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Towards a More Accountable EU

Retrospective and Roadmap

Mark Bovens, Deirdre Curtin & Paul 't Hart

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1. An EU accountability deficit?

Why bother about EU accountability? One reason to do so is the nature and reach and intensity of EU governance as it has evolved over the years. The ecology of European governance certainly embraces law making and its implementation and the Treaty based and other powers of the various key political actors (the European Council, the Commission, the Council, the European Parliament). The European Council sets the agenda and steers the often the law-making institutions, the Commission proposes the content of far-reaching legislation and ensures its implementation and the Council is either co-legislator or main decision-maker, depending on the policy area. European governance also covers the (considerably greater) non-legislative power of the European Union that is exercised to a considerable extent by a host of more 'hidden' but nonetheless formal actors towards the backstage of European governance (for example, European level agencies and 'comitology' committees). Agencies that provide key certification of airbuses and committees that decide which tracts of land to place on the environmentally protected area list are adopting decisions that are seemingly 'technical' but may also be politically salient in a host of ways. All these decisions, both legislative and non-legislative, matter, also ultimately for the European citizen, even if he or she is only sporadically or invisibly affected by it. To keep such a system in check, keep it smart, and provide it with public legitimacy is a key and urgent challenge (Scharpf, 1999; Arnall and Wincott, 2002: 1). Designing and managing appropriate accountability regimes is often perceived as a crucial part of meeting this challenge (Schmitter, 2000; Fisher, 2004: 496).

In the past years, much discussion has been focused on the relative merits of various proposals to institutionalize accountability in the complex, multilevel web of European governance structures. However, other than a few descriptions of existing formal accountability arrangements, there have been almost no efforts to describe and evaluate how existing accountability mechanisms regarding the major EU institutions actually operate. The aim of this article is to fill part of this gap and to assess more systematically if, where, and how, the EU suffers from an accountability deficit. We present a framework for assessing EU accountability structures and practices which juxtaposes three criteria sets from the prevailing theories of European governance (intergovernmentalism, supranationalism and regulatory

functionalism) and combines these with three fundamentally different views on the functions and forms of accountability in public governance. The framework is then applied in a 'trend report' with regard to the state of accountability regarding four key EU institutions (European Council, Commission, Comitology and agencies), grounded in detailed empirical case studies of both de jure and de facto aspects of (aspects of) their accountability practices.ⁱ Ours is therefore not a comparative study but a set of coordinated studies that all employ the same definition of accountability and draw on (parts of) the same analytical framework for mapping and assessing accountability mechanisms. This is certainly not ideal for the purposes of holistic judgment of the state of accountability practices for the EU polity as a whole nor explains observed similarities and variations but it does provide a first cut at a deeper understanding of the working of specific accountability mechanisms in practice. Finally, based on this assessment, we place these results in the context of recent changes in the EU's institutional architecture, following from the Lisbon Treaty.

2. Mapping and assessing accountability: A framework for analysis

In its *White Paper on Governance* and in several consecutive documents, the European Commission (2001, 2003) uses 'accountability' rather loosely. It serves not only as a synonym for 'clarity', 'transparency', and 'responsibility', but it is also equated with much broader concepts such as 'involvement', 'deliberation', and 'participation'. This lack of clarity is not surprising, as it mirrors the existence of different schools of thought in the wider literature.

One treats it as a normative concept, as a set of standards for the evaluation of the behaviour of public actors. Accountability or, more precisely, 'being accountable', is seen as a *virtue*, as a positive quality of organizations or officials. Hence, some accountability studies focus on normative issues, on the assessment of the actual and active behaviour of public agents (Dubnick, 2002; Koppell, 2005). Another school of thought conceptualises accountability as a social *mechanism*: an institutional relation in which an actor can be held to account by a forum (Bovens, 't Hart and Schillemans, 2008; Meijer and Schillemans, 2009).ⁱⁱ The locus of analysis in such studies is not the behaviour of public agents, but the way in which these institutional relations operate;

and their focus is not whether the agents have acted in an accountable way, but whether they are or can be held accountable ex post facto by accountability forums.

This article fits within this latter tradition. We leave the broader, deontological discussions about accountability and EU governance to others (Schmitter, 2000; Arnall and Wincott, 2002; Harlow, 2002; Lord, 2004; Bogdanor, 2007). We define accountability as: *a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences*. The relationship between the actor and the forum, the actual account giving, usually consists of at least three elements or stages.

