Designing accountability?
The role of parliamentary rules for the involvement of national parliaments in EU affairs

Carina Sprungk


Draft –comments most welcome!

Abstract:
Even though the purpose of involving national parliaments in the European Union (EU) is to provide more legitimacy to EU politics, the literature has made little attempts to analyse under which conditions their involvement does have this impact. This paper argues that it is not the intensity or the sheer level of scrutiny activities, but the quality of national parliamentary involvement which contributes to the legitimacy of EU politics. Drawing on principal-agent-theory, it will show that national parliaments can provide legitimacy if they hold their governments accountable in an EU-specific way. This requires that both the governing parties (which usually form the parliamentary majority) and the opposition use accountability mechanisms which are predominantly invoked by the opposition in domestic affairs. Two specific parliamentary rules support MPs in holding their governments effectively accountable in EU affairs: 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. 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).

Contact details:
Carina Sprungk
Visiting Assistant Professor of Government
Harvard University
Department of Government/
Minda de Gunzburg Center for European Studies
27 Kirkland St
Cambridge, MA 02138 USA
Tel.: +1-617-495-4303-x279
Fax: +49-617-495-8509
Email: csprungk@fas.harvard.edu
Introduction

With the ongoing transfer of competencies from the domestic to the European Union (EU) level, national parliaments are often considered as the „losers“ of European integration. However, in a series of political reforms initiated in the 1990s, all national parliaments in the EU have been compensated by „getting a say“ in the EU policy-making process. They have all subsequently engaged in (re-)designing their internal legislative organization for adapting to EU affairs. It is this new role of national parliaments in the EU which has opened up a new strand of the literature in both legislative and European studies (Auel and Benz 2005; Maurer and Wessels 2001; Norton 1996; O’Brennan and Raunio 2007).

This literature has, however, so far mainly focused on analysing how national parliaments adapt to their empowerment in EU affairs in the first place, and on explaining why some legislatures invoke their new scrutiny rights more actively and frequently than others. Even though the purpose of involving national parliaments in the EU is to provide more legitimacy, little attempts have been made so far to analyse under which conditions parliamentary scrutiny actually does have this impact. While recent studies assume that this effect is at best limited, since even the most active parliaments in the EU overall hardly invoke their formal scrutiny rights (Janowski 2005), this line of reasoning implies that, theoretically speaking, a very active use of these rights would be suited to improve legitimacy. In fact, much of the literature makes the implicit assumption that “scrutiny leaders” are better equipped to provide legitimacy to EU politics than “scrutiny laggards”.

This paper argues that the focus on the frequency of parliamentary scrutiny activities is misleading: more scrutiny does not necessarily result in more legitimacy, and might even have contradictory effects. It will show that it is not the sheer level of scrutiny activities, but the quality of national parliamentary scrutiny which is likely to „make a difference“ to the legitimacy of EU politics. One way to assess the legitimacy of governance beyond the nation-state is to analyse to which extent appropriate accountability mechanisms are in place (Grant and Keohane 2005). In fact, the main focus of national parliamentary involvement in the EU is to hold their governments accountable for their EU policies (Auel 2007; Benz 2004; Raunio 2005). 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 parliamentary involvement can provide legitimacy
if governments are held accountable in a way appropriate for EU governance, and this mainly involves an adjustment of strategies invoked by the parliamentary majority.

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 the conditions of effective parliamentary scrutiny in a multi-level polity by drawing on principal-agent theory. In the following, the theoretical argument will be applied to two case studies, which systematically compare the scrutiny 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 paper concludes by arguing that two features of EU-specific institutional design support the effective use of new 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.

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 the European integration process (Maurer and Wessels 2001; Kassim 2005). Despite the significant disempowerment and the emerging literature on „new“ and „post-parliamentary“ modes of governance (Anderson and Burns 1996; Benz 1998), the idea of involving national parliaments as a way to provide legitimacy to EU politics is still prominent. In fact, throughout the EU, there is a wide-ranging consensus that national parliaments need to exercise greater control on their governments, or at least be more fully engaged with EU policy-making (Katz and Wessels 1999; Strøm et al. 2003). National parliamentary participation in the EU policy-making process is considered to be crucial for its legitimacy (Westlake 1996; Schmidt 2006).

