* affairs as well?

4. The Europeanization of domestic principal-agent relationships

EU policy-making represents an additional arena of governance, at which mostly national governments operate and to which they have privileged access. As Benz convincingly argues, the functions and interactions of relevant actors in parliamentary systems change in significant ways in a multi-level political system (Benz 2004: 879). Thus, national governments acquire new roles as both principals and agents in their relations to EU institutions, and the role of national parliaments as principals of their governments is significantly transformed. Hence, when systematically applying the mechanisms and instruments available to the two constituent parts of the principals as identified in the previous section to the arena of EU governance, we find severe restrictions compared to the domestic arena.

First, the possibility to effectively *control* the agent is severely reduced. Due to the lack of a direct access to the EU policy-making process, it is much more difficult for national parliaments to obtain information about EU issues and corresponding governmental politics. Both the scope and timing of information on EU legislative proposals was initially dependent on the transmission practices by the government – and thereby of the institution parliament is supposed to control (Maurer 2002; Norton 1996; Raunio 1999). While this problem has been rectified with the establishment of the interparliamentary information exchange database in 2006 (www.ipex.eu) and the new LT provisions requiring EU institutions to directly transmit documents to the national parliaments, the burden has now been fully shifted to the internal legislative organisation. Parliaments have to sift numerous documents, which are often not (yet) translated, correspond to a different political agenda, and also frequently affect several domestic policy areas (Maurer and Wessels 2001; O'Brennan and Raunio 2007). Thus, the control of governmental politics in EU affairs does not only require intensive cooperation among various parliamentary actors, but also the building up of a new area of expertise and the investment of considerable resources (ibid.). Compared to domestic affairs, information asymmetries between parliament and government and the corresponding risks of agency loss are bigger in EU affairs. Moreover, given that the government operates at another level of governance to which parliaments do not have formal access, the possibility of combating agency loss by means of "police patrol" oversight are severely reduced.

Second, the same holds true for the possibility to impose *sanctions* as a privilege of the parliamentary majority. While the latter retains its formal right to remove government from office should it deviate too much from its position in EU policies, the right to change the agent's decisions by blocking or amending them is severely constrained. On the one hand, as shown above, the specific nature of EU policy-making processes constrains the possibility of national parliaments to have a substantial impact on EU legislation. What is more, multi-level governance actually increases moral hazard problems, since when sitting in Council, governments can take actions unobserved by their parliaments, and "secretly" deviate from the latter's position.[5] On the other hand, the failure of substantially affecting EU legislation *ex ante* cannot even be fully compensated *ex post*, as in domestic affairs, where the parliamentary majority usually has the final say for putting legislation into force. This is only possible if decisions have to be ratified by national parliaments, which applies to primary legislation (e.g. treaty amendments or enlargement decisions). Here, the majority can

effectively invoke its veto power and block decisions, but it can only do so in a yes/no vote. Regarding secondary law, domestic legislatures are only formally involved in the transposition of directives, which they cannot substantially amend. In other words, for EU legislation, the parliamentary majority does not have the power to amend decisions according to its preferences, and even its veto power is reduced in scope. In sum, compared to domestic affairs, its possibility to impose sanctions by changing the agent's decisions is severely reduced.

Overall, the application of principal-agent-theory to the case of the EU as a multi-level polity shows that the risk of agency loss is considerably higher in the area of EU politics as compared to domestic politics. This is because politics are made in an arena with restricted formal access for principals. Moreover, the scope of instruments available to parliaments to overcome the information asymmetry and thereby re-strengthen the chain of accountability is reduced compared to domestic affairs.

