

Accountability in the European Union: the cases of the Comitology Committees and the European Council¹

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Status of this paper

This is the first time that we present some results from our research projects on accountability in the European Union. At this early stage of the project, the main goal is to receive feedback, comments and ideas with which to strengthen the empirical research.

We are happy that we can present our provisional findings in both the workgroups on accountability (wg. 3) and on the European Union (wg. 9).

For the accountability workgroup, we would like to know what fellow researchers think about the way we define the concept of accountability. Can the operationalisation of accountability in view of an analysis of EU politics and governance be sharpened?

In the EU workgroup, we would like to pay most attention to findings and practices. Comments on operationalisation and execution of the research are highly appreciated.

Marianne van de Steeg carries out the research on the European Council's accountability. Gijs Jan Brandsma investigates the accountability of Comitology committees.

The European Union has assumed a growing number of competences that previously were located within the national realm. There is a concern that the transfer of competences is not matched with a simultaneous development of arrangements with which European decision-makers are being held to account. The European Union is, for example, blamed of not being democratic, because many decisions are taken behind closed doors. The bottom line of the debate on the democratic deficit is that the development of the European Union has come to a point that it needs some procedures

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that ensure fair outcomes. It needs a system in which decision-makers explain and justify their conduct, and face consequences if necessary. In short: it requires accountability.

In this paper, current practices of accountability in the European Union will be looked into. We will specifically pay attention to two distinct arenas: Comitology committees and the European Council. These two realms share several characteristics. Both in principle operate behind closed doors, and both are influential policy makers in their own way. Yet, they also differ. Comitology committees are found at the end of the legislative process, assisting the Commission in implementing policy. The European Council, on the other hand, sets the course for the European Union. The European Council consists of politicians, while the committees are the exclusive domains of non-politicians.

For both, the question of accountability is an important one. According to the European legislation, comitology committees only assist the European Commission with the implementation of over four hundred regulations and directives. However, the word ‘assist’ may be somewhat misleading, since most committees are not merely advising the Commission, but rather their consent (or lack of opposition) is required for proposed implementation measures. This effectively makes comitology committee participants true decision makers. Are they under scrutiny for their behaviour?

The European Council usually takes key decisions that initiate a whole process of decision-making, such as the EMU, enlargement, and the Lisbon agreement. It also is criticized for its opaqueness and ambiguous relations with accountability forums. A key question is if the European Council is an example of government for the people, or of the people. Is the Presidency accountable to the European Parliament for the whole European Council, or is each head of government accountable to its own national parliament?

Emergent (or non-emergent) accountability practices of both these sets of actors will be described below. But before elaborating in more detail on the practices of these two sets of actors, let us take a look at the overarching concept of accountability first.

1. Accountability

1.1. Definition of accountability

In the literature on accountability, a bewildering variety of definitions exists, ranging from broad concepts defining accountability as transparency, responsiveness and integrity (Behn, 2001: 3-6; Bovens, 2006: 8) to narrow concepts defining it as a specific relationship between an actor and a significant other (Bovens, 2006: 9; Pollitt, 2003: 89).

This paper will follow the narrow concept and, following Bovens, defines accountability as a social relationship between an actor and a forum, in which the actor has an obligation to explain and justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences (Bovens, 2006: 9). In this definition it is clear to distinguish between what is, and what isn’t accountability. First of all, one would need someone to render account, and someone to render account to. Bovens calls these two individuals, groups, or other entities as ‘actors’ and ‘forums’ (Bovens, 2006: 9-10), but elsewhere they are also labelled as ‘accountors’ and

‘accountees’, or as ‘account givers/account holdees’ and ‘account holders’ (Pollitt, 2003: 89; Behn, 2001: 2). Further, there is a relationship between the two, in which the actor explains and justifies his or her conduct to the forum. If necessary, the forum can ask further questions, evaluate the actor’s behaviour in a judgment and make the actor face consequences, either in terms of rewards or of sanctions. This kind of relationship qualifies as an accountability relationship. Through explanation, questioning and judging, previous actions can be evaluated and consequences can be determined.

The definition of accountability can be operationalised by breaking it up in four parts. The elements that should be contained in formal and informal arrangements in order to qualify as an accountability arrangement are:

1. A relation between the actor and a forum (or several forums).
2. Obligation of the actor to appear before the forum. This may be either a formal or an informal type of obligation. It can be enhanced with the obligation to provide certain information and answer questions.
3. The role of the forum is to pose questions and to pass judgement. (It might be that this condition is not always explicitly stated, but can be inferred.)
4. Possibly the element of sanctions or consequences is explicitly defined. If not, there should be examples of a negative judgement followed by a punishment or a positive judgement followed by a reward. There should be sufficient reason to believe that a judgment may have consequences.

1.2. Purposes of accountability

What exactly is the purpose of accountability, and how can it work to fulfil those aims? Opinions diverge in the literature. One can distinguish at least five different perspectives. First, there is the *democratic* perspective. Since any democratic political system ultimately rests upon the notion of government by the citizens, delegation from one authority to the other involves a whole series of principal-agent relationships, with ultimately the citizens as principals. Therefore, accountability mechanisms can be meant for keeping a popular ‘check’ upon the behaviour of public officials enjoying discretion in order to make sure that ultimately the preferences of the people are translated into policy. Therefore, the emphasis of accountability in this perspective is on the content of decision-making (Bovens, 2006: 25; Behn, 2001).

