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Political accountability in EU multi-level governance: the glass half-full

Yannis Papadopoulos

THE EU'S POLITICAL, CONSTITUTIONAL AND ECONOMIC SYSTEM

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Political accountability in EU multi-level governance: the glass half-full

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Preface

The EU has gradually strengthened the democratic aspect of its policymaking through a number of reforms. One important change came with the Lisbon treaty (entered into force 2009) which made the European Parliament a co-legislator, together with the Council, in most policy areas. At the same time national parliaments were accorded an independent role in the legislative process, monitoring the principle of subsidiarity (the idea that the EU should in most areas act only where it is more effective than member states). Both changes are recognizable steps in the parliamentarisation of the EU.

But that citizens can influence decision-making, either directly or indirectly, is just one element – albeit an important one – of a democratic system. Another element is that the elected representatives are accountable to the citizens, or at the very least that the executive is accountable to the elected representatives. In a Sieps report from 2019, EU i riksdagen (The EU in the Swedish Parliament), the common opinion of the authors – I simplify somewhat – is that the Swedish parliament compares favourably with other national parliaments when it comes to how well adapted it is to the political system of the EU. In this report, however, the author asks how the influence of national parliaments within the EU is affected by the fact that some decisions are made through intergovernmental negotiations. Neither the European nor national parliaments play a significant role in these negotiations, which limits their ability to hold the decision-makers accountable.

There is no obvious recipe for how to produce effective political accountability at the European level. But this report is clear that those who exercise political control in the decision-making process, e.g. parliaments, must have sufficient knowledge and information to be able to do their job. I hope that this report increases the level of knowledge of the system of political accountability at the EU level; both its strengths and weaknesses.

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About the author

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List of abbreviations

CJEU	Court of Justice of the European Union
ECB	European Central Bank
ECOFIN	Economic and Financial Affairs Council
EASA	European Aviation Safety Agency
EASO	European Asylum Support Office
EFSA	European Food Standards Agency
EMF	European Monetary Fund
EMA	European Medicines Agency
EMU	European Monetary Union
EP	European Parliament
ESM	European Stability Mechanism
ESMA	European Securities and Markets Authority
EU	European Union
EWG	Eurogroup Working Group
MEPs	Members of the European Parliament
MPs	Members of Parliament
NGOs	non-governmental organizations
NPs	national parliaments
SRB	Single Resolution Board
SRM	Single Resolution Mechanism
SSM	Single Supervisory Mechanism
TFEU	Treaty on the Functioning of the European Union
TSCG	Treaty on Stability, Coordination and Governance

Table of contents

Summary

Primarily based on the study of rich secondary material, this report offers a bird's eye view of the status of accountability in the political system of the European Union, and disentangles accountability according to the various loci of power in the EU complex and the multi-level decisional system. It focuses on accountability in the real world: to understand how accountability operates one needs to know how formal competences to hold individuals or organizations accountable are allocated, but one also needs to determine whether the monitoring agents have the ability and the willingness to effectively hold policy-makers to account.

Although legal and financial accountability are important dimensions of the accountability regime of the European Union, this report concentrates on the political accountability of EU decision-making bodies: the subset of accountability procedures in which the control function is performed by citizens or their democratically elected representatives. In other words, political accountability includes vertical (democratic) accountability to citizens, and horizontal (interinstitutional) accountability to directly elected representative institutions (legislatures). Horizontal accountability is more developed than vertical accountability in the EU system, and it may be argued that as the European and national parliaments perform the function of democratic representation jointly, accountability to them is, indirectly, accountability to the European people. The report therefore concentrates on accountability to democratically elected accountability "forums": on the centralised accountability of European executive bodies to the European parliament (supranational circuit), and to a lesser degree on the decentralised accountability of national governments to the EP's national counterparts, which are the two main channels of multi-level oversight in the compound European system.

More specifically, the report takes stock of the developments generated by intergovernmental treaty-making, starting with the Lisbon treaty in 2009, taking shifts in the power balance following Lisbon and the Eurozone crisis into account, particularly within the European Monetary Union. It scrutinises the accountability of actors that now assume a key governance role, such as the European Council, the informal Eurogroup and the activist European Central Bank. It also considers the implications for accountability of the post-Lisbon transformation of the comitology system, the development of so-called Trilogues, the creation of new agency-akin bodies (European Stability Mechanism), and the advent of new governance modes such as the European Semester. The report also sheds light on the major challenges, with respect to democratic accountability, that stem from the particular system of multi-level collaborative governance that characterises the EU. Finally, the report assesses the impact on democratic accountability of the fact that European integration

(and disintegration) nowadays takes place in a context of increased politicisation and polarisation. It concludes by pointing out the main accountability issues identified in the study. This summary presents the main findings of the report.

The limited contribution of "parliamentarisation" to democratic accountability

In recent decades, and especially with the Treaty of Lisbon, there have been some significant improvements with respect to the defective democratic accountability of the European Union. The more spectacular step was the slow but sure "parliamentarisation" of policy processes, with parliamentary empowerment at both European and national level. However, there are limits to this process, and its contribution to democratic accountability should not be overstated.

a) As regards the European Parliament, the ordinary legislative procedure extended the number of policy areas with the binding involvement of that institution. On the one hand, the European Parliament has been empowered vis-à-vis the Council with its role as co-legislator, and is a strong partner in executive–legislative relations, since there is a parliamentary vetting process for individual Commission members before approval of the whole Commission by the EP. On the other hand, the EP still does not play the same role, depending on EU policies. EU governance is actually divided between a "supranational" and an "intergovernmental" regime. It is in the former that the EP has increased its institutional power: the EP needs to endorse rules and can veto actions from the other EU institutions, so there is horizontal interinstitutional accountability in practice. In the intergovernmental regime, the EP remains sidelined, but even in the supranational regime the corrective effect of accountability is constrained by the "constitutionalisation" of principles of market integration that set material limits to the feedback on policy that accountability mechanisms permit. The development of negotiations ("trilogues") among EU institutions, with a view to securing legislative compromises, is also an unforeseen negative side-effect of the empowerment of the EP with regards to accountability. Such negotiations are effective, but at the same time lack transparency, which inhibits the accountability of decision-makers to outsiders, and even to the EP as a whole. In other words, confidential forms of accountability are to the detriment of public accountability.

b) Some national parliaments have indeed undergone a re-empowerment process in EU affairs. There is nevertheless considerable variation in their ability to "fight back" against "deparliamentarisation" and to control the executive when it is involved in European policy-making. Similarly to what happened with the trilogues at EU level, parliaments are more influential if they succeed in becoming involved

in informal negotiations with the government. This implies a trade-off: governments become more accountable to parliaments on EU matters if the latter exercise their control function outside public scrutiny, but this causes prejudice to accountability to the citizenry.

The influence of parliaments has also expanded with the Treaty of Lisbon (2009). It contains an "early-warning mechanism" that allows parliaments to indicate when the subsidiarity principle is in danger of being violated by a piece of legislation proposed by the Commission. If more than one-third (or one-quarter in the area of "justice and internal affairs") of opinions on the part of a coalition of national parliaments are negative, then the Commission must reconsider its proposal. We do not know if there are many blatant infringements of subsidiarity in the initial Commission proposals, but the mechanism is not used frequently, and only once has the Commission withdrawn its proposal. Overall, the corrective effect of accountability to national parliaments appears limited, although it may have indirect and more diffuse effects, such as a possible increased sensitiveness on behalf of the Commission and learning effects for parliaments through their direct participation in EU policy-making.

Opacity and informalisation of intergovernmental bargaining: the accountability deficits of executive dominance

The advent of the European Monetary Union reinforced the intergovernmental dimension in the EU, putting a halt to the strengthening of parliamentary control and influence. What is more, the Lisbon Treaty coming into force coincided with the outbreak of the Eurozone crisis. The crisis had lasting effects on institutional balance in the Eurozone, and led to much institutional improvisation, with new rules or bodies being established informally in an *ad hoc* manner, the system thus becoming more confused and some of its core components suffering from opacity.

a) In addition to an enhanced role for the European Parliament, the Lisbon Treaty brought the main intergovernmental institution, the European Council of heads of state and government, within the legal order of the EU. It is the highest political institution of the EU and the driving force of political developments, assuming the tasks of strategic planning and leadership. With crisis management, the migration of power to executives became deeper, leading to the centralisation of decision-making. The European Council has thus significantly increased its power and emerged as the centre of gravity in the field of economic governance. Intergovernmentalism also prevails in new domains of EU activity. There may not seem to be any accountability problems with that, since intergovernmentalism is the realm of

democratically elected executives who are accountable to their national constituencies, however, such a view is misleading in many respects, and the electoral sanction of national governments does not have much weight as an accountability instrument.