First of all, it is crucial that the actor is obliged to *inform the forum about his or her conduct*, by providing various sorts of data about the performance of tasks, about outcomes, or about procedures. Often, and particularly in the case of failures or incidents, this also involves the provision of explanations and justifications (Bovens et al., 1999; Hearit, 2005). The second stage is *debate*. There needs to be a possibility for the forum to interrogate the actor and to question the adequacy of the information or the legitimacy of the conduct - hence, the close semantic connection between 'accountability' and 'answerability'. Thirdly, the forum may *pass judgement* on the conduct of the actor. It may approve of an annual account, denounce a policy, or publicly condemn the behaviour of an official or an agency. In passing a negative judgement, or following it, the forum may impose consequences on the actor. These consequences can be highly formalized, such as fines, disciplinary measures, civil remedies or even penal sanctions, but they can also be based on historical conventions.

We call an accountability relationship that has taken on an institutional character an *accountability arrangement* and we speak of an *accountability regime* as the sum of a series of interconnected accountability arrangements and relationships regarding a particular actor. Mapping the webs of accountability surrounding public institutions requires one to grasp if and how particular accountability relations have been institutionalized into arrangements, as well as carefully check how various types of arrangements combine into overall accountability regimes. Public institutions such as the European Commission are subjected to various accountability regimes simultaneously, such as a regime of political accountability to the European Parliament and the Council, legal accountability to the European Court, and

administrative accountabilities to the European Anti-Fraud Office (OLAF), the European Ombudsman, and the European Court of Auditors. Each of these regimes may, in turn, consist of various formal relationships and informal practices.

Assessing the adequacy of a particular accountability relationship, arrangement, or regime to which a particular agency or sector is subject, requires more than just empirical mapping. It also presupposes applying some normative yardstick to evaluate the observed accountability rules and practices. The key question is obviously what the actual effects are of the various types of accountability and how to judge these effects. At this level, inadequacies can either take the form of accountability deficits (lacking or trivial accountability arrangements) or of accountability excesses (a dysfunctional accumulation of a range of accountability mechanisms). Scholars often claim the former inadequacy afflicts many dimensions of European governance (Arnull and Wincott, 2002; Harlow, 2002; Fisher, 2004), whilst the latter is increasingly reported by executive agencies and public managers on the national level (Anechiarico and Jacobs, 1996; Power, 1997; Behn, 2001; Halachmi, 2002).

How do we establish whether these different sorts of inadequacies exist in contemporary European governance? We can do so by articulating the normative dimension of accountability mechanisms: what are their appropriate aims, forms and functions in the public sector in general? And what are they in EU governance in particular? We contend that there are three normative traditions to be taken into account with regard to each of these questions. Juxtaposing the two three-fold criteria sets that can be derived from these normative traditions provides us with a comprehensive and balanced assessment tool. We tackle each question in turn.

Perspectives on public accountability

Democratic: accountability as popular control – From the perspective of democratic theory public accountability helps citizens to control those holding public office in their names and, to make sure their representatives are responsive to their concerns and preferences (March and Olsen, 1995: 141-81; Mulgan, 2003). The modern representative democracy could be described as a concatenation of principal-agent relationships (Strøm, 2000, 2003; Lupia, 2003). Each principal in the chain of delegation seeks to monitor the execution of the delegated public tasks by calling the agent to account. At the end of the accountability chain are the citizens, who pass

judgement on the conduct of the government and who indicate their displeasure by voting for other popular representatives. Hence public accountability is an essential condition for the democratic process, as it provides the people's representation and the voters with the information needed for judging the propriety and effectiveness of the conduct of the government (Przeworski et al., 1999).

Constitutional: accountability as safeguard - The main concern underlying this perspective is that of preventing the tyranny of absolute rulers, overly presumptuous, elected leaders or of an expansive and 'privatized' executive power. This perspective reaches back to the liberal tradition in political theory (O'Donnell, 1999). The remedy against an overbearing, improper, or corrupt government is the organization of 'checks and balances' - of institutional countervailing powers. Other public institutions, such as an independent judicial power or a Chamber of Audit are put in place next to the voter, parliament, and political officials, and given the power to request that account be rendered over particular aspects. Good governance arises from a dynamic equilibrium between the various 'estates' (Fisher, 2004).

Learning: accountability as intelligence - In the third perspective accountability is seen as a tool to make and keep governments, agencies and individual officials, smarter in delivering on their promises. The possibility of sanctions from clients and other stakeholders in their environment in the event of errors and shortcomings motivates them to search for more intelligent ways of organizing their business. Accountability mechanisms induce openness and reflexivity in political and administrative systems that might otherwise be primarily inward looking. There is a long-standing tradition in political science and related fields with which this idea neatly fits (Deutsch, 1963; Easton, 1965; Luhman, 1966).