As a result, several mechanisms for strengthening parliamentary participation in EU policy-making were introduced in the 1990s both at the national and at the European level in order to compensate for their disempowerment. They mainly consisted of providing new organizational, informational and time resources, and new powers for controlling the government and
for exerting their representative function. While there is considerable variation in how national parliaments have designed their management of EU affairs, we find some common features across the EU. To name but a few, all EU-27 parliaments have established specific committees for dealing with EU affairs (EACs), set up specific rules for the interaction with the government, and opened permanent representations in Brussels (with the exception of Spain and Malta). We also see considerable institutional reforms and institutional adaptation to EU scrutiny in individual parliaments over time, ranging from the strengthening of existing institutions (such as the upgrading of the French AN’s EU delegation into a committee) or the invention of new rules (such as the designing of specific EU delegates in Belgian Chamber of Deputies’ specialized committees). The re-empowerment of national parliaments in the EU and the corresponding developments has triggered a new strand of literature in the last decade.

In a first generation of research, the literature on national parliaments in the EU has engaged in analysing how these institutions 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 in order to adapt to their new role. 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 or how actively they seek to acquire information on EU issues. Drawing on results of individual country studies, the first generation also engaged in the comparison of parliamentary involvement. The findings of comparative case studies point to a distinct cross-national variation in scrutiny activities in the EU-15, with Northern European parliaments as well as those of Germany and Austria being considered as scrutiny leaders (Maurer and Wessels 2001; Raunio 2005; Strøm et al. 2003).

This uneven adaptation to Europe has triggered a second generation of research on national parliaments, with scholars engaging in explaining cross-national variation and in analysing why some national parliaments get more actively involved in EU policy-making than others. The most prominent explanations are the power of the parliament in the domestic institutional setting, partisan positions on European integration and the frequency of minority governments (Bergman 1997; Hansen and Scholl 2002; Pahre 1997; Raunio 2005).

---

1 There is no ranking of the level of parliamentary scrutiny which involves the national parliaments of those countries having joined the EU in 2004 and 2007 yet. However, recent studies suggest that the legislatures in these young democracies tend to be active scrutinizers (cf. O’Brennan and Raunio 2007).
Based on the finding that even scrutiny leaders overall hardly invoke their formal scrutiny rights, a third generation of research has started to raise doubts about the need for and reliance on strengthening national parliaments as a means to enhance the legitimacy of EU politics (Janowski 2005). However, this line of reasoning actually implies that, theoretically speaking, frequent and intense parliamentary scrutiny would be suited to improve legitimacy. But while the motivation to invoke scrutiny rights might be generally enhanced, and is at least not likely to decrease with the recent enlargements and the (potentially) upcoming reforms based on the Lisbon Treaty (LT), it is still questionable whether ever more scrutiny makes a difference to the legitimacy of EU politics in the first place.

In fact, an important shortcoming of the literature is that it tends to conflate quantity of oversight with quality, without providing theoretical and empirical evidence as to how and why more scrutiny translates into more legitimacy. 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 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 hardly invoked (Janowski 2005), and that a more frequent use is generally unlikely, since it is incompatible with the logic of parliamentary systems (Aucl 2007). Finally, and most importantly, Benz convincingly argues that even if mandating rights are used, they might not necessarily enhance the legitimacy of EU politics, since tight voting instructions could undermine 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 (Strom et al. 2003; Raunio 2005; Szukala and Rozenberg 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 the 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 (ibid.). Yet, the relevance of these indicators for providing legitimacy to 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 legitimacy, or how “much” specialised committees have to be involved for effective scrutiny, and why.

In sum, ever more scrutiny in terms of a more frequent use of formal mandating rights or a higher degree of active involvement does not necessarily provide more legitimacy, and might even have contradictory effects. While there is a large consensus that the purpose of national parliamentary involvement in EU affairs is to provide legitimacy to EU politics, only little attempts have been made to discuss under which conditions this 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.

**Principals, agents and the claim for legitimacy**

Parliaments are by nature representative institutions, and there are a number of criteria against which representative political systems can be judged if they are regarded to be legitimate, such as stability, efficiency or representativeness (cf. Strøm 2000). Yet, one of the most dis-
inct 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 (for an overview, cf. Strøm 2000: 269). Focussing on the role of parliaments as principals, we would therefore argue that national parliamentary involvement in EU affairs can provide legitimacy if parliaments (can) invoke effective mechanisms for holding governments accountable.