Intergovernmental negotiations are prepared by administrators who can enjoy considerable discretion, leading to a *de facto* extension of the delegation chain. Further, even though each member of intergovernmental bodies in the EU is formally accountable to their own national parliament and electorate and there have been improvements in some countries in that respect, it is difficult to assign responsibility given the opportunity that governments have to play a "two-level game" and shift the blame for unpopular decisions to their negotiation partners. Whenever many participants are involved in negotiated decision-making, it is hard for outsiders to decipher who is responsible for what, how much, and for what part of the decisions. This is particularly true if negotiations are opaque, because visibility is a first necessary step for accountability. Even democratically accountable governments are therefore only accountable on paper as regards their participation in intergovernmental decision-making, if relevant information is not made accessible to the account-holders, and if the latter lack the capacity to meaningfully digest it (be they national parliaments – whose capacity and willingness for scrutiny varies – or even more so the less-informed domestic popular constituencies). The European Council, for example, is quite an opaque institution: its decisions are frequently taken by consensus after informal and secretive negotiations. The Council, in its ministerial formations, is subject to more formal transparency requirements, but as it is also subject to functional requirements of secrecy to achieve compromises, its members seek to evade transparency by shifting actual decision-making into informal arenas.

Intergovernmental bodies make decisions that have European-wide, not just national, implications, without being held accountable by the electorates or representative institutions of member states that are subject to joint decisions. If intergovernmentalism is asymmetric, as it was during the management of the Eurozone crisis, peer accountability also operates imperfectly among governments with unequal bargaining power. In the case of the European Council, although the individual governments do enjoy formal electoral legitimacy in their respective countries, as a collective it has emerged as a self-sufficient institution that operates in an accountability vacuum. The European Parliament has very thin powers that do not lead to the European Council being meaningfully accountable to the EP. The limited accountability at the national government level is not compensated for by the effective

accountability of the Council as a whole to the EP at the supranational level. The numerous accountability gaps of the Council should be taken seriously as they affect the institution that takes the role of the strategic manager of European integration on highly sensitive issues.

b) The constitution of the Eurogroup is probably the most salient example of informalisation in policy-making. Despite the Eurogroup's considerable *de facto* power over Eurozone member states in terms of coordinating national fiscal and budgetary policies, which increased after the crisis and has wide-ranging socio-political consequences, its legal basis is minimal. The role of the Eurogroup should be seen in relation to the role of Euro Summits which, although not mentioned in the EU Treaties, emerged as an institutional player and as a potential rival to European Council summits. Both bodies illustrate the increasingly autonomous logic of decision-making in the Eurozone.

   The Eurogroup's accountability is very limited. It is accountable to another weakly accountable executive body, the European Council. The Eurogroup's President also regularly appears before the European Parliament to answer questions, but this is a thin accountability mechanism that contains no corrective mechanisms. As with the reporting exercises of other European bodies, this kind of merely "discursive" accountability cannot be considered sufficient, especially as it is also voluntary in the case of the Eurogroup. As the Eurogroup is not an official body, its output is not subject to judicial review by the European Court of Justice, provisions for transparency do not apply despite some recent progress, and there is extensive use of informal working methods. The Eurogroup Working Group (EWG), which is an influential preparatory body composed of secretaries of state and involving representatives from the Commission and the European Central Bank, also plays an important role in discussions of national budgetary plans and Euro area recommendations as part of the European Semester. It also operates without any formal procedures, and in a confidential manner. The Eurogroup and EWG are emblematic of the gaps in the accountability of political-administrative bodies that enjoy *de facto* authority in the absence of delegation and a formal status, and operate with limited transparency.

c) The *de facto* authority of the Eurogroup underpins the power of its *alter ego* that enjoys formal authority: the European Stability Mechanism, which is a peculiar construction as it is an intergovernmental institution outside EU treaties, and to a large extent formalises the asymmetric nature of intergovernmentalism. The Eurogroup's informal nature and the ESM intergovernmental set-up allow finance

ministers to evade EU provisions on transparency. The situation is also mixed with regards to political accountability (and judicial control). The accountability of ministers to national parliaments is unevenly developed in law, and in practice it has also developed in closed-door meetings, to the detriment of public accountability. Since votes on capital matters in the ESM are weighted according to the proportion of national contributions, decentralised accountability to national parliaments may reinforce domination by the wealthier countries. The absence of accountability to the EP shows how the EP has been sidelined in the design of the ESM. The ESM seems aware that its transparency and accountability issues are criticised, and seeks to proactively counteract them. It may be argued that this alleviates the formal accountability deficits of the ESM and indicates that *de facto* accountability may be greater than *de jure* accountability, when we usually expect the opposite, given that accountability forums may have limited capacity or willingness to hold bodies to account. On the other hand, this form of voluntary accountability cannot be considered sufficient, and remains thin because it is limited to providing information. If the ESM is incorporated in EU legislation, one might expect that accountability mechanisms to the EP become more binding for the ESM, but not thicker (beyond an imperative for dialogue).

The partial accountability of the powerful European Commission

As a supranational organ, the European Commission enjoys considerable power, and developments in the field of economic governance have further strengthened its role, even if crisis management has largely been intergovernmental. The Commission has been endowed with unprecedented custodial powers regarding much tighter budgetary requirements, and it came to enjoy significant discretion regarding the coordination and supervision of macroeconomic policy. With the Commission becoming the guarantor of commitments agreed by governments, the traditional role of national parliaments – whose budgetary sovereignty is a key prerogative – has been reduced. The European Parliament only has consultative and advisory powers, and carries no formal powers to veto or amend country-specific recommendations issued by the Commission. Although the formal decision-making sites are the ECOFIN Council and the Eurogroup, the recommendations of the Commission become binding, unless the Council objects using the peculiar procedure of reverse qualified majority voting.

Does the Commission's accountability match its power? The Commission has made progress with respect to transparency, and it has also become increasingly accountable to the European Parliament, which can be considered the most legitimate accountability forum for an executive organ such as the Commission. This is an important facet of the relative, yet significant, "parliamentarisation"

of the EU system of governance. Despite improvements however, there is still a major formal weakness in the Commission's accountability, because, unlike in parliamentary government, the EP does not keep the Commission under check, and in practice is not in a position to dismiss it in case of political disagreement. The fact that none of the parties' *Spitzenkandidaten* became Commission president in 2019 (unlike 2014), and that the EP had to opt for the person proposed by the Council, can be seen as a major setback with respect to the parliamentarisation of the EU system.

There has been both progress and limits regarding the accountability of the Commission to the EP, regarding the 2000 or so rules that the Commission issues on average every year, based on powers delegated by the Council of Ministers and the European Parliament. About 250 committees of national representatives exercise control over implementing acts delegated to the Commission, and which remain entirely outside the control of the EP. National members of these committees are formally accountable to their hierarchical superiors at "home", although these superiors – also usually unelected bureaucrats – do not seem very interested in committee discussions in Brussels. The Treaty of Lisbon nevertheless introduced a new category of acts entailing an important change with respect to the accountability of the executive. The EP and the Council have full veto and revocation powers over the newly introduced "delegated" acts. Although there are no *ex ante* mechanisms for controlling the activity of the Commission, and no formal ability to amend delegated acts, Parliament and the Council can object to the adoption of a delegated act or revoke delegation. The effects of the new system are unclear, however: vetoes are very rare, and we do not know whether the EP and the Council agree with the delegated acts or if they are simply not performing their duties of scrutiny properly. The anticipation of the "nuclear option" (veto) possibly obliges the Commission to take their preferences into account. We do know that the Commission and the EP exchange views early in the process so that the eventual delegated act survives legislative scrutiny. However, as with the trilogues, the empowerment of the EP leads to informal negotiations (this time with the Commission) which are incompatible with public accountability.

