Restoring Accountability in Multilevel Governance

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First Draft

Abstract

The paper deals with the accountability of governments to citizens and parliaments in complex systems of multilevel governance. The empirical basis for my analysis is the political system of the European Union. Starting from a normative concept of democracy, I argue that democratic deficits in multilevel governance are caused by specific institutional settings, that are typical for European modern states and for most of EU policies. These settings combine patterns of intergovernmental (and often also public-private) co-operation and parliamentary democracy into a compounded polity. It is not only characterised by a multitude of veto players, but also by incompatible decision rules: Whereas in negotiations across levels, governments have to be willing to find an agreement, party competition in the parliamentary arena forces them to follow the distributive interests of their constituency.

In contrast to the assumptions of the veto player theory, empirical studies on the EU reveal that effective solutions of problems are possible in multilevel governance. Governments and parliaments tend to avoid to obstruction in decision-making, because stalemate is considered as failure. Parliaments shift to post-decision scrutiny and informal influence. Governments use differentiated structures of negotiations to manage the problem of the multi-level governance. These „escape routes“ (A. Héritier) reduce the probability of deadlocks in policy-making. But they reduce the transparency of political processes and the effectiveness of democratic accountability, too. Therefore, we should discuss how accountability in multilevel governance can be „restored“. In the final part of the paper, a new pattern of division of powers in governance and the establishment of institutionalised linkages between intra- and inter-level policy-making is proposed.
1. Introduction: The problem of democracy in multilevel governance

If Robert Dahl is correct we are currently in an era of a transformation of democracy (Dahl 1989: 311-320). The old idea of a government of the people, invented in the Greek city state of Athens and in the Roman Republic and transformed during the reinvention of democracy of the modern nation state into a representative government (government by the people and for the people), is now challenged by the emergence of transnational forms of multilevel governance. These new types of political structures do not meet the basic prerequisites of democracy as we know it. There is no immediate relationship between a „demos” and a government. Political decisions are made in negotiations of multiple governments, no one being alone responsible for the results, and they concern several „demoi”. Those who make decisions are not directly accountable to an electorate but at best to an assembly of representatives of people., functionally specialised organisations of governance regularly cut across the boundaries of territorially based structures of representation. In addition, problems of multilevel governance are caused by specific institutional settings that are, however, typical for European modern states and for most transnational and regional forms of governance. They combine patterns of intergovernmental (and often also public-private) cooperation and parliamentary democracy into a compounded polity, which includes incompatible decision rules: In negotiations across levels, governments have to be willing to find an agreement. On the other hand, party competition in the parliamentary arena forces them to follow the distributive interests of their constituency.

While there is ongoing dispute in political science as to what degree the power of national governments is or will be shifted to multilevel governance (summarised in Held and McGrew 2000), most scholars agree that this transformation of power structures causes severe deficits of democracy. Firstly, it is doubted whether all relevant interests gain access to political processes of multilevel governance or are sufficiently taken into account in policy-making. Secondly, due to the growth of actors with veto power (veto points: Immergut 1990; veto players: Tsebelis 1995), the costs of decision-making in multilevel governance are said to be very high and the effectiveness of policy-making low. Finally, the complexity of structures apparently impedes transparent processes and makes it difficult for supervisory organisations and for citizens to hold those participating in decision-making accountable.

In the following sections I will examine these three reasons for a democratic deficit in multilevel governance. Referring to the example of the European Union, I will show that the quality of interest intermediation and the efficiency of decision-making in multilevel governance is not as poor as it is often assumed. The differentiated structures are advantageous regarding the „input” of interests, as they provide opportunities for participation and as actors from various institutions are integrated into the effective core of the political system. Thus, the process of policy-making opens to a plurality of interests (e.g. Héritier 1999). In addition, I will argue against the veto player theory
(Tsebelis 1995, 1999) that multilevel governance does not necessarily impede effective decisions. Powerful veto players, i.e. negotiating governments and their parliaments tend to avoid obstruction of multilevel decision-making, because stalemate is usually considered as failure. Parliaments shift to post-decision scrutiny and informal influence. Governments and other actors participating in negotiations use differentiated structures of interactions to manage the problems of the „multilevel game” These „escape routes” (Héritier 2000) reduce the probability of deadlocks in policy-making. However, efficiency is attained at the cost of transparency of political processes and of democratic accountability. Multilevel democracy turns into a polyarchy (Dahl 1989: 218-244) of a specific type: It is dominated by executives and independent experts, fosters informal policy-making outside the legitimate institutions, and it gives accountable representatives of citizens in governments and parliaments ample opportunities to avoid responsibility for decisions.

In the final part of the paper, I will discuss how accountability in multilevel governance can be „restored“. I will elaborate a proposal for a new division of powers in governance and the establishment of institutionalised linkages between intra- and inter-level policy-making.

This paper draws on empirical evidence from a study on policy-making and democracy in regional policy of the European Union. My arguments are based on experiences from the process of reforming the financial and institutional framework of EU structural funds that was part of the Agenda 2000. This policy implies redistributive decisions and is therefore - in theory - jeopardised by deadlocks. The empirical study should reveal how deadlocks have been avoided and whether the ways of escaping them reduces the democratic quality of policy-making.