The second view on the purpose of accountability focuses on the prevention of the tyranny of government, or rather the prevention of the abuse of the discretionary powers of people and institutions. This could be called the *constitutional perspective*. Through accountability mechanisms, actors are to be deterred from increasing their powers in a way that distorts institutional balances. Here, the accent does not lie with the content of actions, but rather with the processes that have been followed. Accountability regimes are there in order to make sure that the actors do what they are supposed to do, and nothing more than that (Bovens, 2006: 25-26).

The third perspective emphasizes the quality of the decisions themselves, with accountability providing opportunities for improvement. In this *cybernetic perspective*, past behaviour is reflected upon in order to improve future performance. By rendering account on past behaviour, stakeholders, peers, experts and people up the hierarchy are enabled to express their views on the content of the actor’s actions, after which

afterwards gives both sides the opportunity to change their positions. Through an accountability mechanism, both actors and forums are able to learn from situations in the past. In special circumstances, accountability regimes can also fulfil a function of *purification* apart from learning from past conduct. In such situations, there is not only an impetus for improvement, but there is also a need for a clear demonstration of a break with the past. Especially after crisis situations, policy fiascos or regime change this aim of purification can be fulfilled. In this way, confidence in the system as such can be restored. The Truth Commission in South Africa is a good example of this. (Bovens, 2006: 26-27; Muller, 1994: 28).

Apart from these three perspectives, there is a fourth perspective in the literature that focuses on *maintaining legitimacy* (Muller, 1994: 28). However, this perspective is ambiguous. On the one hand, it is suggested that accounting for behaviour as such will increase legitimacy, because this way any audience can see that accountability practices exist, so that the perception of the audience will be that the actors and institutions are more credible and conducting fair practices. It must be stressed here that here the accent lies with the perception of fairness, rather than with the actual fairness of the behaviour of the actors and forums. On the other hand, it is pointed out that the availability of information about the proceedings of the accountability process will make the less-informed audience suppose that the wheeling and dealing of the actors involved is nasty and dirty business. This way, legitimacy is actually undermined when an under-informed audience is to know about an accountability process (Bovens and 't Hart, 2005: 245-262).

Summarized, accountability can have four different aims: from a liberal democratic point of view it is meant to safeguard democratic inputs and to preserve the division of power between actors and institutions; and from a knowledge-based point of view it provides opportunities to learn from past behaviour. The fourth point that the mere existence of accountability regimes as such provides for legitimacy is controversial.

Having described this, it may look as if accountability is something one can never have enough of. However, this is not the case. As Behn, and Bovens and 't Hart have argued, there should be a balance between accountability and efficiency (Behn, 2001; Bovens and 't Hart, 2005: 245-262). If the balance is tipped in favour of the former, one may easily spend lots of time on explaining one's conduct without having much time left to do one's primary tasks. On the other hand, accountability deficits may occur if opportunities for preserving democracy or learning through accountability have been missed. This may be due to simply missing opportunities for interaction between actors and forums, but this may also be due to underdevelopment of the accountability regime itself. In the latter case, the practices within the accountability regimes do not fit the aims of learning and defending democracy, so that interaction does take place but rarely leads to desired outcomes.

Returning to the debate on the alleged democratic deficit of the European Union, the concept of accountability would very well suit as a means to tackle some of the problems this deficit involves. This is not to say that there is no accountability at all at the moment. On the contrary, several accountability practices have emerged. The question, however, is to what extent the emergent accountability regimes fit the aims of accountability properly.

2. Comitology committees

2.1. Comitology: a diverse group

Non-political actors such as civil servants or independent experts are highly involved in European policy-making. This happens in a wide variety of ways, for example by lobbying, monitoring and advising. A special group of non-political actors engaged in policy-making is found in the so-called 'comitology' committees. These committees are of a special kind. Set up by the Council of Ministers, comitology committees are meant to keep control of the Commission's implementing powers delegated to it by the Council. They assist the Commission in executing policies, but are mainly composed of delegated experts from the member states. This way, comitology committees 'bridge the gap' between Council and Commission by keeping member state control over policies that are to be implemented by the Commission.

In reality, however, these committees have much room for manoeuvre. On many occasions, community legislation is of a more general nature, asking for specific norms to be developed at the implementation stage of policy making (Rhinard, 2002: 196-197). This makes comitology committees very influential, which makes the accountability question relevant. How are the actors participating in comitology committees held to account for the decisions they take?

Straightforward as this question may seem, there is actually a lot of diversity within the total population of comitology committees that needs to be taken into account. First of all, some committees rarely ever meet or do not meet at all, whereas other committees meet up to a frequency of twelve times per year. Secondly, some committees concern themselves with a range of specific issues, while others keep themselves to one specific issue. Thirdly, there is divergence in the role of the committee. They can be dealing with distributing funds, or policy decisions, or derogations to rules, or implementation norms, or setting prices. Fourthly, the type of actors participating in these committees also differs from committee to committee. Officially, only national representatives participate, but the member states may decide themselves whom to send. In general, civil servants participate, but also delegates from non-majoritarian institutions can take part, or even scientists working on the government's behalf. All of them are allowed to bring external experts with them.