Before turning to the discussion of these mechanisms, we have to bear in mind that we are dealing with collective agents and principals. In fact, the parliament is a collective actor (as is the government), 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 parliamentary minority 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 (Saalfeld 2000: 365). But what does accountability of the government exactly 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 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\(^2\), while the opposition cannot assume that the former acts according to its preferences. 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 (without thereby necessarily achieving the desired outcome). 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). When elaborating on the former, we find that one of the most important reasons for agency loss actually is 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 and thereby restoring the accountability “chain”, 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 the case of 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 prin-

\(^2\) The distinction made in this paper between majority and opposition does not preclude the existence of minority governments. Arguments made on majority parties equally apply to governing parties in cases of 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 (for details, cf. 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).
cipal 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. In the case of 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: *Accountability mechanisms in parliament-government relations*

<table>
<thead>
<tr>
<th>Mechanism</th>
<th>Parliament (principal)</th>
<th>Government (agent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose</td>
<td>control</td>
<td>sanction</td>
</tr>
<tr>
<td></td>
<td>make agent explain and justify decisions</td>
<td>change agent’s decisions or agent</td>
</tr>
<tr>
<td>Instruments</td>
<td>- require agent to report</td>
<td>- block or amend agent’s decisions or agent</td>
</tr>
<tr>
<td></td>
<td>- engage in own monitoring activities (“police patrol”)</td>
<td>- removal from office</td>
</tr>
<tr>
<td></td>
<td>- involve third parties (“fire alarms” and “institutional checks”)</td>
<td></td>
</tr>
</tbody>
</table>

Source: Own elaboration.

Looking now at the distribution of these rights among the two constituent parts of the parliament as 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 the government from office. The parliamentary opposition, on the other hand, mainly disposes of the right to demand information about the government’s activities, while rights to impose sanctions can usually be exerted, but hardly have that effect. In modern parliaments, information rights are typically granted to the opposition in the form of interpellation rights, the right to set up investigation committees or to demand (public) hearings of government members. 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 justi-
ification and explanation 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 depend-ent 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 also has more (human, financial and organizational) resources at hand for exerting „police patrol“ oversight, if necessary. 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, both parliamentary majority and the opposition hold the government accountable, though they do so to various extents and by drawing on different accountability mechanisms, as shown by Table 2.

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

<table>
<thead>
<tr>
<th>Mechanism</th>
<th>Parliament</th>
<th>Opposition</th>
<th>Majority (governing parties)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Control</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reporting requirements for agent</td>
<td>√</td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>Police patrol oversight</td>
<td>√, focus on formal oversight</td>
<td>√, focus on informal oversight</td>
<td></td>
</tr>
<tr>
<td>Fire alarms oversight</td>
<td>√, highly dependent on third party information</td>
<td>√, less dependent on third party information</td>
<td></td>
</tr>
<tr>
<td><strong>Sanction</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Block or amend agent’s decision</td>
<td>---</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>Removal from office</td>
<td>---</td>
<td></td>
<td>√</td>
</tr>
</tbody>
</table>

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

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?
The Europeanization of domestic principal-agent relationships

In EU studies, principal-agent-theory usually focuses on the relationship between EU institutions and member states. While Pollack explored to which extent EU member states as principals can hold EU institutions, and mainly the European Commission, accountable as agents (Pollack 1997, 2003), scholars concerned with the issue of compliance with EU law analyse to which extent the European Commission as the enforcement authority can hold member states accountable for their implementation of EU policies (Tallberg 1999; Hartlapp 2007). Little attempts have, however, been made to draw on insights from principal-agent-theory for exploring how EU membership affects domestic relationships between principals and agents. In line with the literature on Europeanization and domestic change (Börzel and Risse 2007; Featherstone and Radaelli 2003), we aim at exploring how EU membership has affected the domestic principal-agent relationship between national parliaments and governments (for a similar approach, cf. Auel 2007).