2. Compounded representation: A normative concept of democracy for multilevel governance

Most scholars in political science agree that a simple transfer of institutions developed during the process of democratisation in the western nation states could hardly solve the problem of democracy in multilevel governance (summarised in: Abromeit 1998; Benz 1998a; Føllesdal and Koslowski 1998; Grande 1996; Kohler-Koch 1998; Lord 1998; Wolf 1997, 2000). Those who propose the establishment of transnational parliaments (Held 1995) or the direct election of leaders of transnational institutions (like the president of the European Commission) ignore that such institutional settings were developed for states with a relatively homogeneous community of citizens. The social basis of multiple „demoi” does not allow elections of representatives by majority rule (e.g. Kielmansegg 1996; Offe 1998; Scharpf 1998) and, given the institutional fragmentation of multilevel governance, democratisation cannot be achieved by applying a single principle. In fact, the EU does not conform to a
parliamentary democracy. It has more in common with a system of government, which, like that of the U.S., is aiming at a separation of power between the executive and the legislature and between different levels (Coultrap 1999, Decker 2000; Hix 1998). However, in contrast to the American system, it includes elements of a consociational democracy (Schmidt 2000) and of the traditional European parliamentary system at the level of the member states and combines them into a complicated mixed polity.

For this reason, it seems to be more promising to look upon the EU as a compounded government of a new type (Benz and Esslinger 2000; Kincaid 1998). It consists of the following elements, which are relevant for representing citizens interests:

- In the Council, ministers from member state governments represent the people of the 15 nations of the EU.

- The decision-making power of the members of the Council depends on the support by a majority in their national parliament. Hence, in the multilevel structure of the EU, national parliaments are important institutions for transmitting and representing citizens’ interests and for rendering the Council accountable.

- The European Parliament (EP) represents „the people“ of the EU. Although in practice members of EP may advocate national interests, they more often than not promote transnational concerns (Bailer and Schneider 2000; Ernshaw and Judge 1996; Shephard 1998).

- Interests of specific groups in society are introduced into European policy-making via a multitude of consultative special committees. While most committees assemble experts from specific policy fields, the ESC is an institution designed to represent societal groups. An additional special committee is the Committee of the Regions, the assembly of representatives of regions and local communities.

The conception of a compounded government resembles Arend Lijphart’s definition of a consociational democracy (Lijphart 1999). It can be argued that the EU is developing into a political system conforming to this type of governance (Schmidt 2000). However, by using the term compounded government I avoid the assumption that such a mixed polity constitutes an integrated system in which decisions are based on consensus and co-operation. In fact, the combination of diverse institutions of governance causes internal tensions and conflicts induced by structures. The multilevel system of the EU does not match the well-known mixed constitutions of national democracies. It rather constitutes a political system which fuses incompatible components of competitive and consociational democracy. Such a combination of “rule systems” (Lehmbruch 2000) is a typical feature of multilevel governance. In order to better understand policy-making in the EU, we have to analyse the interplay of the various parts of the compounded polity and, in the case of incompatibilities, look for the ways how they are integrated.

This analytical framework implies, that we can use the normative concept of representative democracy to evaluate the democratic quality of the compounded polity.
Democratic representation concerns the relationships between citizens and their representatives, in particular their government. Referring to David Easton’s model of a political system (Easton 1965), we can distinguish the aspect of input of citizens’ interests, the output of policy-making in the political system and the feedback between citizens and political actors. These relations can be qualified as democratic as far as they conform to three criteria (Putnam 1993; Scharpf 1970; Schmidt 2000, 294-306; Steffani 1981, 142-147):

- With regard to the input-side, the political system has to be open to citizen participation and must enable *effective transmission of relevant interests of the citizens* into the process of governance ("input-legitimacy").

- With regard to the output of policy-making, institutions and procedures have to bring about *effective solutions of problems* ("output-legitimacy").

- With regard to feedback, office-holders representing citizens have to be *accountable* for their decisions. Representatives have to give reasons for their decisions and the represented have to be able to punish them if they are not convinced by the decisions or the reasons supporting them.

The following analysis does not deal with the societal preconditions of democracy but solely with the institutions of democratic governance. These institutions are regarded as structures that should provide *opportunities* for citizens or interest groups to influence policy-making, create and limit political power and hold governments accountable. As far as the societal basis of democracy ¹ in the EU is concerned, it must be conceded that communication and solidarity among citizens from different nations is difficult to attain. However, these problems do not make democracy in the EU impossible. The pluralistic character of the European society and the chances that open frontiers generate for improving education, information and values (tolerance) should not be underestimated. On balance, the multinational character of the European political space is not necessarily an insurmountable obstacle for democratising the EU. Essential are institutions that allow the intermediation of all relevant interests, efficient decisions and accountability of decision-makers.

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¹ Among the societal preconditions of democracy, the following are the most important: First of all, citizens have to be capable to formulate and enunciate their interests. Secondly, power structures in a society should not privilege specific groups or exclude individuals or groups from influencing policy-making. Thirdly, patterns of communication should allow for unbiased information of citizens and facilitate open discussion on matters of public policy. Finally, members of a society should be guided by a minimal standard of solidarity which motivates them to accept outcomes of democratic procedures even if they do not agree to them (Offe 1998). It goes without saying that even in nation states, these requirements are not met in every respect.
3. Intermediation of interests and decision-making in multilevel governance

3.1 Multiple access points

Regarding the input side of the political system, multilevel governance has the advantage of providing a multitude of points of access for organised interests. The interorganisational structure includes a plurality of institutions representing different interests. Moreover, these institutions attract a variety of associations promoting special interests. This is obvious if we look at the processes of policy-making in the EU.