Perspectives on EU accountability

The question about the specific purposes of accountability in the context of European governance is answered differently by the three most prominent normative perspectives on European integration.

Intergovernmentalist: accountability to national principals -Intergovernmentalism assumes that the institutional form of the EC and later that of the EU is sufficiently

like other international organizations that it can be studied within a conventional interstate relations perspective (De Witte, 1994; Schermers and Blokker, 2003; Werner and Wessels, 2005). A variant to this approach is what has been termed liberal intergovernmentalism (Moravcsik, 1993; Schimmelpfennig, 2004). It depicts states as unitary actors (via national governments driven by national preferences) on the European scene and assumes that no actors other than national governments play a significant independent role in negotiations beyond the state. This perspective insists that the actors at the EU level are accountable to the member states. What matters is that representatives of the member states (in the Council of Ministers, in the European Council and in intergovernmental negotiations) can and will be held to democratic account for their actions and inactions at the national level.

Supranationalist-federalist: accountability to a European demos - Viewing the EU as an evolving (federal) state at the supranational level of governance implies logically that the Commission may be considered as a type of supranational 'government' and the Court of Justice as a federalizing organ with central and binding authority. From this point of view it is problematic that such supranational institutions are not embedded within an autonomous and democratically legitimate political system (Mair, 2005). The supranationalist perspective emphasizes the need to hold autonomous EU actors accountable in their own right - and on the desirability of having legitimate and competent EU-level accountability forums to do so effectively, hence its strong interest in the strengthening the institutional capacity of forums such as the European Parliament and the European Court of Justice.

Regulatory: accountability as oversight by peers - A third key perspective on EU governance sees the emerging structure in Europe as a governance regime grounded in the manner in which the EU has evolved as a matter of policy making in day-to-day practice. Majone, many years ago referred to it as the 'regulatory state' (Majone, 1996), but it is more appropriate to characterize it as a regulatory regime. It envisages the EU as a functional regime set up to address problems that the member states cannot resolve when acting independently. From a regulatory regime perspective, it is justifiable to remove some areas of governance from the realm of politics. Likewise, the accountability of these governance mechanisms is to be provided in apolitical arrangements (for example, management boards composed of technical experts

rather than national representatives overseeing European agencies, peer review committees of experts overseeing comitology committees, or more widespread use of benchmarking and visitation).

In short, when confronted with information about the formal and de facto accountability arrangements around a particular EU institution, proponents of these perspectives will most likely arrive at *different* assessments of their relevance and appropriateness. Table 2 gives an overview in schematic form of core understandings of the three different perspectives with regard to the specific actors of interest to us, i.e., the European Council, the Commission, and the ‘lower-level’ more technocratic actors: comitology committees and non-majoritarian (executive/regulatory) agencies.

<i>EU actor</i> <i>EU governance perspectives</i>	<i>European Council</i>	<i>Commission</i>	<i>Comitology</i>	<i>Agencies</i>
<i>Intergovernmental</i>	To national parliaments and electorate	To member state governments	To national representatives To national hierarchical superiors	To member state governments
<i>Supranational</i>	To European Parliament (collectively); To European Court of Justice	To European Parliament; To European Court of Justice	To Commission/ Council To European Parliament To European Court of Justice	To Commission/ Council To European Parliament and To European Court of Justice
<i>Regulatory</i>	n.a. (the perspective is focused on role of administrative	To Court of Audit To sectoral and international expert review/benchmark	To peer review style audit committees	To management boards composed of technical experts To professional

	actors only)	bodies		accreditation and benchmark bodies
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Table 1 Contending integration perspectives on accountable EU governance: who ought to be accountable to whom?

3. Assessing the state of EU accountability

The growing scope of formal and informal accountability

Given the realities of limited resources, aspiring for a complete picture of all relevant formal rules and observable practices regarding accountability in every nook and cranny of EU governance is simply impossible. We, like other students of the subject (for example, Harlow, 2002; also Curtin, 2009) have had to delimit both our object of study and the ways in which we analyse it. We applied our definition of accountability consistently to address both *de jure* (rules) and *de facto* (practices) dimensions of accountability across each of our four case studies. What composite picture can we draw from these four exercises?