As shown in Tab. 3, these constraints mainly affect the parliamentary majority. On the one hand, its traditionally exclusive competences to impose *sanctions* are reduced to the options of either de-authorizing the agent or to completely block her decisions – and even only certain ones – while amendments of decisions are hardly possible. On the other hand, "police patrol" oversight as a means of *controlling* the agent is more challenging in EU affairs. While this is true for both, majority and opposition MPs, its implications are more far-reaching for the former. This is because opposition MPs traditionally have fewer resources at hand for acquiring information than majority MPs, and therefore have to rely more frequently on information by third parties ("fire alarms"). For them, the constraints on "police patrol" oversight are therefore mainly further constraints in the *scope* of their control possibilities. For majority MPs, however, they represent constraints both in scope *and* in nature, since they are less likely to get the same results from their monitoring activities. Thus, the government might be less inclined to share information and explain its decisions to the majority both because its actions remain largely unobserved and because the shadow of *ex post* sanctions is smaller.

Table 3

The most important implication of this theoretical investigation of how principal-agent-relationships in the EU differ from domestic politics is that the reliance on and even further strengthening of "domestic" accountability mechanisms is not an effective solution for solving the problems of agency loss arising from multi-level governance in the EU. The discussion has shown that the use of "veto" strategies by majority groups (Benz 2004; Auel and Benz 2005) risks being less effective in EU affairs. The analysis consequently suggests that the "EU-specific" way of holding governments accountable consists of a more frequent use of accountability mechanisms which are predominantly invoked by the parliamentary opposition in domestic affairs, i.e. the general focus on making the government explain and defend its decisions, the stronger dependence on "fire alarms" oversight by invoking third party information, and the actual use of this information for formally holding the government accountable. Thus, since the prospects of "imposing sanctions" on the government by blocking or amending its decisions are very limited, even the parliamentary majority has to focus on gathering information for inducing the government to explain and defend its decisions. In this perspective, demanding the government to justify its negotiation behaviour throughout the EU legislative procedure might be more effective than the issuing of tight

voting instructions, which are unlikely to be fully taken into account at the EU level. What is more, since national parliaments do not have formal access to the arena of EU decision-making, information by third parties (potentially having better access to that arena) is particularly valuable. Finally, in EU affairs, holding governments more frequently accountable *in public* might be effective even from the parliamentary majority's perspective. Publicity can be a means to compel governments to give accurate information and explanation on its negotiation and voting behaviour in the Council, since particularly in EU affairs, it could be verified by third parties (cf. Lupia 2000).

The analysis also contributes to the literature on national parliaments in the EU by allowing us to qualify under which conditions "more" scrutiny translates into "more" accountability. The use of formal mandating rights, on the one hand, resembles the legislative function of national parliaments in domestic politics (and thereby refers to accountability as a type of outcome) which is hardly given in EU affairs. In this respect, adopting parliamentary resolutions on EU legislative proposals should rather serve as a basis for making the government explain its negotiation behaviour than for binding it in order to ensure substantial impact. A high degree of active involvement, on the other hand, is meaningful if it aims at making the government explain and justify its decisions at the EU level. In other words, "ever more" scrutiny only results in more accountability if it refers to more frequent interactions between government and parliament on EU affairs, in which the former reports to the latter on its EU policies.

In sum, the analysis of how domestic principal-agent-relationships are transformed in the context of the EU allows us to define criteria for assessing the quality of national parliamentary in EU affairs. It is most conducive to hold governments effectively accountable if parliament invokes control rather than sanction mechanisms, and focuses on using the control instruments traditionally at the disposal of the parliamentary opposition in an even more intensive way. This implies that:

> **a)** the information asymmetry is addressed by increasing reporting requirements for the government, formally requesting it to provide information and more frequently seeking information by third parties,

> **b)** this information is then actively used by actually making the government explain and defend its EU policy decisions, and to do so preferably in public and

> **c)** both majority and opposition MPs are actively involved in these scrutiny activities

To which extent do national MPs actually behave this way, and what is the role of formal rules in inducing that behaviour? The following section will address this question by analysing the practice of parliamentary scrutiny in two member states, Germany and France.