European policy-making is mostly initiated by the Commission and starts by intensive consultations of the responsible DGs with representatives of national and regional governments, public administrations and associations. The Commission, in order to be able to have an effect on EU policies, is compelled to establish good relations to experts from these organisations. Therefore, a lot of committees and networks are established designed to support the preparation of policy initiatives. Only on the basis of these external relations, the Commission is able to define policies negotiable among national governments. We know from policy studies, that these consultations in formal and informal committees contribute quite substantially to the „output-legitimacy” as they serve to accumulate knowledge of a great variety of experts. Moreover, they should be regarded as structures appropriate to improve the input-legitimacy as well (Héritier 1999; Kohler-Koch and Eising 2000). In this early stage of the decision process, many interests are taken into consideration.

As to the participation of special interest groups it is the economic interests that are best represented on the national as well as on the European level (Eising 2000). In matters of the structural funds reform we found in particular lobbying by the farmers’ associations a pertinent feature during the whole process. Associations of industry and commerce and unions were less active. They used the formal consulting procedures of the ESC, which favours a pure market approach to overcome regional disparities. For the result of policy-making, the more informal relationships that exist between members of the EP and of the Commission on the one hand and experts from individual associations on the other, were more important. In addition, pressure groups lobby at the national level trying to influence preference formation of the national government. Groups supporting the protection of environment or defending the interests of the unemployed had limited influence on the reform of the structural funds. But this is a general problem of the policy field even at the national level and not particular for the EU.

Non economic interests are partially introduced into the policy process by actors from regional governments representing the regions. They use the arena of the Committee of the Regions as well as more informal channels for advancing their interests. The bureaus of the regions in Brussels are well integrated into the policy...
networks of the Commission. In the CoR, the stabilisation of the structural funds for regions in general and the decentralisation of powers to regions (principle of subsidiarity) ranged at the top of the agenda. During the reform process concerning the Agenda 2000, the Committee established a working group in order to communicate its opinion to the Commission. The group’s efforts resulted in more than 300 requests for changing the original proposals. But again we found that the policy networks of the Commission, the members of the EP and the responsible national administrations were much more significant for transmitting particular interests.

In addition, the European Parliament constitutes an important arena for the transmission of interests. Our case study on the reform of the structural funds shows that contacts to lobbyists from their region have become daily business for the members of its regional committee. During the sessions of the committee a considerable amount of time is spent on hearings where delegates from affected regions (NGOs, local civil servants, mayors, leading members of regional governments) present their views on selected topics, why they pursue certain interests and what they expect. On the one hand, the EP formulated a great number of proposals concerning specific regional and sectoral interests (Rudzio 2000: 216-271). On the other hand, all EP members act as representatives of the European people, even if they are elected by their local constituencies. They have to integrate interests of regions with the European concerns. A majority of the EP, e.g., finally supported a policy that, in the face of a limited budget and the challenge of the enlargement of the EU, aimed at a consolidation of the structural funds but at the same time advocated the goal of economic and social cohesion. The Cohesion Funds and the Community Initiative URBAN were maintained not at least due to the influence of the EP. That it was able to achieve these goals can be explained not only by its right to co-decision on the budget but also to an even greater degree by its participation in a very early stage of policy-making. The EP entered the arena when the Commission drafted her reform proposals for the structural funds which were the basis for further negotiations in the Council. Moreover, it used the opportunity to induce so-called initiative reports. Such reports are a usual mechanism for expanding the EP’s influence whenever it perceives that a proposal is worked out inside the Commission. In informal discussions with the Commission and the Council, the parliament influences the formulation of propositions that later are introduced into official procedures.

It goes without saying that the policy process was not open to the participation of interests at all stages. Of course the intermediation of interests is biased in the same way as it is the case in national governments. However, what is important is that the multilevel character of policy-making provides open access before any proposals are fixed and introduced into the formal procedures. The structure-induced selectivity of the EU is low compared to those of national states. The aggregation of interests takes place during the sequence of the policy process. In regional policy, we found the same patterns that Adrienne Héritier has described for environmental policy (Héritier 1996):
In the early stages, the agenda of the European policy process is defined by competing interests introduced by public organisations at the European, the national and the regional levels as well as by organised interest groups. The various proposals are then dealt with in negotiations among experts. These negotiations define a framework, which is finally subject to bargaining among national governments in the Council. While in the second stage, integrative bargaining is the rule, policy-making in the Council can be characterised as distributive bargaining (Walton and McKersie 1965; regarding the EU: Elgström/ Jönsson 2000). The package deals, resulting from the intergovernmental bargaining process among the heads of member states’ governments or ministers are thus to a considerable degree shaped by the pluralistic intermediation of interests and the informal negotiations in policy communities of experts.

3.2 Veto players and incompatible decisions rules

In the European multilevel process of policy-making, decisions are made in the Council with the EP participating with rights that vary from policy to policy. In most cases, the Council decides by a qualified majority or by unanimity (as it is the case for reforms of the structural funds). This gives a minority of member state governments or even an individual government a veto power. In addition, ministers representing national governments in European policy-making are accountable to their national parliaments. The power of these parliaments depends on the constitution of each individual state. However, in all member states of the EU, parliamentary systems exist requiring that governments be in principle dependent on parliamentary support. Thereby, national parliaments are involved in multilevel governance.

In fact, national parliaments are no strong veto players in EU policy-making. Regularly they complain about not being able to effectively participate, and some scholars declare that the Europeanisation leads to “deparlamentarisation” (Beyme 1999: 541). In principle, national parliaments are still able to impede major integration steps and institutional reforms of the EU that they have to ratify (provided that these are not subject to a referendum), but they cannot overthrow European law or programmes. Moreover, their legislative and budget powers are relevant in the implementation of EU directives. However, in intergovernmental policy-making they can only indirectly influence the European policy process by deciding on the position of their government or by controlling negotiation behaviour of the responsible minister.