It is clear that in recent times, the black letter law of EU-level accountability forums has not stood still (even before the Treaty of Lisbon entered into force). There are more of them now than even ten years ago (proliferation) and some of them have a markedly increased potential to critically engage with executive actors (expansion). Particularly the European Parliament has been accruing formal means to investigate, demand information from, debate with, and sanction EU office-holders and agencies across a range of areas. Likewise, the European courts' expansive interpretation of their mandates has been as conspicuous as it has been unstoppable (Slaughter, Stone-Sweet, and Weiler, 1998; Arnall, 1999; Gormley, 2002). A pertinent example is the judicial filling of a formal treaty gap when the General Court unilaterally broadened the scope of its mandate when measures that produced legal effects formally lacked the possibility of judicial review.

Following the assessment of formal rules, we used a variety of data gathering methods to obtain insight into how the formal powers are actually being used by forums and responded to by the actors, and what accountability practices result from

this interplay. This allowed us to examine whether and how the growing array of formal powers to hold EU actors to account that have fallen to various national and EU level forums translate into observable accountability practices. Do they remain ‘dead letter law,’ or have they provided the wedges needed to open up the hitherto opaque structures of executive power in Europe?

The empirical record of this study provides mixed evidence. Clearly, some forums do not vigorously pursue the cause of scrutinizing the behaviour of key EU actors. With regard to comitology committees it appears that many supervisors of national comitology participants do not want to know, or feel they don’t have time to know, what their junior colleagues are up to when they engage with their professional peers on the EU circuit (Brandsma, 2010). Our study of European agencies reveals that most management boards come nowhere near to wielding the full extent of their formal accountability powers. Some boards are simply too big and unwieldy to effectively scrutinize agency performance. Many board members moreover suffer from considerable double hat problems; some appear more interested in using their seats on the board to protect their national agency’s interests than in divulging their duties as members of a EU level accountability forum (Busuioc 2010b).

Assessing EU accountability

Assessment #1: through the lens of public accountability perspectives

Table 2 reports the outcomes of this logic of assessment. Note that the marks indicate an assessment of the observed trends rather than an absolute assessment of the present state of affairs. We take the *democratic* perspective first - which to some scholars, like Gustavsson (2009), is really the *only* relevant way of assessing accountability (within the EU or otherwise). From this perspective, there is good news to tell, certainly more than these same authors imply when they conclude their study by stating EU governance labours under an ‘illusion’ of accountability. Three of the four cases we studied revealed relatively robust trends towards an increasing scope and strength of parliamentary control mechanisms. Two of them directly concerned an evolving accountability relationship with the European Parliament as the salient accountability forum (the European Council and the Commission). Particularly noteworthy has been the ascendance of the European Parliament in

holding the Commission accountable, notwithstanding the fact that democratic theorists practically rule out the current EP as a credible accountability forum, given the continuing insignificance of European issues in the European electorate's mind (second order elections) and the lack of a well-developed EU party system and public sphere (cf. Schmidt, 2006; Hix, 2008; Mair, 2008; Gustavsson, Karlsson, and Persson, 2009). In addition it is striking how the European Parliament continues to use the threat of its formal budgetary powers over the Community budget as a wedge to lever more *de jure* and *de facto* accountability from agencies.

While the EP itself continues to be viewed as a democratic work in progress by some, there can be little doubt that its exploitation of the Santer Commission crisis has given it significant momentum in its desire to become a more effective check on the Commission. At the same time, the EP is more constrained in any attempt to likewise 'normalize' its control relationship with the European Council, given that institution's strongly intergovernmental origins and features. However, in cases in which the European Council acts as the ultimate decision maker or coordinator of EU policy on pivotal issues such as treaty reform and transnational emergencies, the EP is slowly but surely doing what it can under the present arrangements to hold it accountable (but under present rules it remains dependent upon whoever happens to hold the EU Council Presidency at the time to appear and debate the issues in a sustained and serious fashion).

We have only looked at one (i.e. the Dutch) national parliament's role in holding its head of government accountable for their role in European Council decision-making, revealing a mixed picture. We know from other research that there are considerable cross-national variations in these parliaments' desires and capacities to do so – although again the general trend seems to be one of rising ambitions and abilities (Fitzmaurice, 1996; Marquand, 2008; Sousa, 2008). The two trends – increased, and more overtly politicized, forms of parliamentary oversight of European Council inputs and outputs by both national parliaments and the EP – can co-exist without too many difficulties, since they target different actors about different aspects of Council decision making (except perhaps the Council President's own national parliament, whose scrutiny of its head of government may overlap with that of the EP's scrutiny of him or her in his or her role of Presidency).