5. Parliamentary scrutiny in the EU revisited

The two parliaments were selected because they reflect two distinct types of parliamentary management of EU affairs. While both parliaments have constitutionally guaranteed scrutiny rights, the French AN, traditionally considered to be a domestically weak parliament, is a rather active scrutinizer in EU affairs (Rizzuto 2004; Szukala and Rozenberg 2001). The German BT as a domestically powerful parliament is only moderately engaged in the scrutiny

of EU affairs (Hölscheidt 2001; Hansen and Scholl 2002; Töller 2004). The French parliament is very active within COSAC and at the EU level, and adopts parliamentary resolutions on a regular basis, while the BT is rather reluctant to use its formal scrutiny powers, and has only recently opened a permanent representation in Brussels. The case selection allows for an analysis of the extent to which either active involvement in EU affairs or strong formal powers are related to effective parliamentary scrutiny.

The cornerstone of the AN's participation in EU affairs is Art. 88-4 of the French Constitution (FC), which stipulates a constitutional right of the parliament to obtain information on EU issues from the government. It also provides the legislature with a constitutional right to react on this information by voting on parliamentary resolutions – a right which it did not have in domestic affairs. However, they merely have political scope and are not legally binding for the government. The latter has yet to respect the parliamentary scrutiny reserve, which was introduced in 1994. Moreover, the government is required to report on the extent to which parliamentary resolutions have been taken into account during negotiation at the EU level (cf. Art. VII of ministerial circular from Nov. 22, 2005).

Until a reform in July 2008, when a standing committee on EU affairs was established, the major player in the AN's scrutiny process used to be the Délégation pour l'Union Européenne (DUE), which had been established in 1979. It has over time managed to improve its former role as a purely consultative body for the specialized committees to a kind of "watchdog" in EU politics, despite its subordinate legal status (Rizzuto 2004). It is mainly as a result of the DUE's proactive stance on dealing with EU affairs that the French legislature is considered to play a rather active role when compared to the EU scrutiny activities of other national parliaments, and especially those with an equally weak position in domestic affairs (Bergman 2000; Raunio 2005; Rizzuto 2004). Thus, scholars frequently point out that French MPs are rather actively involved in scrutinizing EU politics, but that the activities are very much centralized in the EAC/former DUE (Rizzuto 2004; Sprungk 2007). The centralization process is also likely to be reinforced with the "upgrading" of the DUE to an actual committee.

For the BT's scrutiny of EU affairs, the most important constitutional provision is Art. 23 of the Basic Law (Grundgesetz, GG), which obliges the Federal government to inform the BT comprehensively and at the earliest possible time. The parliaments shall also have the opportunity to state its position on EU legislative acts, which the government shall then take into account during negotiations. Moreover, a 2006 agreement between the Federal government and the BT also provides for an actual "parliamentary reserve" during Council negotiations for cases in which the position of the Council is likely to deviate significantly from the BT's essential requests. The recent "Responsibility for Integration Act" also provides the BT with stronger participation rights for amendments of primary law which are not subject to the usual ratification procedures. Moreover, Art. 45 GG stipulates a constitutional obligation to set up a parliamentary committee on EU affairs, which can be empowered to adopt "plenary-replacing" decisions in urgent cases. The EAC is an important player in the BT's participation in EU affairs. However, compared to the AN, specialised committees are also heavily involved in the scrutiny process. They examine EU proposals pertaining to their respective areas of competence. Generally speaking, the BT is considered to be a rather reluctant scrutinizer and to be less actively involved in EU politics compared to other parliaments with similar formal powers (Hölscheidt 2001; Töller 2004), even though

recent developments point to a slight increase in activities (Sprungk 2007). The GCC ruling has further encouraged the BT to engage more actively in the scrutiny of EU affairs.

In the following, we will analyse to which extent these two distinct types of parliamentary involvement in EU affairs correspond to the criteria for effective scrutiny outlined above. We use a specific instance of scrutiny for illustrating parliamentary behaviour: the decision-making process of the WFD, for which we find various scrutiny activities of both parliaments. The directive was initiated by a European Commission proposal in 1997, and eventually adopted by the Council in 2000 (No. 2000/60/EC). An environmental policy was selected since recent studies have shown that as a result of the Europeanization of environmental policy, the legislative power of national parliaments in this sector has dramatically and steadily declined over time (Jordan and Liefferink 2005). Environmental policy proposals therefore require a stronger scrutiny at the EU level. Moreover, the directive is considered to be a major piece of legislation in EU water policy with a far-reaching impact on domestic water policies (Kallis and Butler 2001; Kaika 2003).