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 looking at how parliaments can hold their governments accountable in EU affairs, 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 formal role in the EU policy-making process, it is much more difficult for national parliaments to obtain information about EU issues and corresponding governmental politics. The scope of information available to parliaments largely depends on the transmission of information by the government – and thereby of the institution it is supposed to control (Maurer 2002; Norton 1996; Raunio 1999). Moreover, the possibility to actually use this information by requesting the government to explain and justify its EU policies also crucially depends on the point of time at which it is transmitted. Given that the EU has a different political agenda, parliament has to adjust its procedures for making sure that scrutiny of the governmental position takes place before legislation is adopted in the Council. Furthermore, EU scrutiny challenges the internal legislative organisation, since parliaments have to scrutinize numerous
documents, which do not only correspond to a different political agenda, but also often 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 (ibid.). This means that compared to domestic affairs, the 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. They are additionally challenged by the need to build up new resources.

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, this holds true for the *ex ante* stage, i.e. the stage before the government decides on adopting binding EU legislation in the Council. As shown above, the specific nature of EU policy-making processes impedes on the possibility of national parliaments to provide 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 thereby „secretly“deviate from the latter’s position. This implies that in EU affairs, thinking of accountability as a type of outcome might even be inadequate for the relationship between parliamentary majority and government. On the other hand, the failure of substantially affecting EU legislation *ex ante* cannot even be fully compensated *ex post*, as it is the case in domestic affairs, where the parliamentary majority usually has the final say for putting legislation into force. In other words, the agent’s decision made at the EU level can hardly be changed. This is only the case 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 exercise 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 and applies only to certain (yet
significant) pieces of legislation. In sum, compared to domestic affairs, its possibility to impose sanctions by changing the agent’s decisions is severely reduced.

Overall, we find that compared to domestic politics, the risk of agency loss through information asymmetry is higher in the area of EU affairs. This is because EU politics are made in an arena with restricted formal access for principals. Moreover, the scope of instruments and mechanisms available to parliaments to overcome this 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 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 oversight 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: Parliament as a collective principal in EU affairs: control and sanction instruments

<table>
<thead>
<tr>
<th>Mechanism</th>
<th>Opposition</th>
<th>Majority (governing parties)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Control</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reporting requirements for agent</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>Police patrol oversight</td>
<td>√, focus on formal oversight</td>
<td>√, more focus on formal oversight</td>
</tr>
<tr>
<td>Fire alarms oversight</td>
<td>√, highly dependent on third party information</td>
<td>√, more dependent on third party information</td>
</tr>
<tr>
<td>Sanction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Block or amend agent’s decision</td>
<td>---</td>
<td>constrained</td>
</tr>
<tr>
<td>Removal from office</td>
<td>---</td>
<td>√</td>
</tr>
</tbody>
</table>

Source: Own elaboration, √ = instrument available, --- = instrument not available
The most important implication of this finding is that 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 „EU-specific“ way of holding governments accountable relies in an increased (though not exclusive) 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 use of this information for holding the government more formally accountable. Thus, since the prospects of „imposing sanctions“ on the government by blocking, changing or amending its decisions are very limited, even the parliamentary majority has to focus on acquiring information for inducing the government to explain and defend its decisions - even more so as the latter can take these decisions largely unobserved. In this perspective, demanding the government to explain and 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.

In fact, when looking at the parliamentary scrutiny systems across the EU, we find that legislatures hardly mandate their government (Auel 2007) and focus instead on acquiring information by e.g. establishing EACs. Moreover, many parliaments have designed new rules for enhanced the reporting requirements of the government on EU affairs by providing for regular hearings in EACs or for the issuing of annual reports on EU policy. 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 and often required for complementing own information. The corresponding institutional adaptation of parliaments refers to the inclusion of MEPs in EACs, the cooperation with other parliaments through COSAC, the institutionalization of links to EU institutions by opening „permanent representations“ in Brussels, and the direct provision of information by EU institutions as provided for by the LT, are important examples in that respect. Finally, in EU affairs, holding governments more frequently accountable in public might be effective even from the parliamentary majority’s perspective. Given the reduced „shadow of sanctions“ compared to domestic affairs, governments might actually have fewer incentives to provide full account of their decision behaviour. 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, i.e. other actors in EU governance (cf. Lupia 2000).