	Case 1 European Commission	Case 2 EU Agencies	Case 3 European Council	Case 4 Comitology committees
<i>Democratic Perspective</i>	+	+	+	-/+
<i>Constitutional Perspective</i>	++	+	-	+/-
<i>Learning Perspective</i>	+	-	--	--

Table 2. Assessing EU accountability rules and practices: accountability perspectives

The sole area covered in this study where democratic accountability forums operate at considerable arm's length is comitology. This may well be an artefact of the study's design, which focused first and foremost on the hierarchical accountability arrangement between comitology participants and their bureaucratic superiors at the national level. But at the same time other research suggests that it is safe to say that comitology processes remain relatively impervious to direct scrutiny from the EP or national parliaments (Rhinard, 2002; Brandsma, 2007; Brandsma, Curtin, and Meijer, 2008; Neuhold, 2008) although there is certainly evidence of more legal powers being given to the European Parliament in particular (Bradley, 2008; Curtin, 2009).

The *constitutional perspective* detects even stronger positives. Our studies of both the European Commission and the European agencies clearly report an ongoing 'thickening' of their accountability regimes, at least in the *de jure* sense: there are now more accountability forums that can hold them accountable on a broader range of subjects employing a wider range of powers of information-gathering, debate and sanctioning than just ten years ago (see Busuioc, 2010a). To the extent that these formal possibilities have also been translated in actual accountability practices, this has meant in practice that senior bureaucrats in the European executive branch have had to pay more attention to explaining their past practices to a variety of bodies. Consequently, one may infer, the norms of good public and corporate governance (for example, transparency, responsibility, actuarial propriety, motivation of decisions, rights of appeal, competence-based recruitment and career advancement) have become a lot more salient in the way they run their organizations (see also Groenleer, 2009).

There may be differences between the two actors in terms of the formalization – and intensification- of these accountability forums but one thing is sure: the accountability regime of the other two institutions is very thin by comparison. That of the comitology system may have seen some formal thickening in recent times, but its day-to-day realities are such that it remains a problematic arena of European governance from a checks and balances perspective spanning both the national and the European levels (Neuhold, 2008).

From the *learning* perspective, the picture is more mixed. Only with respect to the Commission did we find significant evidence – for example, the Kinnock reforms' emphasis on strengthening professionalism of the European Commission's cadres and organizational cultures – for the existence of the more reflective accountability practices envisioned by deliberative democrats such as Eriksen and Fossum (2000). Some directors of EU agencies, for example, seem to be more concerned by issues of 'overload' instead of welcoming the possibilities for (self-) reflection and performance improvement that the increasingly thick accountability regimes they are embedded in entail. Moreover, to the extent that the observed trends point towards 'normalization' (more comprehensive and more overtly political forms of oversight) not just of the Commission but also the Council and to some extent the agencies, the learning potential of these accountability regimes is more likely to be compromised rather than enhanced.

Assessment #2: through the lens of European integration perspectives

From European studies we derived the trio of intergovernmental, supranational-federalist, and regulatory regime perspectives on the nature and purposes of EU governance. The question now is to what extent the observed accountability practices conform to these various visions. Table 3 provides a set of schematic answers. To interpret the scores, take the example of the *European Commission's* developing accountability regime (Wille 2010, see also Tallberg, 2009). Intergovernmentalists like their Commission small to begin with, but to the extent that its scope and powers are considerable, they would prefer it to be checked and counterbalanced by a strong Council and assertive national parliaments, rather than the current trend towards strengthening the EP as the principal accountability forum (hence the negative score). In contrast, the supranationalists rate the deepening of the Commission's various accountability regimes as positive: EU-level political and administrative forums have

‘woken up’ and put themselves forward to effectively curb Commission autonomy. From a regulatory perspective, the growth of political accountability of the Commission to the EP would also count as a negative, whereas the enhanced administrative and emerging social accountability mechanisms count as a positive development.