5.1 Fighting the information asymmetry: reporting requirements and oversight activities

The EU-specific control instruments for national parliaments consist of acquiring information via various channels: the institutionalization of reporting requirements for the government, the consultation of third parties and the formal request for information to the government itself. Generally speaking, the French AN's strategies for fighting the information asymmetry are geared towards acquiring information on its own. There are hardly any specific reporting requirements of the French government beyond the transmission of EU documents. The dominant way to acquire information for French MPs has been the active consultation of and cooperation with third parties, such as other national parliaments via COSAC or IPEX, or EU institution officials and issue-specific experts via their representation in Brussels or by inviting them to DUE/EAC hearings in Paris. Though we see an increase in formal questioning activities in recent years, French MPs have initially been reluctant to ask the government about the status of legislative proposals and its position on it.

This holds also true for the scrutiny process of the WFD. The AN was actively involved from an early stage on, and invoked all scrutiny rights it had been granted. The French government had submitted the initial WFD proposal to the AN on June 13, 1997. The DUE immediately initiated a closer examination of the proposal, and already published its conclusions on July 1, 1997 (AN 1997), when Council negotiations had not even started yet. The DUE then decided to engage in a more in-depth analysis of the WFD proposal by drafting a specific information report, which eventually resulted in a proposal for a parliamentary resolution.

The socialist member of the DUE, MP Béatrice Marre, was designated as the rapporteur for the information report on the WFD. For acquiring information, she engaged in an extensive consultation process of various actors, ranging from government officials, local authorities, environmental NGOs and representatives of the water industry to actors at the EU level, including MEPs and Commission officials (AN 1998a: 47-48). Her information report lays out the overall approval of the WFD proposal, but also identifies a number of shortcomings, which it would like to be addressed by the French government throughout negotiations.[6] Based on this, the DUE adopted a proposal for a parliamentary resolution, which was forwarded to the production and trade committee for further deliberation and adoption. The

final parliamentary resolution on the WFD was adopted and published on June 12, 1998 prior to the Council meeting (AN 1998b). There was no formal request for information to the government in the time period prior to the adoption of a parliamentary resolution.

As for the German BT, Art. 23 GG as well as the various subordinate legal provisions imply specific reporting requirements for the Federal Government. It shall inform the BT on the main contents and objectives of EU legislative proposals, on the nature of the decision-making procedures, the decisions that it intends to take and the course of deliberations at the EU level. The BT, and first and foremost its EAC, also actively acquires information on EU issues on its own. This is done, first, by frequently consulting third parties such as MEPs, Commission officials and issue-specific experts in EAC hearings. In contrast to the French parliament, the BT has, however, been less active in gathering information directly in Brussels. It has only recently opened a permanent representation in Brussels and has also not played a very active role in COSAC meetings (Maurer 2002). Another difference to the AN's activities is that German MPs have regularly consulted government members on their positions and on the status of legislative proposals. However, recent studies have shown that BT members do not exert *formal* pressure on the government by frequently using their questioning rights (Sprungk 2007: 142).

Compared to the overall reluctance of the BT to invoke scrutiny rights in EU affairs, the German parliament was rather actively involved in the WFD's decision-making stage. The Commission's proposal was officially submitted by the Federal government to the BT in June 1997 (Printed Matter, (PM) 13/7687). The committee on the environment, nature conservation and nuclear safety was assigned as the lead committee in the deliberation process, with other specialised committees being co-responsible. Given that the WFD was a sector-specific issue, the EAC was not involved in the scrutiny process. The major scrutiny activities took place in the 14th electoral term, shortly after the Federal elections in 1998.