Apart from these four differences between comitology committees, it should also be noted that not all committees enjoy equal powers. According to the most recent Council decision on comitology, there are four different types: advisory, management, regulatory and safeguard committees (OJ 1999 L 184). All have different powers.

Advisory committees advise the Commission on specific policies, but the Commission may ignore their opinion. In general, this type of committee is established in areas of low political importance. It is in this type of committee that, occasionally, sectoral interests participate as opposed to member state delegates, such as trade unions or employers organisations (Falke, 1996: 144-145). This committee type has least power from a legal point of view.

In *management committees*, the Commission will execute the proposed measure *unless* the management committee objects to it by a qualified majority. If the

management committee does not object to the measure, the measure can be implemented with immediate effect. If the committee objects, however, the Commission may postpone the implementation of the measure for a period up to three months. During that time, the Council may take a different decision by itself. If it does not, the Commission is free to execute the proposed policy.

In *regulatory committees*, the role of member state representatives is even more pronounced. Here, proposed measures are only implemented *if* the regulatory committee approves it with a qualified majority. If it does not, the Commission will submit the same, a new, or an amended proposal to the Council, and will inform the Parliament of that. Here, the Council decides on the new or amended proposal directly by qualified majority, bypassing the committees. If no decision is taken within three months, the Commission is free to enact its latest proposal. In this regulatory procedure, the Council and the member states have most control over the making of implementation measures.

The last type of committee is the *safeguard committee*, which is very rare. In fact, it is not a special committee, but it entails an extra procedure for another committee. Safeguard committees deal with individual cases, for example with respect to airport access rights or cabotage, and every member state participating in it has the power to refer the proposed decision to the Council (Van der Knaap, 1996: 94; Hix, 2000: 69).

But even this formal classification itself becomes blurred if one takes into account that a comitology committee may act as one type with decision A, and as another type with decision B (Van der Knaap, 1996: 102). Other features adding to the complexity of comitology is that committees with a similar policy interest can decide to meet together, that committees may set up their own sub-groups and advisory groups, and that they may act as mere advisory groups, only acting as comitology committees when it comes to a formal vote (Demmke, 2000: 287-289). Another complicating factor is that the most recent decision on comitology procedures dates back to 1999, and not yet all procedures of comitology committees have been brought into line with it (Haibach, 2000: 210-212).

Therefore, the comitology committees are a very diverse group of committees. Still, they also bear resemblances. All act to provide member state input in implementation decisions, and all are taking decisions on behalf of the European Commission. Even though in theory these committees only concern themselves with the implementation of European policy, in practice the committees enjoy a lot of discretion. Depending on the issue at stake, their decisions can be far-reaching. For example, they can be about designating nature reserves, allowing specific genetically modified resources in food, setting standards for numerous manufactured products, and much, much more. Therefore, the actions of the comitology committees have a direct impact on the lives of citizens, on economic activity, and sometimes they are even decisive in the future of companies (and their employees).² This makes the question of accountability very relevant. How are the decisions of these comitology committees being accounted for?

² For chemical industries, for example, thousands of jobs and a lot of company profit can depend upon the legality of use of certain chemical substances. The withdrawal of single-hulled oil tankers and replacement by new –hence more expensive- double-hulled tankers is also a good example of this (Mark Rhinard, personal communication, March 27 2006)

2.2. Accountability of committee participants

The research into the accountability of comitology decision-making has only just started, and therefore it is far too early to give a comprehensive summary of the state of the art. Still, on the basis of a number of interviews and an extensive document analysis, some preliminary findings can be given. These findings are by far not exhaustive, but nevertheless they give more nuances to a view on accountability than the stereotypical ‘lack of transparency’ for which comitology committees are often blamed (Schäfer, 2000: 22-23; Töller and Hofmann, 2000: 25; Harlow, 2002: 67-70; Dehousse, 2002). Presumably, this is because most of the critique on comitology practices is based on democratic lines of thought. However, there is much more to accountability than only the democratic perspective. It is also possible to view accountability from a constitutional or a cybernetic perspective. They will now be discussed one by one.

From a democratic perspective, the purpose of accountability is to ensure that the *volonté générale* of the citizens is translated properly into policy. This would mean that the content of action must be scrutinized. If one takes the normative standpoint that citizens should be able to monitor comitology committee proceedings themselves, one immediately runs into the problem of intransparency. The meetings of comitology committees take place behind closed doors, which obviously adds to the image of opaqueness. However, the intransparency now is not so big anymore as it used to be. The Commission recently set up an on-line register containing agendas, draft measures, summary records and vote sheets of the committees, and most comitology documents sent to Parliament for information are also available at the Parliament’s website.³ Even though some documents are not mentioned at all, some are placed under the wrong heading, some are mentioned but are only available on special request, and the summary records are in most cases very short, the online register definitely makes it easier for citizens or stakeholders to identify what the committees do and how to locate them.⁴ Much more needs to be done in order to make this information more easily accessible, but certainly it has become easier for citizens and stakeholders to follow the proceedings. Due to this increasing transparency, it is likely that from a democratic perspective it has become easier to hold the actors in comitology committees to account.

Research into to what extent comitology participants are actually held to account by the public, or by their superiors, is now in progress. Two interesting ways of (opportunities for) democratic accountability have already emerged, though. Firstly, if only one person represents a member state, this would enable him to promote his own interest rather than that of the member state as a whole. This possibility becomes more likely if the agenda of a committee meeting is circulated only short before the meeting, or at the meeting itself.⁵ Then, a representative is more or less forced to set his own mandate. However, if two or more representatives are sent, they can keep tabs on each

³ Question remains, however, to what extent the Commission register covers all comitology committees.