	<i>Case 1 Commission</i>	<i>Case 2 Agencies</i>	<i>Case 3 European Council</i>	<i>Case 4 Comitology</i>
<i>Intergovernmental</i>	-	+/-	+	+/-
<i>Supranational</i>	+	+	+/-	+/-
<i>Regulatory</i>	+/-	+/-	n.a.	+/-

Table 3. Assessing EU accountability rules and practices: European integration perspectives

Secondly, the developing financial, managerial and political accountability regimes surrounding *European agencies* will be judged differently when employing the three perspectives. Intergovernmentalists, one assumes, do not like the EP’s growing interest in the agencies, nor the encroachment of the ECJ’s jurisdiction over them. Yet though they do not welcome the role of those two forums, they do favour agency accountability vis-à-vis management boards composed of member state representatives and accountability arrangements vis-à-vis the Council structures. Supranationalists in contrast welcome the growing remit and role of ECJ and EP and may at some point in the future be able admit that one can no longer speak of an accountability deficit as such with regard to many agencies (although there will certainly still be gaps). Proponents of the regulatory perspective welcome the growing use of professional and administrative accountability mechanisms. However, they would be concerned that the even more markedly expanding grip of political and legal accountability forums risks robbing the agencies of the very thing they had going for them: the capacity to do their business in a de-politicized, ‘non-majoritarian’ climate.

Thirdly, the fact that the EP still has limited powers in holding the *European Council* to account are probably a welcome state of affairs to intergovernmentalists. In their perspective, the European Council is an arena for interstate bargaining and

persuasion. Its members should be held accountable by their national constituencies and not by the European level EP as a matter of principle. On this view only the national level can be considered a possible accountability forum. It emerged from this case study that the Dutch parliament had the formal powers to oblige the prime minister to provide information about his input into European Council deliberations and their outcomes, debate his European Council performance in the chamber, and be bound by the Dutch parliament's opinion. It was also found that the parliament invokes these powers selectively, and that accountability following major European Council summits is patchy, but can be relatively intense at times (depending upon a range of often ad hoc considerations). This composite picture suits adherents of the intergovernmental perspective nicely. In contrast, from a supranationalist perspective the limited powers of the EP in this domain are seen as a clear sign of an accountability deficit, while strong national parliamentary accountability practices are to be welcomed even more strongly than intergovernmentalist do (cf. Karlsson, 2009). Still, with the entry into force of the Lisbon Treaty in late 2009 the European Council acquires a formal status as an institution of the EU and will almost inevitably find itself in an evolving and living accountability relationship with the European Parliament at the European level of governance. Finally, the regulatory perspective has no preference either way, since the Council as a political entity is beyond its preoccupation with non-majoritarian actors and technocratic rather than political forms of collective decision making.

Regarding the accountability of *comitology* participants, supranationalists clearly lament the relative weakness of EU-level forums in checking this important cluster of the 'many' and 'invisible' administrative hands, although some progress has been made in recent years (Curtin, 2009). They likewise lament the similar findings of studies concerning the lack of accountability of national public servants stationed at the Permanent Representation in Brussels. Whilst intergovernmentalists may not (yet) be up in arms over the relative (and not very visible until this study) lack of interest and activity of the national bureaucratic principals of comitology participants, they will note that neither do national parliaments appear to be exercising much of a grip on member state governments. At the end of the day though, intergovernmentalists are likely to explain this away as part of the larger implicit delegation bargain that national parliaments have struck with their governments when agreeing to membership and subsequent deepening of the

European integration process. Finally, from a regulatory perspective the relative weakness of hierarchical accountability is considered to be largely irrelevant, but the dearth of more institutionalized professional accountability mechanisms of self-regulation and monitoring is probably deplored.

4. An accountability deficit?

Where does that leave the much-vaunted accountability deficit of the EU? By now it will come as no surprise to the reader that our answer to this question is 'it depends'. It depends on which accountability mechanism, regime, or cluster of regimes is being assessed. It depends on whether one is judging snapshots or long-term trends. It also depends on who is doing the assessing, as there are marked differences among EU scholars in particular as to what constitute the relevant criteria. And it depends on what implicit or explicit benchmarks or counterfactuals are being used in doing the assessing, even among proponents of one and the same criteria set. From the supranationalist and 'democratic' accountability perspectives the crux is whether EU-level accountability rules and practices should be 'as good' as the average (or the 'best') member state's national practices. Intergovernmentalists in contrast focus on whether EU webs of accountability are more or less elaborate than that of other regional or global international organizations. For adherents to the regulatory perspective on the EU and the 'learning' perspective on accountability, the issue is how categorically 'non-majoritarian' they like the accountability regimes of each and every EU institution to be. And finally for 'constitutional' accountability scholars it is how many check and balances are 'enough' (and, by implication, when they become 'too much').