The improvements in scrutiny should also be relativised for other reasons. The Lisbon Treaty gives no clear guidance regarding the choice of instrument and procedure, giving rise to many institutional conflicts between the EP and Council. Recent empirical research has concluded that the Council agrees to involve the EP only when it considers it an ally, so that parliamentary control is limited. The subordinate standing of the EP is aggravated by the lack of time and expertise of MEPs compared with the Commission's services and member state administrations. The EP can rely on its own administrators in order to flag salient issues, with the unexpected consequence that the relative empowerment of the EP as a democratic accountability forum leads to the empowerment of unelected bureaucrats within that forum.

Post-crisis legislation and the EMU as a break from "parliamentarisation"

Even though the Lisbon Treaty has empowered the EP with its role in ordinary legislative procedure, it also includes an intergovernmental regime that applies *inter alia* to the coordination of national economic and financial policies, and in which the EP's position is subordinate, so that there is no significant check on intergovernmental choices. The treaty entering into force also coincided with the beginning of the Euro crisis, and crisis management under executive dominance counteracted progress in terms of parliamentary control that had been made possible by the previous empowerment of the European Parliament.

Crisis legislation and the ensuing intergovernmental treaties were generally unfavourable for the EP. Being sidelined in economic governance, the EP also loses weight as an accountability forum, because the other decision-making bodies can ignore its opinion. The role of the EP as an accountability forum is certainly not completely absent, and there are more and more cases in which the representatives of the different EU institutions involved in economic governance appear before the EP – as in the "Economic Dialogue" – to explain and justify what they do, however, this thin form of accountability does not offset the more general phenomenon of parliamentary sidelining in economic governance. Having the right to be informed and to access relevant documents is naturally essential for an accountability audience, however, when accountability is limited to an exchange of views and when information rights are decoupled from the authority to decide sanctions or to block action, this is no more than a minimalist version of accountability. For accountability to be effective, those who are held to account must believe that the course of action may be detrimental to their preferences if the audience is not satisfied with their account. In other words, they must anticipate that the positive or negative perception of their accounts will result in positive or negative consequences for them. This is not the case. There are mixed results in research, for example, regarding the benefits of both information rights acquired by the EP and of multi-level parliamentary cooperation for effective parliamentary scrutiny. Studies also show that limitations are not just due to formal obstacles, but also to the logic of parliamentary agendas, and to problems that parliaments encounter with collective action. In many respects it appears that the EP and national parliaments may be co-responsible for their disempowerment.

The Euro crisis and the ensuing developments (such as the establishment of the European Semester) also put a halt to the (partial) empowerment of national parliaments, especially with the centralisation of budgetary competences in the hands of the Commission and the Council (whose "disciplinary" logic did find some parliamentary support). Although there is cross-country variation in the capacity of parliaments to adjust to the new realities, the general picture is of a cumbersome process of budgetary coordination and surveillance that dilutes responsibility, and of parliaments that in practice do not have any substantial powers to review or amend intergovernmental agreements in the field of

economic governance, which intrude into the autonomy of national economic policy-making (even though the formulated recommendations ultimately prove to be rather "toothless"). Unsurprisingly, parliaments are more sensitive when they are motivated by highly politicised issues, but we then encounter a familiar phenomenon: their activism translates into stronger bargaining power that is wielded vis-à-vis executives in secluded arenas, to the detriment of public accountability.

The technocratic complex and the rise of the unelected

"Guardian" institutions are increasingly important supranational actors that form a technocratic complex, primarily the European Central Bank and numerous European agencies. The main issue is to conciliate the independence of these bodies with accountability requirements, however, the intentional limits to their accountability are supplemented by other limitations that result from practical constraints, and sometimes their formal accountability status does not keep pace with their changing functions.

a) The ECB is the main institution of the European Monetary Union. The bank's very high level of independence coupled with a significant expansion of its activities in recent years has made the issue of its political accountability particularly prominent. The formal accountability of the ECB – primarily to the EP, less so to the Council (Eurogroup) – is limited to its discursive dimension, mostly structured around the provision of information and reporting obligations, because the bank's independence limits political accountability to answerability, excluding the enforcement of political sanctions. Another limitation is that the ECB is subject to standards of professional secrecy, even though it recently opted to be more proactive in communicating with the public, the media and markets, in a context of increased media coverage, the politicisation of its role, and reduced levels of trust. Nevertheless, the higher density of interactions does not conceal some problems. For example, the quality of exchanges between the bank and MEPs is questionable, under the joint effect of confidentiality requirements and the weakness of in-house expertise on technical matters in the EP. MEPs therefore have difficulty posing relevant questions that would allow them to substantively challenge ECB decisions, and there is no real discussion of the quality of justifications provided by the bank.

   There is a similar mixed picture when looking into the accountability of the ECB in its new tasks as the main banking supervisor in the Euro area. This is a policy field in which the bank enjoys less discretion, and the EP has more powers, but at the same time the ECB's mandate is broader and "fuzzier", making the practical exercise of accountability

more difficult. The organisation of confidential meetings with committee members is intended to remedy such problems, and these meetings do allow real debate. The EP manages to gain influence through such informal *in camera* channels, although they entail the usual trade-off regarding the absence of public accountability, not to mention that the corrective function of accountability remains relatively limited.

Overall, the EP remains relatively weak as an accountability forum, and the accountability of the ECB is thin, because the procedures do not allow for effective contestation, especially with regards to substance. Finally, the accountability of the ECB to the Eurogroup faces somewhat different problems, primarily because the Eurogroup is an informal structure that lacks transparency and thus legitimacy, and in addition does not seem to be overly concerned with holding the ECB accountable. National parliaments are unevenly active, and remain peripheral entities in the accountability web of the ECB. Actually, accountability gaps are largely due to the passivity of those who should exercise this function. They are confronted, however, with a multi-level and networked system of governance that makes the allocation of responsibility difficult: the institutional framework is particularly complex and difficult to understand, the proliferation of ECB functions makes it increasingly hard to identify the arenas in which it should be held to account and for what, and the ECB's role in different bodies varies between theory and practice.

b) There are numerous EU agencies: they vary considerably with regard to their tasks, powers, and size, but a substantial amount of regulatory power has been *de jure* or *de facto* delegated to them, and their activities are expanding. Similarly to the ECB, the existing accountability mechanisms may not keep pace with the frequent expansions of mandate. The *de facto* power of agencies may not only be greater than their *de jure* authority through their influential expert advice and "soft" recommendations, but their *de facto* accountability may be less than expected based on the existing formal controls. This generates an obvious accountability gap.

   The dilemma regarding the accountability of agencies is similar to the dilemma regarding the ECB: how to conciliate accountability and independence. Agencies are politically accountable to the Commission, EP, and Council, but there is no comprehensive and coherent system of control over their operation. The most powerful agencies, such as the European Securities and Markets Authority (ESMA) with strong enforcement competences, do not appear to be subject to a much stricter accountability regime than less powerful agencies.

As the closest "master" of European agencies, the Commission has an active monitoring function over them. The Council is more loosely involved, but the European Parliament has more recently been rather strongly involved in scrutinising agencies. It has used its budgetary prerogatives to sanction agencies due to concerns about their staff's lack of independence from market interests ("revolving door"). These sanctions had a corrective effect, unlike thinner discursive accountability mechanisms. However, the limits due to forum passivity observed elsewhere also seem to apply to the accountability of agencies. Agencies operate with a significant degree of autonomy in often highly technical fields, which makes the practical exercise of control difficult in the absence of "focusing events". Accountability deficits therefore tend to originate more from a lack of motivation and the passivity of those who are supposed to hold agencies accountable than from intentional attempts to evade accountability. For example, agencies increasingly voluntarily and proactively seek contact with the EP, to avoid excessive dependence upon the Commission.

Another problem is that agencies may be overloaded in complex accountability regimes by conflicting steering signals from accountability forums with different agendas ("multiple eyes"). It should also be remembered that the EU Commission and EU agencies seek to exert influence over national agencies by forging partnerships with them in a large number of EU-wide rule-enforcing and coordination networks. It is difficult to identify the core actors in such networks, so in addition to the "many eyes" problem that may undermine the effective accountability of individual agencies, there is a "many hands" problem: responsibility is diluted and it is difficult for outsiders to identify who should be held to account in such complex multi-level settings.

c) The Court of Justice of the European Union is not just an accountability forum, but also a key actor in the expansion and deepening of supranational integration. Unlike most national constitutions, the EU treaties contain policy prescriptions, and the Court enjoys discretion in interpreting them. It has thus significantly contributed to the deepening of integration. However, more control over the Court is considered a blow to its independence, and therefore one could imagine only very soft forms of discursive accountability, for example with a more regular dialogue between the Court and the European Parliament. To remedy what may be perceived as a democratic gap with the key policy role of an unelected body such as the Court, one might consider removing provisions from treaties that are unduly (over-)constitutionalised, and thus locked in and relatively immune from change.