⁴ For the Commission’s on-line register, see http://europa.eu.int/comm/secretariat_general/regcomito/recherche.cfm?CL=en ; and for the Parliamentary register of Comitology documents see <http://www.europarl.eu.int/registre/recherche/ListeDocuments.cfm#> . Both registers are updated continuously.

⁵ In a recent unrepresentative sample among comitology committee participants, 45 percent of the respondents indicates that documentation arrives only a day or two before the meeting, or even at the time of arrival in Brussels (Egeberg, Schäfer and Trondal, 2003: 10-11)

other. According to a respondent, this is the standard procedure for delegations from federal states, where many competences lie with the regions. In that case, the official delegate comes from one of the regions, while a federal delegate sits in as an observer in order to keep track of his actions.

Secondly, with a committee in the environmental sector, right after the ‘official’ meeting has ended, a range of stakeholders joins the participants in order to debate and discuss certain issues. This enables the participants and the stakeholders to exchange views, to look for support and to explain and justify the decisions that have been made.⁶

From a democratic perspective, therefore, it is to a large extent not clear yet if and how accountability takes place, but the conditions under which this can take place are definitely improving. Research into this matter is now in progress, so hopefully the next version of this working paper will shed some more light on it.

From a constitutional perspective, accountability is about preventing the abuse of powers. Because most comitology committees give formal opinions without which the Commission cannot operate, they can be powerful actors. From a constitutional perspective, power abuse would be that a comitology committee acts upon issues that are outside its discretion. The management committee for sugar, for example, should not decide to build trans-European motorways, even if that would facilitate the transport of sugar. The committees should only do what they are entitled to do according to the legal act by which they were set up.

In monitoring this, the European Parliament has a role. Ever since the 1999 decision on comitology, the Commission is obliged to send agendas, draft measures, summary records and vote sheets to the European Parliament. If the Parliament feels that a particular decision exceeds the implementation powers conferred on a committee, it may object to it and refer the matter to the Council, or it may ask the Commission to review the draft measure (Haibach, 2000: 212). The European Parliament may not object if it does not like the content of a decision. Its only role is to monitor the proper use of powers. In this sense, Parliament has a role in the constitutional perspective of accountability. As far as can be overseen now, no cases of Parliamentary action regarding power abuse took place. However, Parliament’s role should not be over-estimated. With over a dozen of committee meetings per week, comparing all the vote results and draft measures with the occasionally very complex text of the basic legislation requires a lot of effort. It is therefore questionable to what extent this scrutiny actually takes place (Türk, 2000: 395).

Turning to the learning perspective, accountability can also help to improve future performance, either the performance of individuals or of the committee as a whole. An example of the latter would be an independent expert group, assessing a community policy including the workings of its accompanying comitology committee. Some regulations and directives provide for an extensive evaluation after some years, which may also investigate the functioning of a comitology committee.

The evaluation of the regulation on the conservation, characterisation, collection and utilisation of genetic resources in agriculture could have provided such an investigation, but just fell short of judging the committee’s behaviour. From 1994 to 1999, the regulation provided for a budget of 20 million Euros designated for the use of and research into maintaining bio-diversity in agriculture. After completion of its first

⁶ Interview with a Commission official

work programme, a group of independent experts was set up to evaluate its outcomes and procedures. This expert report was then sent to the Commission, which was preparing a second work programme. Even though the experts used information from the comitology committee deliberations, and even though it was free to assess any aspect of outcomes and procedures, it did not make an evaluation of the functioning of the comitology committee, and therefore an accountability opportunity from the learning perspective has been missed (Commission Communication, 2001/0617).

To what extent this specific form of accountability takes place with other committees is still unclear. Other forms of accountability for the committee as a whole might be found in situations where, after the official committee meeting, a range of stakeholders is invited who are actively participating in executing and monitoring the policy; the same situation as was described above with the democratic perspective on accountability. The stakeholders are informed about the proceedings in the committee, and then they could take the opportunity to criticize these on the basis of their expertise. Maybe other opportunities of learning through accountability will be found later.

However, there are indications from other research projects that the first and foremost requirement of accountability, namely knowing who is dealing with which issues, is not satisfied in full, even among participants themselves. As Brendan Flynn notes polemically on the basis of an interview with a senior Dutch civil servant on environmental policy: “He noted simply how little he knew of who, from the Dutch government, actually attended comitology meetings in the environment sector. He could get no lists of participants, or minutes of their meetings, but he might meet them or hear about their work incidently (sic). Overall though, he seldom felt he knew what they discussed and in his own words, ‘had to beg them for little bits of information’.” (Flynn, 2000: 93). This lack of access hardly enables committee participants to profit from each other’s expertise. One must keep in mind, however, that this phrase refers to the lack of communication between participants of different committees. On the other hand, there are also indications of communication between members of the same committee in which the participants with most expert knowledge receive much attention (Schäfer e.a., 2000: 33). To what extent this communication also entails accountability has not been researched yet.

Even though research has only just started, a number of indications emerged already that the committees and their participants are not completely unaccountable. Therefore, comitology procedures are absolutely not as black and murky as they are often depicted, even though it may seem as if there is some truth in that when looking to it from the outside. Question remains, however, to what extent the current procedures suffice.