The newly constituted committee on environment, nature conservation and nuclear safety put the WFD on its agenda for deliberation in December 1998. The aim was to adopt a formal recommendation for a resolution to the plenary, which would then be politically binding in the upcoming Council negotiations on the WFD under the German presidency in 1999. The recommendation for a resolution was eventually adopted in the committee on December 7, 1998 (PM 14/154). The plenary formally adopted the resolution three days later (Plenary Protocol [PP] 14/14). Overall, compared to the AN's parliamentary resolution, the BT's requests were very detailed and gave the Federal government precise (political) instructions on what to negotiate for. It also required it to report on the outcome. The resolution also shows that the committee had comprehensive information on both the contents of the WFD proposal and the status of the legislative procedure, including the role of the EP. However, like in the AN, there is no evidence that German MPs got their information on the WFD as a result of a formal interaction with the government. In sum, despite their varying rights for getting information by the government, both parliaments focused on actively acquired information on the WFD proposal on their own and did not formally request the executive to provide (more) information.

5.2 Making use of information: holding governments accountable on EU affairs

The purpose of acquiring information on EU issues by national parliaments is its actual use for making the government explain and defend its EU policy decisions, and to preferably do

so in public. With regard to the French AN, the EAC/former DUE's use of information on EU legislative proposals have been generally more geared towards informing the specialized committees, the plenary and the public, e.g. by publishing information reports on certain proposals (Sprungk 2007). The information acquired from own monitoring activities and from third parties has initially hardly been used to make the government explain and defend its position, be it behind closed doors or in public. In fact, while recent developments point to more frequent auditions of government members in EAC meetings, the overall interaction between MPs and government in EU affairs has initially not been very high (Szukala and Rozenberg 2001).

The same holds true in the case of the WFD. After the adoption of the parliamentary resolution, the actual negotiations on the WFD at the EU level went on for another two years. However, there was no parliamentary intervention anymore before its final adoption in 2000. First, there were no auditions of the Environment Minister Dominique Voynet on ongoing negotiations or on the consideration of the parliamentary resolution during DUE meetings from May 1998 to October 2000.[7] Second, the same holds true for meetings of the production and trade commission, where the minister was questioned six times within the same time period, but never with regard to the negotiations of the WFD in the Council.[8] Finally, none of the written or oral questions by individual MPs or those asked during the weekly questioning time in the plenary in that time period inquired explicitly about the negotiations of the WFD or the consideration of the parliamentary position by the government.[9] The AN did thus not explicitly compel the government to explain its negotiation behaviour throughout or after the decision-making stage of the WFD.

When analysing the German BT's use of information on EU legislative proposals, we find first of all that the interaction between government and parliament is considerably higher than in the French AN. Not only do government members regularly appear before the EAC, they also provide information within specialized committees. Yet, the interaction usually takes place behind closed doors (cf. Auel 2007). In the case of the WFD, the scrutiny of governmental behaviour has been more frequent than in the French case. As the committee agenda shows[10] there was no hearing of government members anymore after the adoption of the resolution in the plenary and until the adoption of the WFD in October 2000. However, a number of different MPs have submitted various requests to the government in that time period for asking it about the general stage of negotiations and its position (PM 14/1052), to which extent the BT's resolution has so far been considered in the WFD negotiations (PM 14/1070), or to request it to influence ongoing negotiations in a specific way (PM 14/3298). In contrast to the AN, the BT as a generally reluctant scrutinizer actively used its information on the WFD's legislative proposal for formally holding the government accountable. However, formal inquiries about governmental behaviour mainly occurred in writing, which indicates that German MPs are (still) reluctant to go more fully public in their scrutiny activities.

5.3 Look who's talking: the comprehensiveness of scrutiny activities across party groups

The final requirement for effective parliamentary involvement in EU affairs is that both, opposition and majority MPs, are actively involved in the scrutiny process, and that the latter acts in an "opposition mode". In other words, both majority and opposition MPs are required

to invoke third parties when acquiring information on legislative proposals, and both shall engage more frequently in formal oversight.