Network governance as an impediment to accountability

Intergovernmental and supranational forms of decision-making co-exist with less hierarchical decision-making structures and procedures which do not conform to the traditional organisation of political power in political institutions. They are instead organised along functional and sectoral lines in the context of day-to-day EU policy-making, in which weakly visible advisory bodies, working groups and networks include public actors from multiple jurisdictional levels together with various kinds of non-public actors. Actors (such as members of the bureaucracy, stakeholder representatives, or experts) who are part of this complex ecology do individually face accountability obligations, however, they have no democratic mandate (or only a narrow or remote one), and their accountability has important limitations. Furthermore, as they often satisfy multiple accountability forums whose claims differ, they may be caught in dilemmas with unpredictable outcomes.

Collectively, governance networks also face limitations in their accountability. To exert their rights effectively, accountability forums – such as grassroots members in organisations and peers in professional communities – need to be aware that their representatives or colleagues participate in such networks, and to be informed about their actions. Outsiders have difficulty grasping exactly what takes place in networks, because the "many hands" problem is exacerbated by the fact that policy-making takes place backstage. Understandably, accountability forums may lack the necessary information to make sound judgements, not being aware of the role of individual network members, of the collective influence of networks, or even of the sheer existence of such networks. Although lack of visibility is not the result of purposeful concealment, it impedes the allocation of responsibility and facilitates blame-shift.

Networks are increasingly held to account by other networks to remedy such problems, however, this raises additional difficulties: the constitution of accountability networks may face collective action as well as coordination problems, and generate fuzziness, with accountability mechanisms having competing agendas and being in tension with each other, suffering both from redundancy and from gaps. The problem with governance by networks is therefore not that it lacks accountability, rather that it may combine an excess of accountability supply with a waning of political accountability channels as a consequence of de-institutionalisation.

Politicisation and the limits of democratic accountability

As we have seen, the complex EU system does not favour clarity of responsibility. Most notably, many EU citizens are not familiar with the inner workings of EU decision-making, and this is an impediment to democratic accountability. Context matters for the practical exercise of accountability, and in recent decades there has been a politicisation of the issue of integration: with politics "back in",

does this positively affect the accountability of rule-makers by the general public? Empirical research on mass attitudes has come to relatively nuanced conclusions on the ability of the general public to adequately allocate responsibility in the EU system.

Despite the complex and fluid nature of the EU, European citizens are able to make relatively correct distinctions in terms of what the national and the European jurisdictional level do, to distinguish between more and less deeply "Europeanised" policy sectors, and to adjust their allocation of responsibility to policy developments. Those holding strong positive or negative views on integration are more prone to attribution errors, however, and, unsurprisingly, the individual level of political sophistication affects one's ability to acquire the necessary knowledge to make accurate evaluations. On the one hand, politicisation matters indeed: it increases the information supply in countries in which the integration issue is hotly debated. On the other hand, being able to better assign responsibility does not mean being *ipso facto* able to hold someone accountable. Although voters are provided with a direct accountability mechanism through elections for the European Parliament (for which there was a relative increase in turnout in 2019), the outcome of these elections is a very imperfect benchmark of the popular verdict on EU policies. For many reasons, even the most direct accountability connection at EU level appears quite loose in practice. It is impossible to hold accountable – through elections in which governmental parties compete with challengers – something less amorphous than the current executive power and more akin to a European government in the EU. The consequence is that distrust and contestation affect the EU as a whole when European people are dissatisfied, rather than just those holding office. This is a major problem for those concerned with the future and legitimacy of the European Union.

Conclusion

The political accountability glass in the EU is currently half-full, and there are no clear signals that it will be filled up soon. Despite repeated ritual incantations by European authorities that accountability and democratic legitimacy are necessary, the newer decision-making arrangements tend to be weakly accountable, and in some areas decision-making has shifted to less accountable arenas. The combination of executive activism with the empowerment of technocratic bodies is indeed not ideal for accountability.

Parliaments became more influential players, as regards inter-institutional horizontal accountability, and therefore also *de facto* accountability forums, as the other EU institutions must justify their preferences and run the risk of seeing their action blocked. What is more, technocratic bodies such as the European Central Bank or agencies voluntarily opt to be more accountable than formally prescribed. However, the accountability forums are often constrained in their

control activity by resource limitations, mainly in terms of time and expertise, and they may opt to put other issues that are more salient to them higher on their agenda. One might consider increasing the resources of forums, however this would not solve the problem of limited attention due to conflicting priorities.

The "parliamentarisation" of the system has remained uneven, across policy areas at the supranational level, and across parliaments at the national level. *Horizontal* accountability is often limited to reporting, and the provision of information, possibly followed by debate, with gains in terms of capacity to sanction or to block action lacking substance. Even plain reporting may trigger reactions from actors with a strong interest in a given policy, such as specialised media and interest groups that in turn alert the official accountability forums. However, plainly "discursive" or "explanatory" modes of accountability indicate only a moderate empowerment of the accountability forums, even if they are intensified. Although in some cases, such as that of the European Central Bank, one cannot advocate much more than the consolidation of a "thin" imperative to justify, one should set not just the formalisation of discretionary accountability relations as a general goal, but also the "thickening" thereof, to avoid the risk that the soft power of accountability forums becomes meaningless.

Vertical accountability – the most direct form of democratic accountability in representative forms of government – is weak in the EU system. The only directly accountable EU institution is the European Parliament, but even its accountability through elections lacks substance, given the weak electoral connection between the EP and European citizens. A trade-off has also been noted: the empowerment of parliaments as partners in decision-making and as accountability forums is often to the detriment of their own public accountability, as they are increasingly involved in informal and confidential negotiations with executive actors.

In addition, parliamentary empowerment tells only part of the story. There are major developments in the direction of an expanded intergovernmental and technocratic executive power, fragmented across many institutions, and comprising a multilayered political and administrative space. Even though there has been significant progress in recent years with regards to the transparency of several EU institutions, vertical accountability to the European general public in particular is limited by the difficulty of allocating responsibilities in an authority system with a complicated geometry, cumbersome multi-level processes, and opaque negotiations backstage. Informality, for example, may be deliberate, or result from improvisation, but whatever its reasons the codification of informal procedures, coupled with their better visibility, can only be beneficial for accountability. To the problem of "many hands" should nevertheless be added the "many eyes" problem: there is potential for conflicts between multiple accountability arrangements in the EU, because different accountability logics are at work simultaneously, with the risk of generating accountability dilemmas.

Considering that accountability overloads may have unintended effects, it does not make sense to plead only for *more* accountability. Optimising rather than maximising accountability should be the goal, as accountability can be "too much of a good thing", but science does not provide recipes for the optimal modes and levels of accountability. Scientific evidence, by contrast, shows that one reason for disaffection with the EU is the widespread perception that it is unaccountable and lacks democratic legitimacy, despite the fact that accountability deficits are not pervasive (as noted in the report). If people also became aware of the less visible accountability deficits, such as those related to the diffusion of informal practice, or to the prevalence in many areas of "thin" or "soft" forms of accountability, then it is not unreasonable to expect that their support for the European project might decrease further. Even though by no means a panacea, improving accountability is therefore not just a normative *desideratum*: it can contribute to the legitimacy of the European Union, in a context of increased politicisation and contestation of integration issues.