3. European Council

3.1. Is the European Parliament able to hold the European Council to account?

Democracy is the *raison d’être* of the European Parliament. In the debate on the Treaty of Maastricht, the European Parliament defines itself as the nucleus for democracy in the

European Union.⁷ For example, the European Parliament is identified by the leader of the European People's Party *as the only institution that has been democratically and directly elected by the people*. This makes Parliament in his view a more important institution from a democratic perspective than the Council that only pretends to have a democratic basis.

This part of the paper analyses the performance of the European Parliament on one of the functions of a Parliament in democracy: holding the Executive to account. In the case of the European Union both the Commission and the (European) Council perform executive type tasks (Curtin, 2004: 97-110). So far, more attention has been dedicated to Parliament holding the Commission to account. Treaty changes since Maastricht have given the Parliament more leverage over the Commission.⁸ The scandals of the Santer Commission (1999) and Buttiglione (2004) gave Parliament a chance to demonstrate that it is willing to use the powers with which it has been endowed. Instead, we will focus on whether the European Parliament is able to hold the other Executive, the European Council, to account.

The European Council is the institution *par excellence* that defines the course of the European Union. Some say that the decision-making by the European Council is democratically legitimated by the fact that its members are elected Heads of Government and Presidents who are held to account by national Parliaments in their home countries. Others, such as the MEP quoted above, doubt this democratic basis. In this view, a plethora of national Parliaments is not capable to keep a European institution into check. Therefore, the European Parliament – elected by the European citizens – should be sufficiently equipped to hold the (European) Council to account. The aim of this research project is to investigate both claims. In this paper, an analysis is presented of how the European Parliament holds the European Council to account. Afterwards, the same research design will be applied to analyse how various national Parliaments hold the European Council to account.

3.2. Research design

Compared to the research into comitology committees, the research into accountability practices of the European Council is in another stage. Whereas the comitology research is still in an exploratory stage, all the relevant documents to analyse the relationship between the European Parliament and the European Council are readily available. Therefore, the research program listed below is immediately applied to the analysis of the plenary sessions of the European Parliament.

Dependent variable: Accountability debates around summits of the European Council. For this paper, the plenary debates have been analysed. This means that the focus is on the performance of the Parliament on its central, most public stage.

⁷ Debate on the European Council of 9 and 10 December 1991, European Parliament 12 December 1991 (Nr. 3-412/223).

⁸ For example, the Treaty of Maastricht has strengthened the position of the European Parliament at the investiture of the Commission.

Cases: Treaty of Maastricht (1991), Treaty of Amsterdam (1997), Treaty of Dublin (2004), BSE (1996), Haider and the sanctions against Austria (2000), environmental disaster and the Prestige (2002) (see table 1 for a quick summary of each case).

Table 1. Overview of the six cases analysed.

Maastricht (1991)	European Community becomes European Union with 3 pillars, the second and third are intergovernmental; EMU; Social Charter EU-11, criticism about democratic deficit; referendum in Denmark.
Amsterdam (1997)	More decision-making by majority; Euro-zone; Schengen included in Treaty; in view of enlargement was not able to change QMV and number of Commissioners; referendum in Denmark and France.
Dublin (2004)	Constitution for Europe; streamlining Treaties; European Council as an institution; strengthening position of Parliament and citizens; referendum in various countries, not yet ratified.
BSE (1996)	Official start crisis announcement in British Parliament that 6 people died of Creutzfeldt-Jakob; ban on meat products from the UK; UK obstructs normal functioning of the EU and EU summit in Florence; criticism that UK and EU reacted inadequately, putting economic interests above health; Commission temporarily lifted part of the ban too early after political pressures and on advice of veterinary committee.
Haider (2000)	October 1999, Haider's FPÖ becomes second party in Austrian elections; coalition negotiations ÖVP-FPÖ; European leaders meet at Holocaust conference, Austria is warned; a public outcry, demonstrations against racism in Europe everywhere; ÖVP-FPÖ government installed; Treaty provisions not met, thus bilateral sanctions EU-14 against Austria, Commission ensures normal functioning EU; sanctions become a hot potato; lifted after investigation by committee of Three Wise.
Prestige (2002)	November 2002, oil tanker Prestige sinks before the coast of Spain/Portugal; ship dragged around, no harbour accepts it; rescue operation fails; coast of Galicia stained with oil; environmental, economic and social disaster; member states criticised for not enacting EU legislation; Commission and Council criticised for not having implemented measurements announced after disaster with the Erika before the coast of Brittany.

Constant: Institutional set-up, such as the Treaty provisions governing the relation between Parliament and Council, and the format of the plenary debates.

Independent variables:

1. Time.

The six cases cover a period from 1991 to 2005.

2. Normal politics *versus* crisis management.

Even though Treaty changes as such are not so normal, the three cases of Maastricht, Amsterdam and Dublin are considered as examples of normal politics. Treaty changes are procedures that can be planned well in advance. Usually, there is a long preparatory stage, in which the many issues are debated.

BSE, Haider and the Prestige are examples of crises with which the EU was forced to deal. Characteristics that differentiate crisis management from normal politics

are: an externally generated sudden challenge that needs an urgent reaction, and requires the European Union to deal with a specific problem.