In the case of the AN, we find that, generally speaking, opposition MPs are less actively and systematically involved in EU scrutiny than majority MPs. Not only are the EAC/former DUE chairs usually assigned to government MPs (Rozenberg 2008), but the vast majority of rapporteurs for EU legislative proposals also stem from the governing parties. This was also true for the case of the WFD. During the decision-making stage of the WFD, the parliamentary majority consisted of five left-wing parties, the so-called *gauche plurielle*, including the Socialist Party (PS), the Communist Party (PCF), The Radical Left (PRG), the Citizens' Movement (MdC) and the Green Party (Verts). The Gaullist RPR party and the centre UDF party formed the opposition. As mentioned above, the socialist member of the DUE was designated as the rapporteur for the information report on the WFD. A member of the PS, Daniel Marcovitch, also acted as a rapporteur for the WFD proposal in the committee on production and trade. Both the deliberations in the DUE and in the specialized committee were clearly dominated by government MPs. Opposition MPs did not actively participate during the DUE deliberations (AN 1997; AN 1998a), and there was only one brief intervention by an opposition MP during the examination within the committee on production and trade (AN 1998b). They did also not engage in any scrutiny activities after the adoption of the parliamentary resolution. While majority MPs were thus the major players in the scrutiny process of the WFD, they acted only partly in an "opposition mode". On the one hand, the reports by MP Marre contain extensive information on the WFD proposal provided by third parties. On the other hand, no majority MP used this information to formally hold the government accountable.

In the German BT, opposition party groups are more systematically involved in parliamentary proceedings. This is mainly because rapporteurs for legislative proposals are usually designated from each party group represented in parliament, and a significant share of the permanent committee chairs are given to opposition MPs. This also means that *if* German MPs engage in scrutiny of EU affairs, opposition MPs do become actively involved. This is also true for the case of the WFD, where both majority and opposition MPs were engaged in scrutiny activities.

The composition of the BT had changed in 1998, i.e. at the beginning of the WFD's decision-making process, with the new parliamentary majority consisting of the Social Democratic Party (SPD) and the Green Party, with the former coalition parties Christian Democratic Union (CDU) and Free Democratic Party (FDP) forming the opposition, along with the Party of Democratic Socialists (PDS). The opposition party groups have been involved in the WFD scrutiny in various ways. First, for the scrutiny of the WFD proposal, a rapporteur from each of the five party groups was designated[11]. The recommendation for a resolution was also adopted in the committee by the SPD, the Green and the (opposition!) PDS party groups (PM 14/154). Second, even without being a member of either the lead or the co-responsible committee, an opposition MP (Dietmar Kansy, CDU/CSU) asked the government both about the state of negotiations and required it to explain its own position vis-à-vis the WFD (PM 14/1052). Finally, another WFD-related activity by the opposition was a recommendation for a resolution initiated by the liberal opposition party group (PM 14/3298). Moreover, the involvement of majority MPs also corresponded more closely to the standards for effective parliamentary scrutiny. Thus, the environment committee member and rapporteur for the WFD Petra Bierwirth (SPD) decided to ask a written question to the Federal government about the extent to which it has so far considered the BT's resolution in the WFD negotiations

(PM 14/1070). The majority MP was also well informed by the EP's position and explicitly referred to the fact that it supported the BT's requests. Yet, the fact that only a written question was used for inquiring about governmental behaviour indicates that majority MPs are reluctant to go more fully public in their scrutiny activities. Thus, compared to the AN, the BT's scrutiny activities are more comprehensive across party groups, and – at least in the case of the WFD – even majority MPs are willing to formally hold their government accountable.

6. Discussion

Starting from the observation that the existing literature on the role of national parliaments has not sufficiently studied the qualitative aspects of parliamentary scrutiny, this paper has analyzed under which conditions national parliaments can hold their governments effectively accountable systems of multi-level governance such as the EU. Drawing on principal-agent-theory, it was shown that accountability mechanisms significantly differ from those invoked in domestic politics. The appropriate way to hold governments accountable in EU politics involves that *both* parliamentary majorities and oppositions have to invoke the accountability mechanisms used by the opposition in domestic politics. This implies a focus on making the government explain and defend its decisions rather than on substantially influencing EU legislative proposals, and to do this by requiring the government to report, invoking more formal oversight instruments with a view to engage in public scrutiny, and drawing more frequently on third party information.