Coming back to legitimacy considerations, parliamentary involvement in EU affairs can claim to provide legitimacy if parliaments hold the government accountable by invoking the described mechanisms. The analysis also allows us to specify under which conditions “more” scrutiny translates into “more” legitimacy. 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 the government 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 provides legitimacy 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. Thus, both the level and type of interaction between parliament and government plays a crucial role in EU affairs. In sum, national parliamentary involvement in the EU is most conducive to hold governments effectively accountable if a) both majority and opposition MPs are actively involved in governmental scrutiny and b) they focus on counteracting the information asymmetry (e.g. by more frequently consulting third parties) and c) use the information to make the government explain and defend its position in negotiations at the EU level, and preferably do so in public. How and under which conditions do the institutional practices of national parliaments result in these outcomes? The following section will address this question by analysing parliamentary scrutiny in two member states, Germany and France.

**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 1996; Szukala and Rozenberg 2001), while the German BT as a domestically powerful parliament displays with only moderate actual scrutiny activities in 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 very recently opened a permanent representation in Brussels. We also find more evidence of EU-related debates in the French plenary, and, despite its (previously) subordinate status, a more proactive role of the AN’s Delegation for EU affairs as compared to the BT’s EAC (Sprungk 2007). For reasons of scope, we focus our study on a specific instance of scrutiny: the role of the French AN and the German BT during the decision-making process of the WFD, which 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 continually declined over time (Jordan and Liefferink 2005), which therefore requires a stronger scrutiny of these policies 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 existing domestic water policies (for details, see Kallis and Butler 2001; Kaika 2003).

**The scrutiny of the AN during the WFD’s decision-making process**

The cornerstone of the AN’s participation in EU affairs is Art. 88-4 of the French Constitution (FC). Inserted in the context of the ratification of the Maastricht Treaty, Art. 88-4 FC stipulated for the first time a constitutional right of the French parliament to obtain information on EU issues from the government. It also provided the French legislature with a constitutional right to react on information provided by the government by voting on parliamentary resolutions—a right which it does not have in domestic affairs. Since 2005, these resolutions may cover all topics the EP has a say on in the EU legislative process. 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 by a ministerial circular in 1994. Moreover, a ministerial circular from 2005 requires the government 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 recent 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). It was established in 1979 and has over time managed to improve its former role as a purely consultative body to a kind of „watchdog“ in EU politics (Rozenberg and Szukala 2005). According to its function of informing the chamber on EU affairs, the DUE was
the central addressee for all incoming EU documents transmitted by the government. How-
ever, its status as a body inferior to specialised committees did not allow it to treat EU legis-

dative proposals as the primarily responsible parliamentary body. This was also true for par-

liamentary resolutions, which could be initiated by the DUE, but had to be formally adopted by specialised committees. While the latter thus had the final say on how EU issues were dealt with, the DUE had nevertheless a central role for examining incoming documents. Its function of informing the committees required a systematic analysis of all incoming EU documents and allowed for the de facto exercising of a sifting function. In sum, despite its subordinate legal status, the DUE used to be a key player in the AN’s scrutiny of EU affairs. 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 scrutiny activities of other national parliaments in EU affairs, and especially those with an equally weak position in do-

mestic affairs (Bergman 2000; Raunio 2005; Szukala and Rozenberg 2005).

During the decision-making stage of the WFD, the government of Socialist Prime Minister Lionel Jospin was in power. The parliamentary majority consisted of five left-wing parties, the so-called gauche plurielle, including the Socialist Party (PS), the Communist Party (PCF), The Radial Left (PRG), the Citizens’ Movement (MdC) and the Green Party (Verts). The Gaullist RPR party and the centre UDF party formed the opposition. The AN was actively involved from an early stage on, and invoked all scrutiny rights it had been granted according to Art. 88-4 FC. The initial WFD proposal had been submitted by the Commission to the Council in April 1997, and the French government transferred it to the AN on June 13, 1997. The DUE then immediately initiated a closer examination of the proposal (AN 1997: 46-49), and already published its conclusions on July 1, 1997 (ibid.). Given that Council negotiations had not started yet at that time, and that a long decision-making process was being expected, the DUE decided to engage in a more in-depth analysis of the WFD proposal by drafting a specific information report, which could eventually result 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 and interested parties, ranging from government offi-