Their interests to maintain power has motivated national parliaments to adapt their infrastructure to the development of European integration, in particular when, as a result of the Single European Act, an increasing part of national law has been influenced by European regulation or de-regulation (Kamann 1997; Norton 1996; Weber-Panariello 1995). Institutional reforms have been designed to fulfil three goals:

- firstly, they should improve parliaments’ right to obtain information from their government;
secondly, in particular by establishing special committees on European Affairs, national parliaments should become better able to elaborate statements on EU policies and to supervise negotiation behaviour of their government;

thirdly, parliaments tried to extend the veto rights they hold against their government in a parliamentary system, to European policies.

Nevertheless, in contrasts to the majority of the EP and the members of the Council, who can express vetoes in the European decision process - and can be designated as “internal veto players” - national parliaments are “external veto players”. As such, their power is relatively weak, in particular, if the Council decides by majority. However, they can have serious repercussions on the negotiation process in the Council.

The difference between internal and external veto players is important for an understanding of policy-making and of the dynamics of multilevel governance. External veto players are able to disturb policy-making in arenas outside their jurisdiction but they cannot immediately shape policies. Internal veto players can block decisions directly, but they can at the same time influence policy-making by their negotiation strategies. Hence, they usually use their veto power as a bargaining chip. This can be shown in the interplay between the EP and the Council.

a) EP and Council as internal veto players

The harmonisation of policy-making in the EP and the Council is rendered difficult since they imply different structures of interests and different modes of operation: The Council assembles national representatives who, in general, are interested in joint policy-making at the European level when it concerns issues which cannot be dealt with in the context of a nation state. However, in specific policies, member states’ governments also pursue national interests. Although they engage in a joint search for a European solution of problems reaching beyond the boundaries of the nation state, they also favour a decision which maximises the advantages for the individual nation. Hence, governments participating in European policy-making have to deal with a collective choice dilemma: even if all member state's governments agree that a European policy is better than individual national or regional policies, a joint policy may fail due to distributive bargaining strategies of governments. To overcome this „Negotiator's dilemma” (Lax and Sebenius 1986), governments have to adopt cooperative strategies and evaluate issues not only from a national point of view but also from a „European perspective“ (Scharpf 1997: 124). They have to reflect their national interests in the light of transnational consequences.

The aggregate of these interests resulting from bargaining among Council members is not necessarily identical with the European interest as defined by a majority of members of the EP. In general, the EP, like the Council, represents European interests. However, each member of the EP finds himself or herself in a minority position if he or she intends to pursue particular regional goals. Therefore, it is more attractive for them
to advance European integration (Thomassen and Schmitt, 1999). This was revealed in the policy-making on the Agenda 2000, when the EP became a supporter of the structural funds reform as suggested by the Commission. By a majority decision it accepted that a considerable number of regions will lose their benefits from the funds although only after a relatively long transition period.

In the co-decision and assent procedures (the latter being relevant for decisions on objectives and organisation of the structural funds) the relationship between the Council and the EP resembles the two-chamber legislature in the German federal system (see also Hix, 1999: 98). However, conflicts are not shaped parties and therefore decision-making not predictable as it is the case in Germany. In the EU, the associations of national parties are heterogeneous and rather weak. A majority in the EP is usually not fixed but is negotiated for specific policies. The EP's negotiation position not being reliable, the negotiation of compromises or the agreement on a package deal is rendered difficult. Under these conditions, policy-making can end in a deadlock, if the negotiations in both institutions evolve in different directions and if the approval of the EP is necessary.

Indeed, our case study reveals that actors in EU governance are able to deal with the quandaries inherent in linkages between the EP and the Council. This can be explained by the participation of the European parliament already in the early stages of policy-making, when the Commission drafts her proposals. Certainly, the EP uses its power to threaten with a veto and to delay the ratification of the negotiations’ results. When, for example, during the reform of the structural funds the German presidency argued strongly in favour of eliminating the cohesion fund, the former EP president Gil-Robles, an open supporter of the fund’s preservation, expressed the warning that the consent of the Parliament would be all but self-evident. More important, however, is the informal negotiation between the Parliament and the Council, mediated by the Commission. Inter-institutional package-deals or compromises are negotiated in committees with the plenary being only able to ratify or to reject.

Moreover, our study justifies the conclusion that relations between the Council, the Commission and the EP de facto evolved into a certain functional division of powers with the EP focusing on the definition of the agenda and the Council making the final decision. Therefore, co-operation between both legislative institutions of the EU works fairly well and does not preclude effective decisions. More problematic is that policy-making in EU multilevel governance is highly informal. Informality results in opaque processes. It makes accountability of members of the EP difficult and deteriorates the democratic quality of representative structures.

b) National parliaments as external veto players

The same can be said concerning the participation of the national parliaments (Auel and Benz 2000). As a rule, they can issue non binding statements. Ex-ante decisions of
parliaments influence action orientations of Council members, because these have to consider explicitly stated definitions of national interests. Nevertheless, even in this case, the government can pursue its own negotiation strategy and work for an effective solution of European negotiations that is acceptable even from a national point of view. The dilemma of multilevel governance is much more acute if parliaments can credibly threaten to apply veto power. Among the member states of the EU, merely the Danish *folketing* and the Austrian *Nationalrat* have formal rights to issue binding propositions on EU matters to their government. De facto vetoes are possible in most other parliaments, although they can be applied ex-post (by a vote of non-confidence) and are not very likely. However it is not the existence but the possibility of a veto that has an effect on European policy-making. While ex-ante vetoes can be detrimental to multilevel governance as they reduce the flexibility of governments in negotiations, ex-post vetoes may block a decision and may cause a crisis in the multilevel system by undermining the mutual trust of governments (Benz 2001).