3. Saliency of the crisis.

BSE is the most salient crisis as it covers health issues and potentially all European citizens risked being infected. The disaster with the Prestige is the least salient crisis, since it had only a direct impact on a precisely circumscribed geographical area. The Haider affaire is a crisis that is somewhat more salient than the disaster with the Prestige, because the concern about xenophobia, racism and Nazism touches citizens all-over Europe. However, the political problem of an emergence of racism in the heart of Europe cannot be compared to the health problem posed by BSE.

Hypotheses

1. It is expected that over time, the European Parliament is able to hold the European Council more to account.

For various reasons it is expected that there is over time more public scrutiny. For example, in comparison to 1991, the EU in 2005 deals with more areas of public policy and legislation that are sensitive to public concern. Another reason could be that over time the European Parliament has reinforced its position in the decision-making process.

2. It is expected that at times of crisis management there is more of a need for public scrutiny than at times of normal politics.

Crisis management is likely to be more controversial, and has more of a direct political saliency than more or less regular 'package deals' concluded by European leaders in the mode of normal politics.

3. It is expected that the more salient the policy field in which a crisis occurs, the more there is a need for public scrutiny.

Operationalisation

The operationalisation of the definition of accountability developed in the section on the definition of accountability (p. 3) is used to analyse whether the relation between the European Parliament and the European Council established in the Treaties counts as a full-fledged accountability arrangement. The concept of accountability is operationalised in an even more down-to-earth fashion in order to analyse the plenary debates of the European Parliament. The questions guiding this analysis are:

1. To what extent asks the forum about the conduct of the actor?
2. To what extent does the actor refer to her conduct when answering? To what extent does she explain and justify her conduct?
3. The more frequent, and the more explicit and specific the questions and answers are the higher the intensity of the accountability arrangement is.

3.3. Institutional set-up restricts accountability

Accountability is a game with two players: the actor, who is being held to account, and the forum that demands accountability. Whether an intense accountability debate will ensue depends on the combination of the moves of each of the players. However, the game is not played in a void. The rules of the game, such as the Treaty provisions and the format of the debates, set the room of manoeuvre for each player, and give the players a range of instruments they can play off. In this case, it could be said that the rules of the game are not very favourable to the European Parliament. The Parliament has only a few trump cards in its hands, and can easily be out played by the Council, if the Council wants to.

The Treaty provisions related to accountability give the Parliament little leverage over the (European) Council. Two out of the four conditions for a formal arrangement of accountability are met (see the section on the definition of accountability, p. 3). First, a relationship between the European Council (the actor) and the European Parliament (the forum) is established. Second, the actor is obliged to appear before the forum. Article 4 TEU states that the European Council reports after each of its summits to the European Parliament, and also submits to the Parliament a written annual report concerning the progress the European Union has made. Thus, according to this Treaty provision the European Council is obliged to appear before the Parliament and give a certain type of information, however, it does not say anything about answering questions. Similar provisions have been made regarding CFSP (article 21 TEU) and JHA (article 39 TEU): the Presidency is to inform the European Parliament. In conclusion, it can be said that in contrast with the situation in the member states and the relationship between the European Parliament and Commission,⁹ the European Parliament has not been granted all the powers of a full-fledged accountability arrangement. Especially, a provision stating that the judgement by the forum may entail consequences for the actor is absent.

Fortunately, for the Parliament, other arrangements reinforce its position *vis-à-vis* the European Council. First, even though the Treaties do not stipulate explicitly that the Parliament is entitled to ask questions, this is included in the standard procedure of the formal appearance of the Presidency in the plenary of the European Parliament. The same can be said about the presence of the President of the Parliament at the opening of a meeting of the European Council, the inter-institutional conferences to prepare Treaties and statutes, and the informal monthly meetings between the Presidents of the Commission, the Parliament and the Council. Even though there is not any rule that gives the Parliament a right to have its questions answered by the European Council, the setting provided by these various types of meetings may be used in favour of accountability. Second, in a similar vein as the first point, the Parliament may use its leverage over the (European) Council in terms of decision-making. For many decisions, the (European) Council needs a favourable opinion from the Parliament. The Parliament has over the years been granted more powers to perform its function of influencing legislation. These

⁹ Article 214 (2) on the appointment of the Commission and article 201 EC on the vote of censure establish that the Commission needs a positive judgement from the European Parliament. Thus, regarding the relationship between the Commission and the Parliament, the forum may after a debate pass a judgement that could have consequences for the actor. Thereby, besides the first two, also the third and fourth condition of a full-fledged accountability arrangement is met.

powers could be used to benefit accountability, since the exercise of the parliamentary function of influencing legislation may in practise be intertwined with the function of public scrutiny.

Maybe the most important trump card the European Parliament can play is the aura of democracy. Parliament plays this card often, it is for example contained in the statement by the leader of the European People's Party mentioned in the introduction made during the discussion of the Maastricht Treaty: the Parliament is *the only institution that has been democratically and directly elected by the people*. Since democracy is a central value of the European Union and its member states, this card gives the European Parliament moral power over the other institutions. So far, the democracy discourse has helped the Parliament in expanding its position in terms of decision-making. It may also reinforce the position of Parliament in terms of accountability. A freely elected Parliament, the epitome of democracy, cannot be fully disregarded by the other player. Even though relevant Treaty provisions are absent, the European Council is morally obliged to respond to the questions posed by the European Parliament.