1 Introduction: from the "democratic deficit" to a "real world" approach to political accountability in the European Union

We often hear that policy-making in the European Union (EU) is conducted by unaccountable technocrats, such as members of the Commission and its administrative staff ("Eurocracy"). This kind of complaint has been on the rise for over twenty years now, at least since the resignation of the Santer Commission in 1999 following serious accusations of mismanagement and corruption. It found increased resonance with the erosion of the "permissive consensus" which seemed to characterise the first decades of the European project, during which European integration was not really an issue for the broader public (Hooghe and Marks 2009). It was accentuated by the Eurozone crisis and the austerity policies imposed under the regime of conditionality to member states which had been "bailed out". Generally, as the scale of EU legislative and executive power increased with the move towards an ever-denser union, so did the demand for more accountability (Wille 2017). European bodies themselves routinely complained about accountability deficits in the EU, albeit somewhat rhetorically. For example, the Commission's 2017 *White Paper on the Future of Europe* (European Commission 2017a) stated that "questions arise about the transparency and accountability of the different layers of decision-making" (p. 20), and that "Europe and its Member States must move quicker to interact with citizens, be more accountable (…)" (p. 13).

Scholarly critique of the "democratic deficit" of European integration, perceived as closely related to the lack of democratic accountability of policy-makers, is long-standing (Magnette 2003; Papadopoulos 2005). The "standard version" of that argument was presented about 25 years ago by Joseph Weiler and co-authors (1995). Their argument challenged the view that the major decisions related to integration enjoyed sufficient democratic input and sufficient control over output, because they are taken in negotiations between elected national governments (Moravcsik 2002). The view that the European Union is mainly legitimised through its regulatory output, which aims to improve the collective well-being and, consequently, cannot be judged by the same standards as national democracies (Majone 1998), has been equally criticised (Follesdal and Hix 2006).

Joseph Weiler and his co-authors (1995) claimed that the first problematic side-effect of integration was the decrease in national parliamentary control, which can obviously be described as an accountability deficit. Such a decrease is a correlate of the expansion of executive dominance and a consequence of informational asymmetries to the benefit of governments.[1] The latter are able to play a two-level game and impose their justifications domestically by invoking necessary concessions due to joint decision-making at the EU level. Grande (1996) called that phenomenon the "paradox of weakness": governments claim that their power is restricted in the international arena in order to increase their room for manoeuvre domestically. Although the degree of Europeanisation in policy-making should not be exaggerated (for example major policies such as pension reform, or, as we saw recently, public health, continue to be national), Europeanisation has been considered a major triggering factor for the disempowerment of parliaments ("deparliamentarisation"). By remaining weak as a legislator, originally at least, the European Parliament (EP) has not been able to counterbalance such a trend and to challenge the prominent role of the intergovernmental Council of the European Union, and it also took time for national parliaments to reverse the trend.

Other defining traits of the democratic deficit were the absence of "real" European elections with campaigns dominated by European issues.[2] This also caused prejudice to accountability, because, in such a context, elections do not operate as a corrective mechanism leading to responsive policies. Another reason that EU policies are distant from the preferences of the "median" voter is that they result from interinstitutional compromises between the Commission, the Parliament, and the Council. In other words, the prevalence of horizontal accountability between institutions within the EU checks and balance system also leads to policy that may not be aligned with voter preferences. As a matter of fact, these two types of accountability do not aim for the same goals: vertical accountability should ensure democratic control through the popular sovereign, whereas horizontal accountability embodies the constitutional principle of separation of powers in a system of checks and balances (Bovens 1998). More generally, the European Union is too remote and *sui generis*, so the way that such an unidentified political object (as once described by Jacques Delors) operates is only visible to a minority of well-informed and politically highly sophisticated people. Obviously, this also hampers accountability, however, the issue of accountability at the EU level is more complex.

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[1] There is of course empirical variation in information gaps. For example, a study of the European Parliament (2013) showed that the governments of EU member states differ in their practice of sharing information on European Council meetings with parliaments at home, and that formal parliamentary rights are crucial in closing the information gap.

[2] This has to some extent changed since the recent crises (see below).

The most comprehensive study of accountability in the European Union was conducted more than ten years ago by a multidisciplinary team (law, political science and public administration) led by Mark Bovens, Deidre Curtin and Paul t'Hart (Bovens et al. 2010a).[3] Four EU institutions were scrutinised, each with its own accountability "regime": two highly visible bodies, the Commission and the European Council, and two kinds of less visible bodies, EU agencies ("outposts" mainly in charge of regulatory policy) and comitology committees ("backstagers" composed of national experts and in charge of the implementation of European legislation). In their ground-breaking study, Bovens and his colleagues came to nuanced conclusions about the accountability of EU institutions. The picture is composite, differs according to the institution considered, and varies according to whether the focus is on formal accountability relationships ("on paper"), or on effective accountability relationships "in the real world".

Due to space limitations and because it is based on desk research, the present report does not engage in a similar far-reaching analysis of the accountability of European institutions. Relying on the scrutiny of official documents, and above all of a rich secondary material,[4] it nevertheless offers a bird's eye view of the status of accountability in the complex EU system. It draws inspiration from Bovens et al. (2010b: 174) by adopting an approach that aims to move "from assertions to assessments" regarding accountability. As a preliminary step, it spells out the major definitional characteristics of the concept of accountability. It updates the findings of Bovens et al. by disentangling accountability according to the various loci of power in the EU compound and multi-level decisional system. It also focuses on accountability in the real world: on the one hand, there is no doubt that in order to understand how accountability operates one needs to be familiar with how formal competences to hold individuals or organizations accountable are allocated, and with the official accountability procedures that are excellently described by public lawyers and specialists of European law; on the other hand it is also necessary to identify whether the monitoring agents have the ability and the willingness to hold effectively policy-makers to account.

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[3] Major previous studies include the pioneering reflection of Harlow (2002); Arnull and Wincott (2002), where only some of the chapters actually concentrate on accountability (both books reviewed by Fisher (2004)); Verhey et al. (2009), which is very comprehensive but focuses mostly on the formal aspects of accountability; and the relatively critical volume edited by Gustavsson et al. (2009). See also the report drafted by Bogdanor (2007), who chaired a working group which recommended tying the nomination of the European Commission directly to the results of the European elections; giving the European Parliament the power to hold individual European Commissioners to account for mismanagement, and to secure, if necessary, their dismissal; and introducing Europe-wide referendums on treaty change (on that topic see Rose 2015: Chapter 5 and 154-157). From a legal science perspective see Markakis (2020) on accountability mechanisms in the Economic and Monetary Union, and Moser (2020) on EU peacebuilding missions.

[4] The author is mostly familiar with the political science literature on accountability, less so with legal scholarship.

The present report takes stock of the developments resulting from intergovernmental treaty-making, starting with the Lisbon Treaty in 2009, and takes shifts in the power balance following Lisbon and the Eurozone crisis into account, particularly within the European Monetary Union. Most notably, it concentrates on the involvement of the European and national parliaments in policy, and their role as accountability "forums", and scrutinises the accountability of executive actors who assume a key governance role, such as the intergovernmental European Council, the informal Eurogroup, the supranational European Commission and the activist European Central Bank (ECB). It considers the implications for accountability of the post-Lisbon changes in arrangements for delegated legislation, the development of so-called "trilogues", the proliferation of agencies, the creation of new bodies such as the European Stability Mechanism (ESM), and the advent of new governance modes such as the European Semester. The report also highlights the major challenges with respect to accountability that stem from the multi-level system of collaborative governance that characterises the EU. Finally, it seeks to assess the impact of the fact that European integration (and disintegration) nowadays takes place in a context of increased politicisation and polarisation on democratic accountability. It concludes with a synthesis of the main current political accountability issues.

2 Defining accountability: a relational approach

Few people would dare to stand against accountability. Accountability generally appears to be a virtue in public discourse, and some even consider it "the *über*-concept of the twenty first century" (Flinders 2014: 661): It remains, however, frequently elusive, an ever-expanding "chameleon-like" term (Mulgan 2000: 555) that is equated with all kinds of aspects of "good governance". Let us first note that accountability is not necessarily related to democracy: democratic accountability – directly or indirectly to the citizenry – is a subset of all possible accountability relations. This is evident in the following definition by two scholars from the field of international relations, in which standards of democratic accountability cannot easily apply:

> Accountability ... implies that some actors have the right to hold other actors to a set of standards, to judge whether they have fulfilled their responsibilities in the light of these standards, and to impose sanctions if they determine that these responsibilities have not been met. (Grant and Keohane 2005: 29)

Apart from being relational, as prominently highlighted in the above quote, accountability is a multidimensional concept. Those who study it need to flesh out:

- Who is accountable to whom;
- For what: in politics, this is mainly for outcomes (responsiveness to voter preferences; performance and goal achievement) or for process (adherence to norms such as openness, fairness, impartiality or proportionality, or the sound management of public funds), but also regarding the personal qualities of politicians, such as probity;
- How: that is through what kind of processes and with what kind of standards; political (for elected officials), administrative/managerial (for civil servants), legal/judicial (with regard to rule compliance), and so on;
- Possibly with what kinds of consequences: sanctions and rewards.