Granted that the picture is diverse and subject to ongoing change, the overall observation that emerges from our studies of the *de jure* situation is that slowly but surely forums have been gaining powers vis-à-vis actors. Depending on the various vantage points, some will say too much so, others will say not yet enough. Certainly among the cases studied here the most obvious example of a continued shortfall in formal powers of forums over actors is that of the political accountability of the European Council. The EP has traditionally very little to go on, and in all but a very

limited number of national parliaments' mandates there is no special provision (or designated institutional capacity) made for checking the European deal-making activities of heads of governments and ministers.

Turning to *observable practices*, general observations and assessments become progressively more difficult. It is clear that in some cases forums make limited use of their existing powers to hold executive actors accountable. This is the case for national parliaments vis-à-vis heads of government, for management boards in relation to EU agency heads, and most glaringly for the direct superiors of Comitology members. But does that in and of itself provide sufficient reason to speak of a deficit? Doing so would imply that in each of those three accountability relationships at the national level, forums are more energetic, proactive, or tenacious – which we know from other research is certainly not always the case (Muller, 1994; Schillemans, 2007). In fact, there is considerable reason to claim that in any case many national political accountability practices are equally deficient (Weir and Beetham, 1999; Sawyer, Larkin, Abjorensen, 2009), in which case the European deficit looks somewhat less conspicuous. That does not, of course, make it any less real and problematic, certainly not in the eyes of adherents to the 'democratic' school of accountability assessment (Lord, 2007).

It is striking how the *de jure* level reinforces the already existing trend of incremental reinforcement of the supranational level within what can only be easily qualified as the constitutional checks and balances perspective. In this perspective then the alleged deficit shrinks considerably. What one sees instead is a proliferation of perhaps still weak, but clearly nascent administrative accountability norms and practices in most nooks and crannies of EU governance – coming on top of already well-developed financial and often outright strong legal accountability mechanisms. If, as 'monitory democrats' (Keane, 2009), what we care about most is that executive power is being effectively checked by (a set of) forums or principals, then the developments of the last decade regarding both the Commission, the European Council and the EU agencies are rather promising.

The weakest accountability regimes are around the political actors comprising the Council (and its growing administrative apparatus, Curtin, 2009) and the administrative actors of comitology committees. Perhaps not coincidentally, both are right at the interface between national and supranational levels of governance, falling as it were between the cracks of multilevel governance. There is little besides (weakly

developed) national political accountability checking heads of government in their roles as EU architects and policy makers. Likewise, there is little besides (mostly weakly developed) national hierarchical accountability checking technical experts and their EU-level 'epistemic communities' of comitology committees.

Learning-based accountability mechanisms are generally underdeveloped in the EU system. We know from prior research (Bovens, 2007; Schillemans, 2007) that horizontal (professional, social) mechanisms have the greatest learning potential, but they appear to be underutilized in the EU system (see also Persson, 2009; Parks, 2009). This may be an artefact of the lack of direct citizen exposure/contacts of many EU institutions, and the many difficulties of organizing effective interest representation at the European level. That said, research also suggests that such horizontal mechanisms are often overshadowed by learning-unfriendly vertical ones at the national level of government too (Schillemans, 2008; Bovens, 't Hart, and Schillemans, 2008).

To add insult to injury for supranationalists and democrats, there is even the occasional whisper of an 'accountability overload' encroaching upon the EU system – and our study offers some food for thought in this regard too. These whispers come, of course, from among Commission bureaucrats and agency officials deploring the growing number of accountability obligations they are coming under. They bemoan the amount of time and energy consumed by meeting all these obligations has begun. This is, of course, the natives' point of view, that accountability assessors may choose to discount as self-serving. But if these voices increase in number and intensity in years to come, their lived experiences of 'doing accountability' deserve to be taken as seriously as those of the vociferous concerned democrats riding the deficit bandwagon. Neither's claim should be dismissed out of hand. Instead we need evidence-driven, balanced, and actor-specific assessments of both the 'bite' and the 'burdens' of existing accountability rules and practices.

5. Getting EU accountability right: a work in progress

Granted that the picture is diverse and subject to ongoing change, the overall observation that emerges from our studies is that slowly but surely accountability forums have been gaining powers vis-à-vis actors, both de jure and de facto and that

this trend is likely to continue and expand. The entry into force of the Lisbon Treaty has put down clear markers on a number of paths. These markers are already being interpreted and elaborated by the actors themselves. This will no doubt continue as more time passes. If one qualifies these developments within our own 3x3 assessment framework there is significant evidence more powers accruing to supranational accountability forums. This institutional evolution is most readily understood from the constitutional checks and balances perspective. Clearly the role of the Court has been expanded by virtue of the significant 'de-pillarization' of the treaties and the inclusion of new or existing actors under its formal remit (including the European Council and the agencies).