Whereas the Treaties and the moral force of democracy give Parliament some instruments to demand accountability, the format of the plenary debates gives the European Council ample room of manoeuvre to decide the extent to which account is being given. The format of the plenary debate gives the Presidency the liberty to pick and choose to which of the many questions and comments an answer is given. The Presidency and the Commission open the debate with a (usually) long introduction. Then, the presidents of the Parliamentary groups in order of size make a statement, followed by other MEPs. The Commission, and, subsequently, the Presidency have the last word. This means that an MEP does not have the chance to pose a follow-up question to pinpoint the Presidency to the question she wants to have answered.

Usually, the final statement by the Presidency, referring back to the comments made by the MEPs, is shorter than the opening statement. It comes as no surprise that the final statement is limited to answering just a couple of questions. Moreover, when the Prime Minister of the member state that holds the Presidency has to leave the meeting early, his final statement comes immediately after the contributions by the leaders of the Parliamentary groups. In that case, the first political responsible has only to answer to a small part of the debate. This happens for example in the debates on the European Council summits in which, respectively, the Treaty of Maastricht, and the BSE affaire are discussed. In the case of the Haider affaire, the situation is even worse, for the Portuguese Minister of Foreign Affairs and the Commission President make an opening statement, but only Commissioner Kinnock makes a closing remark. From the minutes of the meeting it is not clear when the Presidency has left the room.

The institutional set-up shapes the conditions under which the two players, the European Parliament and the European Council, play their role in the accountability game. Since the European Parliament would want to play its role as a full-fledged Parliament, it can be expected to use the formal accountability arrangements and its moral force to demand accountability. Although the Parliament has various settings at its disposition in which to demand accountability (e.g. commission meetings), the plenary session is symbolically the central platform for public scrutiny. Instead, it is not necessarily in the interests of the European Council, the other player, to give full account of its conduct. It can be expected that when the demands for accountability by Parliament

touch on painful issues, the European Council refrain from giving account. In view of the formal provisions and the format of the debate, the European Council has ample choice to refrain from giving (full) account without incurring substantial costs.

3.4. On how the accountability game is played

Knowing the position of the two players, we will now see how they act in the six debates analysed. The question is whether within the general context of the institutional setting, the saliency of an issue matters for the interactions between the players, and, thus, for the ensuing intensity of the accountability debate.

Table 2. The two players in the plenary debates on the six cases.

	<i>Forum: European Parliament</i>	<i>Actor: European Council</i>
Maastricht (1991)	The big question is how the Council could have made such a Treaty. Issues: unreadable, pillar structure, democratic deficit and CFSP/JHA, democratic deficit and EP, social chapter without UK	Opening statement: explained why social chapter for EU-11 and why better result regarding co-decision with EP impossible. Final statement Prime Minister, half-way the debate: touches on a few of the major criticisms and just states that he has a different reading of the problem with the social chapter and EP influence on CFSP/JHA. He does not refer to arguments made by MEPs. Min. of Foreign Affairs, end of debate: says in terms of substance hardly anything.
	High demand for accountability	Opening: Explains and justifies conduct. Final: Hardly
Amsterdam (1997)	Pleased with several aspects. Criticism that Treaty does not prepare for enlargement and major issues Commission and QMV are left open. Demands clarification on position EP in co-decision.	Opening and final statement Prime Minister: extensive justification of conduct. Explicitly refers to the criticisms. Admits problems. Final statement State Secretary: clear answer to demand of clarification, agrees with reading MEP.
	Average demand for accountability	High level of explaining and justifying conduct.
Dublin (2005)	In general, happy with the Treaty. Presidency praised more than on any other occasion. Final debate the two rapporteurs, senior MEPs, play the role of the Presidency by defending against criticisms.	Opening statement Prime Minister: Praises extensively the contribution made by the EP and the two representatives of the EP at the IGC. Some justification of conduct. Final statement Prime Minister: Refers to only a few comments by MEPs, answers partly from his role as Irish PM instead

	Commissioner: <i>It is the first time that the EP does not have a catalogue of remarks (...) this is the most positive judgement of an IGC.</i>	of Presidency. However, hardly any demands for accountability were made, so there is hardly any need to give account: everybody is happy, and in a certain sense everybody was present at the decision-making stage.
	No demand for accountability. Very positive judgement.	Considering that there is little need for giving account, average level of giving explanations.
BSE (1996)	Very critical. Many demands. Very concerned. Special crisis summit: Most criticism on UK for measurements and obstructionism and on Commission for measurements. Fear that economy more important than health. Two meetings on normal summit: Because of solving political crisis of obstructionism UK, summit did not deal with its original theme, the important issue of employment. This criticism is repeated at the second meeting, but somewhat less.	Special crisis summit. Opening statement State Secretary: Justifies why decision to relax the measurements was neither accepted nor rejected by the Council and left to the responsibility of the Commission. No final statement answering to MEPs. First meeting normal summit. Opening statement Min. Foreign Affairs: Criticises conduct UK. Regrets that time had to be dedicated to this crisis, but summit is a success. Final statement Min. Foreign Affairs: Not a single comment on BSE and the political crisis. Second meeting normal summit. Opening statement Prime Minister: BSE mentioned briefly, happy that political crisis is over. Opening statement Min. Foreign Affairs: Nothing. Final statement Prime Minister, halfway the debate: Does not respond to criticism and sings his own praise. Final statement Min. Foreign Affairs: In one line thanks the MEPs for their appraisal of having solved the political crisis. This is all.
	Very high demand for accountability.	Hardly any explanation or justification of conduct on any occasion. ¹⁰
Haider (2000)	In February, the EP praises the Presidency and the EU-14 extensively. Only PPE neutral (ÖVP is a member). Commission criticised for not taking a tough position.	February meeting. Opening statement Min. Foreign Affairs: Announcement sanctions EU-14 and explanation. No final statement Min. Foreign Affairs. Summer. Min. Foreign Affairs: Does not really answer the questions, sticks to the