As external veto players, national parliaments are not exposed to the mixed-motive situation of the European negotiations process. They are not induced to take the joint profits of a European solution into account, which governments negotiating in the European policy process do. Certainly, governments are usually supported by the majority party or by a coalition of parties. The loyalty of the majority in parliament may give the government sufficient leeway to balance national interests with European concerns. However, government and the majority factions in parliament also have to take into account possible reactions of their electorate. In the parliamentary arena, majority and opposition parties compete for the support of electors and this competition influences the behaviour of members of parliament. Even when the majority parties agree with their national government on accepting a European policy, the opposition parties may blame the government for giving up essential national objectives. Thus they force the government into a rivalry on who is the better representative of the national people. Party competition for votes in elections induces government to adopt a bargaining strategy in EU negotiations, and the loyalty of majority parties in parliament does not counterbalance this orientation. The more a minister of a national government is bound to a proposal of its parliament, the more likely is he or she to act as an agent of a majority in parliament and not as a representative of a nation. While as a representative he or she is free to look for the best realisation of national interests that can be achieved in co-operation with other governments, as an agent he or she is expected to maximise national interests, even if this goes against a compromise with other governments (Benz 2001; Czada 1997). For this reason, the dilemma of joint policy-making in the mixed-motive situation governments are exposed to in the Council is intensified due to the accountability of governments to national parliaments (Benz 1998; Lehnmbruch 2000).

The impact of veto powers of parliaments varies between the decision rule in the Council and the stages of EU policy-making. In processes of EU legislation, vetoes of
national parliaments can block a European decision, if the Council has to decide with unanimity. In case of majority decisions in the Council, parliamentary vetoes can impede the national representatives from finding a compromise that at least partially conforms to interests of the respective member state. In this case, the national parliament risks that its position may be defeated.\(^2\)

In practice these problems are avoided. Members of national parliaments realise the dilemma of binding proposals and vetoes in multilevel governance, particular if their decision implies the risk of a deadlock. They intensively fought for institutional reform improving their participation in the preparation of European decisions, but they have used their acquired rights quite carefully. Members of national parliaments are aware of the fact that propositions forcing a government into distributive bargaining may bring about outcomes problematic even from the national point of view. Therefore, they formulate statements that define goals in broad terms and give their government a wide scope for action. In addition, they use informal channels to influence their government and in order to get information on the negotiations (Auel/Benz 2000).

Thus, in practice, national parliaments escape the „traps” of multilevel governance either by turning to symbolic politics or by using informal links to European and national executives. The first strategy implies that parliaments formulate a strict nationalist position at the outset of European policy-making but abstain from enforcing its accomplishment. Alternatively parliaments may blame an EU decision when it is settled without openly criticising its own representatives in the Council. At the same time national parliaments resort to informal co-ordination with the responsible minister. We found for the French Assemblée Nationale and the German Bundestag that they have improved their capability to influence multilevel policy-making by building up networks to national and European actors. These linkages often are dependent on activities of individual members of parliaments. But it is obviously the availability of channels of communication and the strategies of members of parliaments to use multiple points of access to actors in transnational negotiations, and not the formal right to veto that determines the strength of a national parliament in multilevel governance.

These strategies have their costs concerning the quality of democracy. They lead either to a de facto decoupling of national parliaments from European politics or to an increasing informalisation of their participation. Both consequences, i.e. the transformation of the role of parliaments to a mere symbolic one and the increasing opacity of the relations between parliaments and governments, contribute to undermining the accountability of political actors in multilevel governance.

\(^2\) In the process of implementation, national parliaments have effective veto rights. If these are applied, the individual national executive is forced to enter into new negotiations with European institutions or with parties in the national parliament in order to find a solution conforming both to the European framework and to preferences of a majority in parliament - otherwise the member state concerned may be punished by the EU. Therefore, vetoes in the implementation process do not cause stalemate but induce new dynamics of intergovernmental policy-making.
Table 1: Veto players in EU multilevel governance

<table>
<thead>
<tr>
<th>veto players in EU multilevel governance</th>
<th>EP (in co-decision and cooperation procedures)</th>
<th>national governments in Council</th>
<th>national parliaments</th>
</tr>
</thead>
<tbody>
<tr>
<td>type of veto</td>
<td>internal veto</td>
<td>internal veto</td>
<td>external veto</td>
</tr>
<tr>
<td>action orientations</td>
<td>mixed motives, but strong European orientation</td>
<td>mixed motives</td>
<td>nationalist</td>
</tr>
<tr>
<td>possible strategies</td>
<td>tactical bargaining during the policy-making process</td>
<td>tactical bargaining during the policy-making process</td>
<td>ex-ante statements (binding decisions on the negotiation position of government)</td>
</tr>
<tr>
<td>power of veto player</td>
<td>a) co-decision procedure: strong</td>
<td>a) unanimous decisions: strong</td>
<td>a) unanimous decisions: strong</td>
</tr>
<tr>
<td></td>
<td>b) co-operation procedure: moderate</td>
<td>b) majority decisions: moderate</td>
<td>b) majority decisions: weak</td>
</tr>
<tr>
<td>consequences of veto-power for policy-making</td>
<td>compromise</td>
<td>compromise; package deals</td>
<td>a) blockade</td>
</tr>
<tr>
<td>consequences in reality</td>
<td>separation of functions, informal conciliation mediated by the Commission</td>
<td>symbolic politics of national parliaments; informal influence</td>
<td>b) defeat of national position</td>
</tr>
</tbody>
</table>