As Olsen (2015: 425) puts it: "accountability involves establishing facts and assigning causality and responsibility, formulating and applying normative standards for assessing conduct and reasons given, and building and applying capabilities for sanctioning inappropriate conduct." There are basically two sources legitimising an audience (or a "forum" according to Mark Bovens) to take these steps, including – if suitable – considering delegating the right of oversight to others. The first source is when the audience has previously delegated (some of its) prerogatives to the actor who is accountable, as in the case of voters to politicians, or members of the executive to administrators. In such a delegation relationship,

accountability is based on "ownership" (Bovens et al. 2014: 5). The second source of accountability is affectedness: those who manage to convincingly argue that they are (deliberately or not) affected by policy can claim – and even more so if they have not participated in the policy process and are subject to externalities – that they have a legitimate right to hold policy-makers to account. In both cases, it is helpful for analytical purposes to view accountability as a social relationship of a communicative nature that connects individual or collective policy actors to accountability audiences in deliberative (sometimes also bargaining) processes, normally under the threat of sanctions by the audience (or a mandated body) if it determines that policy actors made wrong choices, showed misconduct, or displayed poor performance. The sanctioning potential is above all a deterrent: the threat to veto a decision, or to remove those who do not perform well from office, is expected to yield disciplining effects. Softer sanctions may also be at work alongside hard sanctions, such as reputational damage, but their impact on policy-makers' conduct is a matter of debate.

Accountability thus implies a relationship between an actor and an audience, in which: (1) the actor has an obligation to explain and justify their conduct to the audience by providing information about procedures, performance or outcomes (answerability); (2) a debate may ensue and the audience can pose questions, contest and pass judgement (the relationship may be more or less dialogical and confrontational); and (3) at the end of this (stylised) "time-line" (Lindberg 2013: 212) the actor may face positive or negative consequences, depending on the audience's evaluation (enforceability) (Bovens et al. 2014: 9). Studying the accountability relationships between the European Central Bank and the European Parliament, Maricut-Akbik (2020: 1203-1205) correctly labelled this approach to accountability "interactionist": it is necessary to know whether and how the audience contests the actor's actions or justifications, whether and how the actor engages with that contestation, and whether and how the audience reacts to the actor's reaction (possibly by deciding on rewards or sanctions). Even if an audience's monitoring of actors is concomitant to their action, and if policy-makers anticipate the accountability phase, accountability fundamentally takes place *ex post*.

Democratic accountability is specific to political bodies (as opposed, for example, to the accountability of private actors and market agents), but it is not their sole accountability. For example, the European Commission is subjected to multiple accountability regimes simultaneously: a regime of political (or democratic) accountability to the EP and the Council (both composed of elected officials), of legal accountability to the Court of Justice of the European Union, and of administrative accountability to the European Anti-Fraud Office, the European Ombudsman, and the European Court of Auditors (Crum and Curtin 2015: 69).[5]

[5] On the effective accountability capacity of the European Ombudsman and of the European Court of Auditors see Wille and Bovens (2020).

More generally, political systems are today complex (and this particularly applies to the European Union). The vertical chain of accountability – as illustrated by the accountability of elected officials to their constituencies, or of members of the bureaucracy to their political superiors – is thus supplemented by horizontal accountability mechanisms (O'Donnell 1998), frequently to non-majoritarian institutions – in the EU most prominently to the European Court of Justice, but also the European Ombudsman without direct sanctioning powers – in order to safeguard the rule of law and to protect minorities and individuals from abuses of power and violations of their rights. Public decision-makers may also be held to account by (on paper at least) independent and impartial third parties. Finally, as we will see below, policy-making is often the prerogative of networks requiring the collaboration of multiple actors, so that informal "peer" accountability among these actors may also count in practice. It is not difficult to understand that this additional constraint is likely to cause accountability dilemmas (Papadopoulos 2010).

Democratic accountability refers to the subset of accountability procedures in which the control function is performed by citizens or their democratically elected representatives. Crum and Curtin (2015: 64-65, emphasis in the original) describe the "triangular relationship of an *executive power-holder*, who justifies the exercise of his power to *a public forum*, in the understanding that its exercise is to serve *the popular sovereignty*." The multilevel expansion of executive power around both Commission and Council makes democratic accountability necessary, but also difficult, given the compound and composite nature of this power system (Curtin 2009). An order characterised by the exercise of complex executive power emerged in the EU, layered around existing national orders and configuring an integrated political and administrative space (Curtin 2007a). Executive power transcends institutions and is dispersed between the Commission, the Council, the European Council, the ECB, agencies, and national governments (Crum and Curtin 2015). This kind of power fragmentation is structurally unfavourable to accountability, because it triggers bargaining strategies, including in informal and sometimes secretive settings, and because the allocation of responsibility is hampered in such a context.[6] Who actually wields (how much) power in such an intricate setting?[7]

> Some insist that member-state governments in the Council are in charge, bargaining or deliberating on the basis of national interests. Others argue to the contrary that supranational actors in the Commission or the ECB are in control, designing and/or implementing initiatives in Europe's general interest. And yet others suggest that the EP plays an increasingly influential role in representing European citizens' interests. (Schmidt 2020: 6-7)

[6] Bovens et al. (2010b: 196) correctly argued in the case of the EU that "complexity breeds opaqueness, indeterminacy, and creates incentives for executive improvisation, negotiation, and entrepreneurship". On democratic and normative issues raised more generally by informal governance practice see Christiansen and Neuhold (2013) (part IV is on the EU).

[7] See also Section 10 below on accountability to the European public.

This report does not arbitrate that debate. It is assumed that each of these actors wields (more or less) significant power, and therefore the issue of its accountability is relevant. As the EP is directly elected by European citizens its role as a democratic accountability *forum* will be privileged. Does the EP act in particular as an effective counterpower to what Habermas (2013) somewhat provocatively referred to as "post-democratic executive federalism"? The same question can be posed about national parliaments, so this report will largely concentrate on the following two facets of democratic accountability of EU institutions: the centralised accountability of European executive bodies to the European parliament at supranational level, and the decentralised accountability of national governments to the EP's national counterparts.[8] These are the two main legitimate channels of multi-level oversight, and more generally of multi-level parliamentarism in the European system, because – as acknowledged by the European Commission – for accountability both the level at which decisions are taken, and the level at which they have an impact must be taken into account: "in multilevel governance systems, accountability should be ensured at that level where the respective executive decision is taken, whilst taking due account of the level where the decision has an impact." (European Commission 2012: 35).

The EP and national parliaments jointly perform the function of democratic representation, so that accountability to them is, indirectly, accountability to the European people.[9] That said, deficient accountability should not be conflated with deficient participation or representation.[10] The question is not how directly the input of European citizens or their elected representatives finds its way into EU legislation. For example, the European Citizens' Initiative is supposed to improve direct popular input, but is actually toothless because it is not binding for the Commission who has the formal right to initiate legislation (Greenwood 2019; Kandyla 2020). The question of accountability is instead about the opportunities that exist for the control of output, regardless of whether they mirror democratic input or not. Fromage and van den Brink (2018: 246) believe that the "accountability of executives is indeed a key issue at present, perhaps more so than the actual influence on the content of the policies". Accountability is a core ingredient of the so-called "throughput" legitimacy of the EU system, as indicated by Schmidt (2013: 7), who refers to "the myriad ways in which the policy-making processes work both institutionally and constructively to ensure

[8] Since there is much variation between parliaments in existing formal and practical accountability arrangements, this report offers only a general picture of accountability to these institutions.

[9] And of course members of legislatures are directly accountable to voters through the mechanism of competitive European and national elections. However, national (and even European) elections are a blunt accountability instrument for decisions pertaining to European integration because these decisions feature rather unfrequently as core issues on the agenda of electoral competition. See below Sections 3.1 and 10.