¹⁰ The Commission explains and justifies its conduct in the BSE crisis to a higher degree than the Council Presidency. However, this research project is on the accountability relation between the European Parliament and the European Council, not between Parliament and Commission.

	Affair mentioned again occasionally in summer. Left wing MEPs still happy. Parliamentary group Europe of the Nations, Austrian MEP PPE and MEP FPÖ pose critical questions, chance missed at summit to end political stalemate. Question time used: including follow-up questions.	formal position that this is a bilateral issue, even though MEPs are tough on him.
	February: Positive judgement. Summer: Few MEPs demand insistently accountability	Formal way of justifying conduct, average level of explanation.
Prestige (2002)	Spanish MEP leader PSE refers to Prestige at general debate on summit. Special debate after summit with Min. Foreign Affairs Presidency. Very critical on Council and Commission: measurements after Erika were not implemented. Many explicit demands. Decisions Council too little too late. Partly MEPs with relation to disaster area.	General debate. Prestige not mentioned by Presidency, Commission, leader PPE or ELDR. Special debate. Opening statement Min. Foreign Affairs: Measurements. Final statement: Refers to what has been done in the past months since the Prestige, does not reply to the main criticism on the mistakes made between this and the previous disaster. Finishes with 'trust us' and good luck with 'controlling' future Presidencies.
	General debate no demand. Special debate high demand for accountability.	Explanation and justification limited to actions current Presidency. Avoids giving the type of account that is demanded.

Hypothesis 1. It is expected that, over time, the European Parliament is able to hold the European Council more to account. One of the arguments for this thesis is that when gradually more sensitive areas are Europeanised, the need for accountability and democratic legitimacy increases. Following this line of thought, there is more (public) pressure on the European Parliament to fulfil its role of public scrutiny and more (public) pressure on the European Council to give account.

At first sight, it might seem that this hypothesis can be accepted on the basis of the three cases of Treaty change. Comparing the three debates a crescendo can be noticed. In the debate on the summit that passed the Treaty of Maastricht, the Parliament demanded accountability, which it did not receive. The debate on the Treaty of Amsterdam more explaining and justifying the Council's conduct was given. Finally, in the case of the Treaty concluded at Dublin, there was complete satisfaction on both sides.

However, I would not extrapolate this. The problems in the ratification of the Treaty on the Constitution for Europe concluded at Dublin have shown that more involvement of the European Parliament (and national Parliaments) is not necessarily a panacea for democratic legitimacy and public support. This diminishes the leverage the European Parliament can draw from the aura of democracy. It is quite possible that the debate after a future Treaty change has more of the characteristics of the debate on the Treaty of Maastricht – the European Parliament demanding accountability, but not receiving it – than the debate on the Treaty concluded at Dublin – cooperation and satisfaction on both sides.

Hypothesis 2. The expectation that at times of crisis management there is more of a need for public scrutiny than at times of normal politics can be sustained as far as the moves by one of the two players in the accountability game is concerned. At times of crisis there is a considerably higher demand for accountability. The contributions of the MEPs to the debate contain a higher sense of urgency. The contributions are more specific and concrete, for example, in pinpointing the mistakes that the Council has made in the crisis management. In comparison at normal politics, the demand for accountability is more related to processes and actions instead of decisions. That is, in the debates on Treaty change, the focus is more on the specific decisions that have been made. Instead, in the debate on a crisis, the focus is more on the behaviour of the various parties involved. The moves made by the European Parliament in a debate on crisis management convey that something important is at stake.

The same cannot be said for the other player. Even though the European Parliament expresses in times of crisis more of a need for public scrutiny, the Presidency of the European Council does not necessarily act more accountable. In fact, the highest level of explanation and justification of conduct can be discerned in the debate on the Treaty of Amsterdam, i.e. normal politics.

Hypothesis 3. Differences in demanding accountability in the three cases on crisis management can be explained with the saliency of the policy area of the crisis. A crisis concerning health and food safety (BSE) generates more of a need for public scrutiny than a political crisis (Haider) or an environmental disaster in a restricted area (Prestige).

In conclusion, we can partly explain when the European Parliament is more tenacious in holding the European Council to account. However, since the European Council is only obliged to inform the Parliament, and does not face any consequences in case of a negative judgment, it is a matter of personal disposition of the politician who represents the European Council whether the Council's conduct is explained and justified. Of course, this conclusion is only based on an analysis of the plenary sessions of the European Parliament. It might well be that less public venues, such as parliamentary commissions and informal meetings, are better places for holding the European Council to account. The next steps in this research are, first, to interview MEPs in order to check for other venues and get the inside view, and, subsequently, to broaden the scope to an analysis of the labor of some selected national Parliaments.

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