5 Initially, the DUE was not a parliamentary committee since the French Constitution restricted the number of parliamentary committees to six. This has been amended by a constitutional law in July 2008, which increases the number of committees to eight, thereby upgrading the status of the delegation to a standing committee.
cials, local authorities, environmental NGOs and representatives of the water industry to ac-
tors at the EU level, including MEPs and Commission officials (AN 1998a: 47-48). Aiming at
influencing the government in ongoing negotiations in the Council, of which a Common Posi-
tion on the proposal was expected for June 1998, MP Marre’s information report was pub-
lished on February 26, 1998 (AN 1998a). It lays out the overall approval of the WFD pro-
posal, given that it is largely inspired by the French model of water management. However, it
also identifies a number of shortcomings, which it would like to be addressed by the French
government throughout negotiations. Based on these shortcomings, the DUE eventually
adopted a proposal for a parliamentary resolution. In the following, the proposal was for-
warded for further deliberation and adoption to the production and trade committee, which
published its information report on May 27, 1998. It included only slight amendments to the
DUE’s version (AN 1998b). The parliamentary resolution on the WFD was adopted and pub-
lished on June 12, 1998 – still in time for the French government to take the parliamentary
position into account during the Council meeting. In sum, the WFD resolution consisted of 13
rather general provisions, which left the government a broad room for manoeuvre (AN
1998c). Only two of them explicitly requested the French government to take action in the
Council.

Both the deliberations in the DUE and in the specialised committee were clearly dominated
by majority MPs. Opposition MPs did not actively participate during the DUE deliberations
on the WFD (AN 1997; AN 1998a), and there was only one brief intervention by an opposi-
tion MP, Patrick Ollier, during the examination within the committee on production and trade

After the adoption of the resolution, the actual negotiations on the WFD at the EU level went
on for another two years. However, neither majority nor opposition MPs intervened 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 reso-

---

6 These points 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 direc-
tives, while leaving other key pieces of legislation still in force, and the insufficient respect of the principle of
subsidiarity in certain aspects.

7 The former included the request that the proposal shall only include the principle of full cost recovery for water
services, while leaving the regulation of details to the member states and the call for the making of a cost-benefit
calculation with regard to the implementation of the WFD and forthcoming water directives by the European
Commission.
lution during DUE meetings from May 1998 to October 2000. 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. Finally, none of the written or oral question by individual MPs or those asked during the weekly questioning time in the plenary in that time period inquired explicitly about the stage of negotiations of the WFD or the consideration of the parliamentary position. In sum, the participation of the AN in the forefront of the WFD adoption was essentially taking place in 1997-1998.

The AN did thus not explicitly compel the government to explain its negotiation behaviour throughout or after the decision-making stage of the WFD. One reason for this lack of control could be that accountability was provided as a type of outcome, i.e. the WFD reflected the requests of the AN as a result of the French government’s negotiation behaviour. A comparison of the parliamentary resolution and the WFD provisions actually shows that many of the AN’s requests are reflected in the final version of the directive. But first, we do not know to which extent this consideration emanates from the French government’s behaviour. Some requests made by the AN, such as the insufficient number of directives to be repealed by the WFD, or the request for more time to achieve the „good ecological status“, were also backed by many other member states like the UK or Germany (Weber 2004) and were therefore likely to prevail in Council negotiations even without a very proactive involvement of the government in favour of the parliament. Moreover, involved actors report that the French government overall had a rather passive stance on the WFD during the negotiations, which is also shown by the fact that it did not interact with the parliament between the issuing of the latter’s resolution and the adoption of the WFD. Second, the comparison also reveals that some positions are not reflected in the WFD (such as the more explicit insertion of a combined approach if curative and preventive measures or the request for a more frequent reporting by the Commission on the stage of implementation) and the government neither explained these deviations, nor did majority or opposition MPs explicitly demand it to do so.

---

9 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 November 21, 2008.
10 See the questions relating to ‘water’ and ‘directives’ in the search engine on questions http://questions.assemblee-nationale.fr/questions.asp, accessed on December 3, 2006.
11 Interviews with French MP and MEP (formerly MP) on October 12 and 13, 2005, respectively.
In sum, in the case of the WFD, the AN was actively involved in the WFD’s decision-making process by acquiring information and issuing a parliamentary resolution. Yet, even though it developed politically binding instructions to the government, it did not formally request the latter to explain and defend its negotiation behaviour in general, and the level of interaction between parliament and government was very low. Thus, the standards for holding the government accountable in an effective way were hardly fulfilled.