[10] The EU Commission, for example, makes frequent use of the notion of accountability in its policy documents, especially since its *White Paper on Governance* (Commission of the European Communities 2001), however, the concept is also often used loosely, and conflated with other notions such as those of transparency, consultation, or participation (Crum and Curtin 2015: 64).

the efficacy of [multi-level] governance, the accountability of those engaged in making the decisions, the transparency of the information and the inclusiveness and openness to 'civil society'".

Finally, as already explained in the introduction, it is worth recalling that "real-world" accountability obviously does not always function as formally prescribed "on paper", and this applies to all sequences of the accountability process: the provision of accounts and justifications, their critical scrutiny and ensuing debate, and the consequences that may follow. One should distinguish between *de jure* (in books) and *de facto* (in action) accountability, and audiences endowed with formal oversight tasks may just be "paper tigers", while audiences who only informally perform an accountability role may prove not to be toothless (e.g. the media may ruin reputations and alert the official accountability forums). The properties and resources of audiences can be decisive in understanding the gap between the institutional and the societal dimensions of accountability (Hurrelmann and Baglioni 2019: 915): on the one hand, an audience endowed with moral authority may induce compliance, even without coercion. On the other hand, audiences may face collective action problems, or may lack expertise or time to process information on the conduct of policy makers. For example, there are many drivers of limits to parliamentary control in the EU, such as "lack of formal powers, timing issues, lack of clarity and transparency of decision-making organs such as the ECB or the Euro summits, insufficient information, an absence of interest on the side of MPs or their insufficient expertise, and the difficulty to properly identify the impact of certain recommendations" (Fromage and van den Brink 2018: 246).

3 "Reparliamentarisation": a limited contribution to democratic accountability

In recent decades, and especially with the Treaty of Lisbon, there have been some significant improvements with respect to the democratic accountability of the EU. Ratified in 2009, the Lisbon Treaty resulted from a decade of constitutional reflection, which started with the 2001 Laeken Declaration on the Future of the European Union and the European Convention that followed it (Roederer-Rynning 2019: 958). The preamble of the Lisbon Treaty notes that it has been signed "with a view to enhancing the efficiency and democratic legitimacy of the Union".[11] The more spectacular step for the alleviation of the accountability problem was the phenomenon of a "slow but sure" (Brandsma et al. 2016: 633) parliamentarisation. As MPs are directly elected by their constituencies,[12] the growing parliamentary involvement in EU matters is generally seen as the manner in which democratic accountability should be enhanced in the EU (Bovens et al. 2010b; Christiansen and Dobbels 2013).[13] This happened with the formal empowerment of the European and of national parliaments.

3.1 A less imperfect bicameralism at EU level

As the Council of Ministers (Council of the European Union) in its different compositions is, in most cases, co-legislator with the EP, it can be considered to some extent as a functional equivalent to State Chambers in bicameral federalist systems. The analogy should, however, be taken with caution, due to the particularity of the Council's more extensive powers (outside the ordinary legislative procedure), which render the EU form of "bicameralism" asymmetric in its favour, and thus *sui generis*. The gradual empowerment of the – since 1979 directly elected – European Parliament is a significant development, however,

[11] (Official Journal of the European Union, 2007/C 306/01, p. 3). To some extent, the findings on accountability in the EU by Bovens et al. (2010a) have been updated in a special issue of the *International Review of Administrative Sciences* published in 2016, whose contributions "take stock of post-Lisbon additions to the EU's accountability toolkit and assess whether EU accountability has been strengthened" (Brandsma et al. 2016: 623).

[12] A consequence thereof is that the numerically non negligible Eurosceptic segment of European citizens is much better represented in the EP and in national parliaments than at the level of executives (not to mention the Court of Justice of the European Union, or the European Central Bank).

[13] This is a point of disagreement with the brilliant analysis by Dawson and Maricut-Akbik (2020: 7), because they exclude "the dimension of political responsiveness to the appropriate forum as inapplicable beyond the nation-state".

mainly with the co-operation procedure giving the EP a binding legislative role in a number of policy areas since the Single European Act (1987), and the co-decision (since the Lisbon Treaty in 2009 called ordinary) procedure that extended the number of policy areas with the binding involvement of the EP (Treaty of Maastricht 1992). The empowerment of the European Parliament has taken place vis-à-vis the Council in decision-making, with its role as co-legislator (even though the formal right to initiate legislation remains a prerogative of the Commission) (Hix and Høyland 2013). It might be objected that empowerment means a gain in influence – such as when the EP acts as co-legislator – and this is distinct from the EP acting as an accountability forum, however, gains in influence in the co-decision mode also strengthen the role of the EP as an accountability "forum" in its horizontal interinstitutional relations: the other EU institutions (Commission and Council) must enter into dialogue with the EP not from fear of sanctions but because it can veto their initiatives and choices. Moreover, the EP is a strong partner in executive–legislative relations, since there is a parliamentary vetting process of individual Commission members before approval of the whole Commission.

The process of "reparliamentarisation" is not without limits, however. Although advancing in the post-Lisbon era towards a more normal legislature, the European Parliament still does not play the same role depending on EU policies. Fabbrini (2019) differentiates between the supranational and the intergovernmental "constitution" of the EU, which have developed in parallel, in what he portrays as a "dual decision-making regime" that has been established with the Maastricht Treaty. It is in the supranational regime – which applies to regulatory policies related to market integration (the so-called "Community method", e.g. in competition or environmental policy) – that the EP has increased its institutional power, culminating in the ordinary legislative procedure,[14] extended to a very large number of areas of EU decision-making through the Lisbon Treaty. The supranational part in the EU's "bicameral" legislature was thereby reinforced, with symmetric bicameralism between the EP and the Council becoming the "default standard" and the "normal mode" of EU law-making, covering more than 72% of all subject areas for which the treaty provides for legislative procedures (Roederer-Rynning 2019: 959). Fabbrini (2019: 42) writes:

> In the supranational policies, an institutional quadrilateral has been promoted, based on a bicameral legislative structure (the Council, since it is the chamber which represents governments in the form of sectorial ministers, and the EP, since it is the chamber representing European citizens) and a dual executive (the European Council and the Commission with a commissioner for each member state).

[14] As already mentioned, the ex-co-decision procedure. The ordinary legislative procedure requires the absolute majority of votes in the EP and qualified majority vote in Council with reduced supermajority thresholds.

Such a system entails strong horizontal accountability relationships among the decision-making bodies: "policymakers in each institution are obliged to inform, explain and justify their actions to other institutions in the system" (Rose 2015: 17). As the EP is a key legislative player, its endorsement is necessary so that the other EU institutions are in practice accountable to it.

This supranational regime is not, however, devoid of accountability problems, which are of a *sui generis* nature. The limits derive from the "constitutionalisation" of the principle of market integration, which inhibits the corrective function of accountability. Although the European Union does not have a formal constitution, it has acquired a material constitution established by Court of Justice of the European Union (CJEU) "on the basis of the treaties interpreted as quasi-constitutions" (F. Fabbrini 2016: 67). The expansive interpretation of European treaties in the jurisprudence of the CJEU has played an important role in the constitutionalisation of principles of "negative" (market) integration contained in the treaties (Scharpf 2015). This form of integration through law is problematic, because European treaties have a higher density than national constitutions, and they regulate in detail questions that would be settled by ordinary legislation in national democracies (Lacey 2017: 229). As a result, progress in European market integration has reduced the potential to democratically formulate economic and social policy at the national level (Scharpf 2015). The scope of constitutionalisation was extended with the Eurozone crisis: Bellamy and Weale (2015) refer to the "near-Constitutionalization" at the European level of supply-side economics. The over-constitutionalisation (Grimm 2017) of policy goals makes their change extremely difficult, requiring treaty revision according to the unanimity rule, and procedures of national ratification.[15] There are thus material limits to the policy feedback permitted by accountability mechanisms.