Thus I come to the preliminary conclusion, that democracy in multilevel governance is neither impeded by loss of parliamentary power to executives (Moravcsik 1997) nor is it doomed by „joint decision traps” (Scharpf 1988). Effective decisions are possible not despite but because a multitude of actors are involved and because of the inherent

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3 For reasons of simplifying the argument I neglect that both the Council as an institutions and the individual representatives of national governments should be considered veto players. The power of the Council depends on a qualified majority or unanimity of its members. Therefore, one can take the latter as the true veto players.
dynamics of the differentiated system. Vetoes are merely potential strategies and they induce activities of actors to overcome or evade deadlocks in policy-making (see, with regard to joint policy-making in the German federal system: Scharpf/ Reissert/ Schnabel 1976; regarding the EU: Laffan 2000). The connection between negotiations on substantial issues and structural changes that seems to be a particular feature of policy-making in the EU (Héritier 2000; Laffan 2000) does not only concern the development of institutions but also the ongoing evolution of informal patterns of joint policy-making. Concerning democracy, this dynamics raises the problem that it leads either to a decoupling of the parliamentary arena from the process of effective decision-making or to a deinstitutionalisation of governance (or both). Deinstitutionalisation of multilevel governance is equivalent with the dissolution of accountability. It supports individual actors to pretend authority but it weakens mechanisms to make them effectively accountable.

4. The problem of accountability

The process of the reform of the structural funds ended with a package deal which is typical for regional policy of the EU (e.g. Sutcliffe 2000). The most astonishing result was the reduction of the area covered by the funds from about 50 % to about 40 % of the population of Europe. Moreover, nine out of 13 “Community Initiatives” were abolished. Such a decision with redistributive consequences, for example, was possible in joint policy-making between the German federal and Länder governments only under very specific conditions. Certainly, in contrast to German regional policy, the regions affected by this reform could not directly participate in decision-making while the national governments gained from a partial re-nationalisation of regional policy. On the European level, the Commission and a majority of the EP strongly pressed for the revision of the structural funds. From their “European” point of view, a consolidation of the EU budget in the face of the challenges of the coming enlargement to Eastern Europe was obvious. This was also the goal of countries like Germany and France, while the southern countries successfully argued for the continuation of the Cohesion Funds.

This result, which was part of the much larger package of the Agenda 2000, provides no optimal solution for the problems of the EU but it constitutes a further step in the incremental development of the integration of Europe. There was no blockade of this process despite severe redistributive conflicts among member states, regions and special interests, and despite the fact that the policy-making process was fairly open to a multitude of actors and organisations.

However, from the point of view of democratic theory, it is not only the objective result of policy-making or the interests considered in decision-making, that generates legitimacy. In any case, there are actors who finally make decisions and thus hold
power. Legitimacy of this concentrated power finally rests on the accountability of
decision-makers, even if the process of decision-making provides sufficient access for
intermediation of interests and even if a policy seems to be efficient. In a representative
democracy, accountability is a fundamental prerequisite of democratic politics. It is the
crucial device which binds governments to their citizens. „Political accountability
depends on institutional arrangements that create a circular relationship between
governors and the governed“ (Scharpf 1997: 183). Elected governments „of the people“
should be effectively controlled „by the people“ and thus be induced to act „for the
people“. This requires that those who are responsible for decisions can be identified,
that their contribution to decisions is perceivable, and that those represented can
effectively control the relevant decision-makers.

These requirements can be fulfilled in the relationship between those governing and
those governed in a nation state characterised by a single centre of policy-making,
namely a responsible government. This government and no one else is accountable for
its decisions to a single parliament or (in presidential systems of government) to
electors. In a multilevel system like the EU there is no single centre but a multitude of
centres of power. With regard to accountability, we have to consider the „problem of
many hands“ (Bovens 1998: 45-50). At the same time, citizens’ representation is
organised in parliaments at different levels. Finally, accountability is rendered effective
not primarily by elections, i.e. the principal mechanism of democracy in a nation state
by which governments are induced to respond to citizens demands because otherwise
electors can cast their vote for an opposition party. Whereas in a unitary nation state a
government is immediately dependent on the outcome of parliamentary elections (if not
of the election of a president), in a multilevel system, there is no direct link between
elections and institutions of governance. Therefore, the possibility of influencing and, if
necessary, vetoing decisions by institutions representing citizens is much more
important.

Decisions in the EU are made by the EP and the Council. Moreover, the Commission
is relevant. Although not designed as a democratic institution or a European
government, but as an administrative body, it is important in multilevel policy-making.
It defines the agenda for negotiations, organises a considerable part of the participation
of interests and, most importantly, acts as mediator in the case of conflicts between the
EP and the Council. Finally, national parliaments function as intermediary bodies
between the Council and citizens. Therefore, only if members of these parliaments can
be held accountable for their policy in European affairs, the chain of control from
citizens to the members of the council conforms to the standards of democratic theory.