The scrutiny of the BT during the WFD’s decision-making process

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 1) provide „comprehensive“ information about the EU legislation process and to do so as early as possible, 2) to enable the BT to vote on a resolution before a decision is taken in the Council and 3) to take the parliament’s position into account in negotiations. Details are regulated in various subordinate legal provisions. A recent agreement on the cooperation between the Federal government and the BT in EU affairs 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. Moreover, Art. 45 GG provides for a constitutional obligation to set up a parliamentary committee on affairs concerning the European Union, which can be empowered to adopt „plenary-replacing“ decisions in EU affairs in urgent cases.

Considering its constitutional basis, its special rights and its considerable administrative resources, the EAC is an important player in the BT’s participation in EU affairs. However, compared to the AN, the specialised committees are also heavily involved in the scrutiny process. Thus, apart from their legislative work related to national legislation, the committees examine EU proposals pertaining to their respective areas of competence.

Compared to the French parliament, the involvement of the BT in the WFD is more difficult to discern. The parliamentary management of EU affairs is not only very decentralized, but both instruments and procedures are also generally organized similarly to the scrutiny of domestic affairs. In contrast to the French case study, the analysis of the BT’s involvement therefore has to take a closer look at the activities of specialised committees and the use of domestic instruments for scrutinizing the WFD.
The composition of the BT 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 Commission’s WFD proposal was officially submitted by the Federal government to the BT in June 1997 (Printed Matter, (PM) 13/7687). It was decided that the committee on the environment, nature conservation and nuclear safety shall have the lead in the deliberation, with other specialised committees being co-responsible. Given that the WFD was a sector-specific „vertical“ issue, the EAC was not involved in the scrutiny process. While there were some initial deliberations on the proposal in the 13th legislature, (PM 14/154), the major scrutiny activities took place in the 14th electoral term.

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. Unlike in the AN, there is always one rapporteur from each party group designated for the examination of a proposal in the BT. Thus, for the scrutiny of the WFD proposal, there were five rapporteurs, reflecting the five parliamentary groups in the BT at that time. The recommendation for a resolution was eventually adopted in the committee by the SPD, the Green and the (opposition!!) PDS party group, and against the votes of the CDU/CSU and FDP party groups (PM 14/154). The plenary formally adopted the resolution on December 10, 1998 (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. Moreover, it required the government to report on the outcome.

As the committee agenda shows, 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, the environment committee member and rapporteur of the WFD Petra Bierwirth (SPD) asked a written question to the Federal government in May 1999 about the extent to which the BT’s resolution has so far been considered in the WFD negotiations (PM

12 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).

The majority MP explicitly referred to the fact that the EP supported the BT’s requests. The Federal government gave a detailed answer about the points which have been considered and the ones which are yet to be discussed in the upcoming negotiations (ibid.). The same holds true for opposition MP Dietmar Kansy (CDU/CSU), who asked about the state of negotiations in May 1999, without being member of either the lead or the co-responsible committees though (PM 14/1052). Another WFD-related activity in the BT in the same time period was a recommendation for a resolution initiated by the liberal opposition party group in May 2000, which was of course rejected by the parliamentary majority.

Thus, while the major committee activities on the WFD ex ante were taking place in December 1998, other scrutiny activities continued until the adoption of the WFD. Compared to the overall reluctance of the BT to invoke scrutiny rights in EU affairs, the BT was rather actively involved in the WFD decision-making stage. What is more, both majority and opposition MPs were engaged in scrutiny activities.

But to which extent did the Federal government actually respond to these scrutiny activities? As requested in the final part of the parliamentary resolution on the WFD, the Federal government officially informed the BT on the extent to which the eight individual requests by the BT have been considered in the negotiation stage (PM 14/5305). The government argued that they had overall been considered and were reflected to a large extent in the final provisions of the WFD (ibid.). In fact, when comparing the WFD provisions with the BT resolution, we find that many requests were taken up in the final version of the directive. Even more importantly, following requests by both majority and opposition MPs, the government explained the extent to which it could consider the resolution both during the negotiation process and right after the adoption of the directive.