In a second step, the paper explored whether and how these standards are met by the institutional practices of two parliaments, the German Bundestag and the French Assemblee Nationale. Generally speaking, the AN is considered to be a rather active scrutinizer, while the BT is more reluctant in invoking its rather powerful formal scrutiny rights. For illustrating and comparing actual parliamentary behaviour in the two countries, the case of the Water Framework Directive was selected, since both parliaments were actively involved in the scrutiny of the legislative proposal. The comparative analysis of the WFD has shown that the scrutiny activities of the BT were more in line with the standards for effective parliamentary involvement in EU affairs. The AN's activities, on the one hand, involved mainly majority MPs and were very much geared towards acquiring information rather than using it for holding the government accountable. The BT's scrutiny, on the other hand, was both more comprehensive across parliamentary party groups, and included formal requests to the government to explain its position throughout WFD negotiations from both majority and opposition MPs.

Thus, it might be misleading to assume that the sheer frequency of scrutiny activities by national parliaments results in more accountable EU politics. At the same time, the variation between the German and French scrutiny behaviour can also not be fully attributed to the BT's stronger formal powers vis-à-vis the government. While they might provide a stronger incentive to actually hold the government accountable for its EU policies, they fail to account for the comprehensiveness of scrutiny activities and the strategies of majority MPs as observed in the case of the WFD. However, the analysis shed light on how provisions in the *internal legislative organization* might provide incentives to engage in effective scrutiny. First, the extent to which specialized committees are formally involved in the scrutiny process could play an important role. In the case of the WFD, the German EAC was not even involved. This implies that scrutiny is usually exerted by "policy experts". This was clearly reflected in the BT's resolution on the WFD, which was very precise and gave rather detailed

instructions to the government. Even though this is often considered to be counterproductive to the efficiency of EU decision-making (Benz 2004; Raunio 2005), the flipside of this is that parliaments are likely to have more incentives to request explanations by the government – and are, if necessary, also more likely to do so. Thus, drafting rather precise resolutions can be an effective means for holding governments accountable, if they are used for more closely controlling the government, rather than for binding them. A second factor of the BT's provisions inducing more effective behaviour is the inclusiveness of parliamentary rules in terms of associating the opposition. As shown in the case of the WFD, all political parties have designated specific rapporteurs for the legislative proposal, which is likely to create "ownership". Both factors stand in contrast with the more centralized procedure of the French AN. And even for majority MPs, ownership for scrutiny used to be prevented by two-tier system, involving both the DUE and the specialized committees in the process. This is, however, likely to change in the future, since the DUE has recently been "upgraded" into a standing committee. In sum, the BT's more effective scrutiny behaviour can be explained by a combination of strong formal scrutiny powers and the presence of parliamentary rules conducive to creating or stimulating *expertise* and *ownership* in the EU scrutiny process.

Overall, our findings have several implications for future research and political practice. First, they suggest that the role of internal legislative organization should be included in the ongoing discussions on institutional reforms on the role of national parliaments in the EU. While many discussions focus on providing new and additional rights at the EU level (such as the "early warning mechanism" in the Lisbon Treaty) or on adding new domestic legislation regulating the interplay of parliament and government in EU affairs, they tend to overlook that accountability can also be "designed from the inside", and improve or support the effective use of existing mechanisms. Second, given the similar challenges both the majority and the opposition are facing in EU affairs, the re-designing of parliamentary rules should also face less resistance than in domestic affairs. Given that both majority and opposition are invited to use similar accountability mechanisms vis-à-vis the government, paths for future research could therefore involve a) analysing under which conditions parliamentary majorities/governing parties are actually willing and able to adjust their traditional strategic interests in domestic politics to new challenges arising from multi-level governance and/or b) analysing to which extent holding governments accountable in multi-level settings is likely to reinforce the classic "two-body" image (Andeweg and Nijzink 1995) of parliaments and governments. Finally, given the severe limits on generalizing from two case studies, more empirical evidence is required to elaborate on the role of internal legislative organization for designing accountability in EU affairs. In this respect, it would be interesting to compare parliaments with similar internal organizations.