Deficits of accountability in EU multilevel governance are mainly caused by the
interplay of these institutions and the inter-institutional dynamics described above. They
make it difficult for citizens and controlling national parliaments to identify the specific
contribution of each accountable actor and to control or sanction the behaviour of the relevant actors.

The Commission as a collective actor is accountable to the EP which has gained the power to force the Commission to resign if the parliament casts a vote of non-confidence. Nevertheless, the individual members of the Commission still have strong relations to national governments, which nominate them. It is not unlikely that the Commission evolves into a fully responsible government of the EU. But more problematic than the weak parliamentary control is the fact that the activities of the Commission rendering policy-making effective evolve in informal interactions.

Among the institutions making decisions in EU multilevel governance, the members of the EP are directly accountable to their electorate. Certainly, the electoral procedures of the EP are disputable regarding the principle of political equality and they should be reformed. Concerning accountability, there are good reasons to doubt, whether electors are adequately informed about the activities of the EP and whether they are sufficiently motivated to control the EP by participating in elections (Lodge 1996). The process of finding a majority is not transparent for citizens. Beyond the failure of European parties to organise reliable factions, this has, to a considerable extent, to do with the inter-institutional relations between the EP and other European institutions, in particular the Council. Yet, the main problem is that the EP does not have the authority of a legislature. It cannot be held accountable for decisions in multilevel governance on its own. Moreover, the real power of the EP is based on the work of its committees and its engagement in informal processes.

The members of the Council are individually accountable to their national parliaments, whereas the Council as the superior body of the EU is not collectively accountable. The EP has no power to control the Council. Despite participating in a European institution, representatives of governments in the Council are part of a member state. They speak for citizens of a nation and are as such immediately accountable to the respective national parliaments. Insofar, the German Constitutional Court was correct, when it argued in its decision on the Maastricht Treaty, that democratic legitimacy of the EU had to be guaranteed by national parliaments (for a similar reasoning see Kielmansegg 1996; Steffani 1995). In principle, citizens can only control the European policy via their national parliament. However, as I showed above, national parliaments are in a dilemma: If they use their formal powers, they threaten to undermine the effectiveness of European policy-making. An ex-post control of the negotiation behaviour of ministers in the Council may have the effect of informing the citizens about the policy of government. However, if such an information is directed against the government, the majority party or coalition interested in securing the government's re-election would hardly be willing to make it public. This is the reason why conflicts between government and national parliaments are kept secret and dealt with in informal consultations.

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According to the standard normative theory of EU democracy, besides the EP, national parliaments are important institutions for transmitting and representing citizens’ interests. It is the community of citizens in the nation state, which is represented by them. These citizens can indirectly demand accountability of members of the Council by their national governments. Yet the informalisation of relations between national governments and parliaments in European affairs, essential to make multilevel governance effective and brought about by the strategic use of veto powers, undermines the transparency of the parliamentary process at the national level. As long as European policies are rarely debated in public, citizens are in no position to influence it by their voting behaviour.

This decline of accountability in multilevel governance can be explained by an institutional development of the EU tending to bring about a fusion of powers of a great number of actors or institutions. This dynamics is caused by a specific division of powers. A “federal” division between levels is combined with the “horizontal” division of legislative functions. In a federal structure, lower level organisations always seek to participate in decision-making the more the central government claims powers. Participation in multilevel processes is determined to compensate the loss of power by centralisation. The horizontal division of power in the legislature tends towards a fusion of powers, as all concerned institutions are inclined to extend their share in decision-making. Normative theories dominating the discussion on institutional policies like parliamentary democracy (participation of parliaments), federalism or regionalism (participation of lower level governments) or pluralism (participation of associations) support this trend. However, as more interests have been integrated into decision-making at the different levels, the “decision costs” increase (in particular due to divergent action orientations, decision rules that ignite conflicts when combined, and the rising number of internal and external veto players). The production of policy outputs being the primary goal of politicians, they resort to procedures outside the formal institutions that reduce the likelihood of vetoes. The consequence of these informal patterns of preparing decisions and finding agreements goes at the cost of accountability.

To sum up: The multilevel system of the EU is characterised by a structural dynamics leading to an extension of actors participating in policy-making. While this development improves the intermediation of interests, the multilevel system is at the same time burdened by a multitude of veto players in institutions that operate according to different and partially incompatible decision rules. In order to come to efficient decisions, actors have to use their veto power carefully, keeping an eye on potential dead-locks. While internal veto players are able to change their strategies during negotiation processes, external veto players, the majorities of national parliaments,

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4 In practice, the idea of a „Europe of the regions“ has been turned into a „Europe with the regions“.
resort either to informal influence or to symbolic but ineffective control. This weakens the accountability of national governments representing citizens of member states in the Council, in the same way as informal and opaque procedures in the co-ordination between the Council and the EP and in the interplay between national governments and their parliaments deteriorates accountability of elected members of parliaments to citizens.

5. How to restore accountability

The problems of democratic legitimacy and accountability are well known both in the scientific community of political science as well as in practice. There is widespread agreement that governance in the EU has to be made more democratic, if the integration process is not to be jeopardised. In the context of the Nizza-process, a discussion on the institutional framework of the EU started. The debate on a constitution for Europe emerged in the face of growing dissatisfaction with the EU and declining support by citizens (Niedermayer and Scott 1995). The pressure for reforms has stimulated discussions but it also has created a situation in which simplified analysis, and many reform proposals are attracting more attention than they are worth.