Overall, the involvement of the BT in the WFD decision-making procedure meets the standards for effective parliamentary involvement in EU policy-making better than the one of the French AN. On the one hand, apart from acquiring information for adopting a resolution, scrutiny activities also implied making the government explain its negotiation behaviour throughout the entire decision-making stage. On the other hand, both opposition and majority MPs were involved in the process, and the latter did not only require the government to report
on the negotiations, but also asked it publicly (though only in a written question) to explain how parliamentary requests could be considered.

In sum, when drawing on the case of the WFD, we find that even though the BT and the AN have both acquired information and adopted a resolution, the BT has more effectively held its government accountable for its decisions with regard to the directive. German MPs from both the majority and the opposition were keener on making the Federal government explain and justify its decisions than French MPs, with the latter focussing on a close scrutiny of the document, but hardly interacting with the government. How can we explain this variation?

The analysis suggests that the different legislative organization of the BT provides more incentives to engage in effective scrutiny in two ways. First, specialised committees play a crucial role in the scrutiny process. In the case of the WFD, the 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. 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 organization is the inclusiveness of scrutiny in terms of associating the opposition. In the case of the WFD, all political parties have designated specific rapporteurs, which provided for an active involvement of both majority and opposition parties by creating “ownership”. Both factors stand in contrast with the more centralized procedure of the French AN, which only provides for the involvement of few MPs. And even for majority MPs, ownership for scrutiny is prevented by two-tier system, involving both the DUE and the specialised 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, a decentralized internal organization of the scrutiny procedure – both in terms of the committees and the political parties involved - seems to be conducive to hold governments accountable in an effective way.
Conclusions

This paper has analysed under which conditions national parliamentary involvement in EU affairs can contribute to the legitimacy of EU politics. Starting from the assumption that it is not the quantity, but the quality of national parliamentary scrutiny which is likely to provide that effect, the paper proceeded by analysing under which conditions parliaments can theoretically provide legitimacy in a system of multi-level governance. Following Grant and Keohane’s (2005) argument that governance beyond the nation-state can be considered as legitimate if appropriate accountability mechanisms are institutionalized, it was argued that parliaments can provide legitimacy to EU politics if they hold their governments accountable in a way which is appropriate for EU governance. Drawing on principal-agent-theory, it was shown that accountability mechanisms in EU affairs differ from those invoked in domestic politics. The appropriate way to hold governments accountable in EU affairs 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 („fire alarms“).

In a second step, it was explored whether and how these standards are met by the institutional practices of two parliaments, the German BT and the French AN. Generally speaking, the French AN is considered to be a rather active scrutinizer, while the German BT is more reluctant in invoking scrutiny rights. In the case of the WFD, both parliaments were actively involved and adopted a parliamentary resolution on the legislative proposal. Yet, the scrutiny activities of the BT were more in line with the standards for effective parliamentary involvement in EU affairs, since they better succeeded in holding their government accountable. This demonstrates that for providing legitimacy to EU politics, the quality of national parliamentary involvement is more important than the sheer frequency of scrutiny activities. Finally, the analysis suggested that differences in the internal legislative organization can account for the observed variation. More specifically, parliamentary rules conducive to creating or stimulating expertise and ownership in the EU scrutiny process support to produce the outcome intended by involving national parliaments in the EU.
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. If we assume, thirdly, that conflicts in the process of institutional re-designing for EU affairs are less likely to arise on the majority-opposition dimension (given the similar challenges for both), this does not exclude conflicts on the issue dimension. In other words, while cooperation between parliamentary majority and opposition should (at least theoretically) be less difficult in EU affairs, conflicts might arise when it comes to a redesigning of the role of specialized committees in EU affairs (for increasing the level of technical expertise), especially since EACs have not only been established in all EU-27 parliaments, but have seen their role vis-à-vis specialized committees strengthened over time. Yet, recent surveys initiated by COSAC (2007) point to an increasing role of sectoral committees in EU affairs and/or a closer cooperation between the former and EACs (e.g. in the Polish and Lithuanian Parliaments). Yet, given the 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.
References