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Endnotes

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[1] Recent studies suggest that many of the legislatures in the countries that joined the EU in 2004 and 2007 also tend to be active scrutinizers (cf. O'Brennan and Raunio 2007; Jungar 2009).

[2] The distinction made in this paper between majority and opposition does not preclude the existence of minority governments. Arguments about majority parties equally apply to governing parties in minority governments.

[3] Adverse selection problems refer to the *ex ante* stage of principal-agent relationships (i.e. to the problem of having selected the "wrong" agent as a result of lacking information about her when selecting her), while moral hazard problems occur *ex post* because the agent acquires information while being "in office" and takes advantage of it by engaging in unobserved actions (Lupia 2003).

[4] Kiewiet and McCubbins also identify the measures contract design and screening and selection mechanisms (1991: 27). Yet, Lupia has shown that these instruments are mainly suited for combating agency loss resulting from adverse selection problems, while the other two can be invoked for solving moral hazard problems (Lupia 2003: 45).

[5] This might change in the future since the LT requires Council meetings to be held in public when deliberating on legislative proposals.

[6] These aspects included the imprecision of the notion "good ecological status", the deadline of 2010 for achieving it, which was deemed to be too early, or the fact that the WFD proposal only aims at repealing some water directives, while leaving other key pieces of legislation still in force, and the insufficient respect of the principle of subsidiarity in certain aspects.

[7] See the summaries of DUE meetings in the 11th electoral term on http://www.assemblee-nationale.fr/europe/comptes-rendus-11leg.asp, accessed on January 14th, 2010.

[8] See the summaries of the committee on production and trade meetings in the 11th electoral term on http://www.assemblee-nationale.fr/11//cr-cpro/01-02/liste.asp, accessed on January 14th, 2010.

[9] See the questions relating to 'water' and 'directives' in the search engine on questions http://questions.assemblee-nationale.fr/questions.asp, accessed on January 14th, 2010.

[10] See Hhttp://webarchiv.bundestag.de/cgi/show.php?fileToLoad=181&id=1040H, accessed on February 18th, 2010.

[11] The rapporteurs were Christel Deichmann (SPD), Kurt-Dieter Grill (CDU/CSU), Winfried Hermann (Bündnis 90/Die Grünen) Ulrike Flach (FDP) and Eva-Maria Bulling-Schröter (PDS).

Table 1: *Accountability mechanisms in parliament-government relations*

	delegation		
	Parliament ⟶		**Government**
	(principal) ⟵		(agent)
	accountability		
Mechanism	control	sanction	
Purpose	make agent explain and justify decisions	change agent's decisions or agent	
Instruments	- require agent to report - engage in own monitoring activities ("police patrol") - involve third parties ("fire alarms" and "institutional checks")	- block or amend agent's decisions - removal from office	

Table 2: *Parliament as a collective principal: control and sanction instruments*

Parliament \ Mechanism	**Opposition**	**Majority** (governing parties)
Control		
Reporting requirements for agent	√	√
Police patrol oversight	√ focus on *formal* oversight	√ focus on *informal* oversight
Fire alarms oversight	√ *highly* dependent on third party information	√ *less* dependent on third party information
Sanction		
Block or amend agent's decision	---	√
Removal from office	---	√

Source: Own elaboration, √ = instrument available, --- = instrument not available.

Table 3: *Parliament as a collective principal in EU affairs: control and sanction instruments*

Parliament ⟍ Mechanism	**Opposition**	**Majority** **(governing parties)**
Control		
Reporting requirements for agent	√	√
Police patrol oversight	√ even stronger focus on *formal* oversight	√ *more* focus on *formal* oversight than in domestic affairs
Fire alarms oversight	√ *highly* dependent on third party information	√ *more* dependent on third party information than in domestic affairs
Sanction		
Block or amend agent's decision	---	*constrained*
Removal from office	---	√

Source: Own elaboration, √ = instrument available, --- = instrument not available