Among such proposals, the upgrading of the EP is most popular. In the discussion on a European constitution, a two (or even three) chamber system of the European legislative is suggested. However, it is far from clear how the two chambers should interact in decision-making, how powers should be separated between them and how decisions procedures should be organised. Moreover, the consequences for national parliaments are not taken into consideration. How the opportunities for transmitting interests existing in the differentiated multilevel system would be affected, is ignored, too. It is too obvious, that any change in the power of one institution would alter the overall balance of power of the whole multilevel governance.

It is also doubtful whether a direct election of the president of the European Commission would improve the democratic legitimacy of the EU. Again this proposal of introducing a presidential system of government is determined to change the power structure to a considerable degree. The Commission would be turned into a European government, without the separation or distribution of powers between the European institutions being clearly defined. Moreover, against this form of a European government based on the majority rule all arguments of the lacking social basis of a European nation are justified.

The same has to be said regarding Europe-wide referenda. As long as there is no adequate structure for public discussions and as long as organisations able to formulate initiatives, elaborate policy proposals and promote them in pluralistic public deliberations (like political parties or associations) are weak at the European level, referenda can merely constitute an instrument of an elite. Therefore, they make sense
only when deciding on European affairs at the national or regional level or in specific public arenas (Abromeit 1998). Nevertheless, referenda can only be used to decide on exceptional matters, they do not solve the institutional problems of multilevel governance in general.

A design of a democratic constitution of multilevel governance has to cope with the “trilemma” (Höreth 1999) that in such differentiated structures, intermediation of interests, efficiency of decision-making and accountability cannot be optimised at the same time if the institutions in multilevel governance expand their power and try to become integrated into the decision making process. If it is true that the fusion of power described above is caused by a particular institutional division of power, we must think about alternative arrangements that hold the different institutions more separate both between the levels and on the different levels, without reducing the chances to introduce a plurality of interests. The strict coupling of institutions caused by the fusion of power should be turned into a more loosely coupled structure of governance.

Between the levels, a better separation of powers is currently under discussion. In particular representatives of the regions are pleading for a strengthening of the principle of subsidiarity. However, experience shows that such an abstract rule does not prevent conflicts about competence to emerge. And conflicts are usually settled by compromises leading either to overlapping competencies or to a compensation of the level losing power by granting participation rights. A better and more stable division of powers can be realised by distinguishing legislative functions of the different levels. The EU can be made responsible for the setting of standards for national policies, while the national (or regional) governments may be empowered to implement the standards in their own law. Standards do not set strict rules like directives but corridors for action that give the lower level government sufficient leeway to decide on the degree of fulfilling it. The motivation to satisfy standards does not come from threatening sanctions, but from competition between lower level governments on the relative quality of their policies. This competition by “benchmarking” creates transparency which allows not only the supervising European institutions but also the national citizens to effectively control policy-making.

In the horizontal dimension, a fusion of the processes in different institutions and the clash of incompatible decision rules can be constrained by a functional division of powers, too. Between parliaments, in which a majority rules, and the Council, the main arena of negotiations among national representatives, conflicts can be reduced if one institution focuses on defining agendas and evaluating policy outcomes in public debates while the other makes the final decision. In the EU, this would require to distinguish between a “federal” and a “parliamentary” form of legislation. In the first case, the Council decides, whereas the EP should have a right to initiate propositions and provide for public discussion and evaluation. In the second case, the EP would make final decisions and the Council could initiate and evaluate. The same principle of
dividing functions could apply in European policies to the relations between national parliaments and their government. Parliaments should be given an independent power to initiate policies and to contribute to the setting of the European agenda. And they should be made responsible for public evaluations on European policies. This way, democratisation is not only focused on decision-making but extended to all stages of the policy cycle.

Beyond this division of powers accountability can be restored by transforming the informal linkages between organisations and levels into institutionalised arenas of public deliberation. Opening informal processes of conciliation to the public can have negative consequences in multilevel governance, if participants in negotiations are constrained to strictly pursue the interests of their constituency. As a consequence, they practice distributive bargaining which often ends in deadlocks or in ineffective compromises. Public debates have this binding effect if the public arena is split into national, regional or sectoral political spaces or if it is predominated by competing parties (Benz 1998). However, the opening of negotiations to public scrutiny can also force actors to argue in terms of the public interest (Elster 1998: 12). This is most likely to happen if party political cleavages are kept at bay and if the public is not divided along national, regional or sectoral lines. Therefore, public arenas should be designed so that they cut across established institutional structures and levels of government.

Two types of public arenas seem to be practicable in EU multilevel governance. Firstly, existing expert committees could be turned into “independent commissions” including actors from associations, governments and parliaments. The British “Royal Commissions” or the Swedish “utredning” can be taken as a model. Secondly, parliamentary committees responsible for European affairs can be turned into independent intermediary arenas by organising joint meetings of members of the national parliamentary committees and of members of the EP (of the member state concerned). Such meetings that already exist in some member states can stimulate public deliberation on how national and European concerns can be integrated.\(^5\) An essential condition for this is that the proceedings of these committees be open to the public. Otherwise the engagement of actors in such meetings, in particular those from the EP, is limited and the arguments on European policies cannot be transmitted to citizens.

These ideas do not amount to a design for constituting a democratic polity of the EU. They merely should illustrate how the principle of a loose coupling of a functionally differentiated multilevel governance can be implemented. Moreover, my intention was to present a concept of a compounded representative system that seems to be helpful for the analysis of the reality of multilevel governance as well as for an evaluation of democracy in such structures.

\(^5\) Transnational arenas organised by individual nation states are presumably more effective than multinational co-operation among parliaments or their committees, which already exist (Maurer 1996).
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