The European Parliament is also a 'winner', both de jure level in practice. This trend is most likely intensified and expanded by the Treaty of Lisbon. It has acquired new formal powers and engages in a process of further defining in its institutional practices with regard to several 'new' actors at the European level of governance including the top level 'inter-governmental' European Council and its new President. The expectation is that the new President will face the EP repeatedly, increasing the power of the latter's 'soft' sanctions, in marked contrast with the previous rotating Presidencies who were held by people who were first and foremost the heads of government of their own Member States (Van de Steeg, 2010).

Other changes in the EU's institutional architecture indicate the direction for future accountability arrangements. For example, the fact that the new High Representative of the Union for Foreign Affairs and Security Policy is simultaneously to be a Vice President of the Commission will impact both on the architecture of the Commission and of the Council/European Council. This 'double-hatting' will almost inevitably 'normalise' the accountability arrangements with the European Parliament in this policy domain. The High Representative as Vice-President of the Commission, will fall under the advanced accountability regime of the Parliament and the Commission. This regime is also affected by the Treaty of Lisbon by the conferral of a new power to adopt delegated acts on the Commission (without necessarily using the existing comitology system) with some power of oversight by the legislator (including the European Parliament).

Though it is not hard to draw idealised scenarios for the future path of the EU's various accountability regimes according to the six normative perspectives sketched in this article, it is much more difficult to predict what will actually happen.

Much remains in flux less than one year after the Treaty of Lisbon formally entered into force, even at the *de jure* level. The often vague general stipulations of the treaty will be fleshed out more precisely in institutional and legal practices. This will occur within the affected institutions themselves (for example in their internal rules of procedure and institutional decisions). It will also occur inter-institutionally as the various actors and forums collectively try to come to terms with new terms of engagement made possible but not cast in stone by both the treaty and ongoing jurisprudence and inter-institutional bargaining. For example, the new 'framework agreement' the European Parliament has negotiated with the European Commission includes greatly strengthened powers of supervision over external relations and foreign policyⁱⁱⁱ, above and beyond what followed from the terms of the Lisbon Treaty itself. It is yet another example of how the European Parliament uses inter-institutional arrangements as an instrument for the incremental change of the living constitution with a view to permanently enhancing its role (Thym, 2009: 206).

The framework presented in this article provides a parsimonious yet nuanced tool to keep track of these evolving practices, and to assess them critically. Its multi-perspectivist, 'competing values' logic reminds us that the institutional design of EU accountability arrangements is not simply a case of 'more is better'. It suggests that in future we should be as alert for signals that the evolving arrangements are producing accountability overloads as for indications of enduring instances of accountability deficits.

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ENDNOTES

ⁱ We employed the following methodology. We selected four key EU executive actors for in-depth empirical study and systematic evaluation by our research team: the European Council, the European Commission, comitology committees and EU agencies. For each both the formal (legal frameworks) and the de facto (observable practices) components of accountability were documented and assessed. Pragmatic decisions about how to penetrate defacto accountability for each of the four actors:

- qualitative content analysis of numerous parliamentary debates in which the *European Council* Presidency appeared before the EP, and the Dutch delegation to the European Council appeared before the Dutch parliament;

- documentary evidence of *EU Commission* accountability politics during the Prodi (1999-2004) and Barroso years (2004-2008), as well 50 in depth interviews held with senior Commission officials;

- survey and interview data collected among the direct superiors of Dutch and Danish *comitology* committee participants;

- documentary evidence and 60 interviews with *EU agency* practitioners as well as members of the forums holding them to account, such as MEPs, members of the management boards, and European auditors (Busuioc 2010b).

We further limited the scope of study in some of the selected cases, e.g. the study of the European Council focusing on its *political* accountability; the comitology focusing on its *hierarchical* accountability and covering only two member states (Denmark and the Netherlands); and the EU agencies study concentrated on their *political and managerial* accountability. For a detailed description of the research design of the project which ran 2005-2009, the overall methodology as well as the pragmatic decisions made for each of the case studies see SOURCES SUPPRESSED

ⁱⁱ For the distinction between accountability as a virtue and as a mechanism see Bovens 2010.

ⁱⁱⁱ Framework Agreement between the European Parliament and the Commission, http://www.europarl.europa.eu/pdfs/news/expert/background/20100202BKG68427/20100202BKG68427_en.pdf.