Finally, although this report considers the EP primarily in its role as an accountability forum, to which other EU decision-bodies (such as the Commission) are or should be accountable, the EP has its own representation and accountability problems that limit the democratic potential of "parliamentarisation". Of course, this is not due to a lack of formal accountability of its members to voters – as just mentioned, the EP is the only directly elected European institution – but rather to deficiencies in the effective operation of accountability. Relatively few citizens turn out to vote in European elections, and, although voter turnout significantly increased in the 2019 election (from 42.60% to 50.66%) after a steady decline, it remains systematically lower compared with national elections, despite the rising decisional powers of the European Parliament (Rose 2015: 108). Competitive elections are also central to the accountability of democratic political systems, but in the European Union

[15] For example, as a treaty the TSCG (Fiscal Compact) cannot be revised through normal legislative procedures, while granting assistance from the European Stability Mechanism has become contingent on the ratification of that treaty, which imposes stringent rules of budgetary discipline to assisted countries (Schmidt 2020: 108).

they fulfil their function only in a limited manner. After four decades, direct European elections continue to be considered primarily as a "second-order" national contest (Reif and Schmitt 1980), in which national electorates sanction their governments for their general performance and evaluate parties' positions primarily on domestic issues – such as in "midterm" domestic (local or regional) elections (Hix and Marsh 2007).[16] The largely domestic prism in campaigns is mainly due to the lack of a common identity among European nations, or at least to the lack of a common public sphere to deliberate cross-nationally. Ten years ago, Bovens et al. (2010b: 191) emphasised the absence of genuine EU-wide party competition on the basis of alternative policy platforms as a limitation to accountability. The situation was not significantly different in the last elections, despite the existence of rival party *Spitzenkadidaten* for the post of Commission president since 2014. Most European voters do not deliver *ex ante* mandates to the members of the European Parliament (MEPs) to deal specifically with European matters, and above all they do not evaluate their conduct *ex post* (through retrospective voting). This is because even if some voters opt for a party primarily on the basis of shared preferences on European integration, they do not have the necessary information to hold this party accountable for its action at EU level. (Hobolt and Tilley 2014a: 147). [17]

Although the salience, contestation and media coverage of European issues have increased in recent years, the policies of different parties on issues that are on the EU agenda do not dominate the campaign (Braun et al. 2016; Schuck et al. 2011). Even if European-wide cleavages such as left-right and increasingly pro-contra integration do matter in legislative behaviour, many MEPs are not present in national political arenas, and debates in the European Parliament do not find much resonance in them. The electoral connection is weak (Hix and Høyland 2013): most notably, support for European integration is higher in the EP – in Rose's terms "a cartel advancing European integration" (Rose 2015: 12) – than among the mass public. It may thus be argued that the EP lacks "the cultural and social infrastructure that could position it as the effective voice of the 'European people'" (Crum and Merlo 2020: 400).[18] This is nicely portrayed by Jürgen Habermas's (2015: 3) metaphor that the European Parliament is designed as a bridge between the European and national arenas, "but there is hardly any traffic on this bridge." It thus comes as no surprise that, despite its formal democratic credentials, the EP has not been preserved from the overall erosion of trust by the public that affected the European Union after the financial crisis (Alonso 2014: 20–23).

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[16] It has nevertheless also been shown that in European elections voters tend to defect more from governing parties, because the latter tend to be pro-European. This is facilitated in campaign contexts that prime Eurosceptic sentiments (Hobolt et al. 2009).

[17] See also Section 10 below on the general public as an accountability forum.

[18] Transnational party lists at European elections are seen as a potential remedy to this problem. For a presentation of various proposals see European Parliamentary Research Service (2021).

3.2 When the empowerment of the European Parliament hampers public accountability: the case of "trilogues"

As we have seen, one of the major institutional changes introduced by the Lisbon Treaty was the extension of the co-decision procedure into new policy areas. This entailed an increase in horizontal inter-institutional accountability due to the role of the EP as an equal partner in co-decision. However, it also resulted in a need to negotiate compromises with the Council, which is done behind closed doors. The gains in terms of horizontal accountability to the EP may thus be offset by the gap in public accountability due to the informal negotiation procedures that become necessary for the drafting of legislation (Brandsma et al. 2016: 628–629). In other words, the empowerment of the EP with regards to accountability had an unforeseen negative side-effect. As already mentioned, by becoming an equal negotiating partner in the ordinary legislative procedure, the EP obliged the Council to justify its preferences and options. The EP thus became increasingly aware of the importance of its role as a "normal" parliament developing leverage over the Council with respect to the Council's accountability (Roederer-Rynning and Greenwood 2015). At the same time, however, interinstitutional negotiations – in the so-called "trilogues" – lack transparency, so that citizens are not able to determine whether, or how, decisions are "pre-cooked".[19] Roederer-Rynning and Greenwood (2021) refer to trilogues as "politicised diplomacy", a concept that highlights their hybrid nature, involving an unstable fusion of the parliamentary and the intergovernmental paradigm of politics. Trilogues are an informal but institutionalised mechanism providing for *in camera* discussions of legislative texts between representatives of the Council, the EP, and the Commission, with a view to securing legislative compromises (so-called early agreements). They have become the standard operating procedure for reaching legislative agreements between the institutions, which means that trilogues play a crucial role in the vast majority of European legislation under the regime of co-decision between Council and EP. During the eighth legislative term of the EP (2014–2019) trilogues took place on 346 out of the 401 proposals that were adopted under the ordinary legislative procedure, with a steep increase in the second part of the term (European Parliament 2019a).

Once a compromise has been found, public meetings of the EP and the Council are only used for rubberstamping (Brandsma et al. 2016: 629). Trilogue meetings can thus be seen as an effective instrument with which to reach inter-institutional agreement by enabling early compromises. However, the legitimacy of this practice has been questioned due to its opaque nature, and the EP has developed internal mandating and reporting mechanisms to keep the negotiators in check:

[19] Auel and Benz (2005) observed a similar development at national level, where empowered legislatures negotiate informally with the cabinet about the country's positions in the EU, shielded from public scrutiny in order to preserve the government's bargaining position, which might be endangered by information leaks and domestic conflict becoming visible.

> Trilogues have become more inclusive (by including all political groups), representative (by having the initial negotiating mandate endorsed in plenary), and accountable (by requiring the negotiating team to regularly report back to their committee and political groups). This has made it easier for parliamentarians who are not represented in trilogues to follow what is going on and to hold negotiating teams to account (…) The detailed intra-institutional rules and practices on trilogues mean that negotiators are held to account by their respective institutions and to a much higher degree than in the early days of trilogues. (European Economic and Social Committee 2017: 77).

There is continued criticism of limited transparency, however, including in recommendations by the European Ombudsman and in the ruling of the Court of Justice on the De Capitani case (Hillebrandt and Leino-Sandberg 2021). For example, although the EP requires its trilogue negotiators to report back to its committees after each trilogue, there is no report at all on the majority of trilogues, or reports are often late. When feedback is given, its quality is often poor (Brandsma 2019), and little is known about the Council's response (Roederer-Rynning and Greenwood 2021: 490). Internal accountability is not sufficient and the limits of external accountability must also be considered (Rosén and Stie: 2020):

> The absence of an official paper trail during trilogue meetings makes it challenging for external stakeholders (such as interest groups) to follow what is going on during trilogue meetings (…) According to the European Ombudsman, public disclosure of information of trilogues would create a level playing field between stakeholders in Brussels, at least concerning access to information. (European Economic and Social Committee 2017: 79).

Accountability can be improved if outsiders are better informed, since the account-holders may need to coordinate in order to act effectively. Formal accountability forums often depend on the resources of other actors, so that accountability is often mediated. For example, interest groups with intense preferences regarding issues on the trilogue agenda can play a role as "fire alarms" in alerting MEPs. However, access to relevant information is easier if organisations are endowed with considerable lobbying resources, so that there is also a risk that vested interests will gain influence (Roederer-Rynning and Greenwood 2021: 494). There is yet another problem: while the EP can be considered a winner, national parliaments have difficulty keeping pace when negotiation procedures expand at European level. In other words, the EP and its members gain power through their participation in trilogues, but this seems to go hand in hand with a loss of control by most national legislatures (de Ruiter and Neuhold 2020). With more transparency national legislatures would be in a better position to monitor trilogue meetings (Jensen and Martinsen 2015).

3.3 The ambivalent post-Lisbon role of national parliaments

The decentralised accountability of rule-making bodies is the other facet of political accountability to representatives of EU citizens. This is part of the idea that national parliaments should be re-empowered because a more democratic European Union must be a "demoi-cracy": the design of its democratic features must take into account the fact that its political community is not a single "demos" sharing a common identity and a feeling of belongingness, but is fragmented in multiple national "demoi" (Cheneval et al. 2015).

Some national legislative assemblies have indeed undergone a gradual re-empowerment process regarding EU affairs: "domestic MPs have become increasingly aware of how the EU impacts on their work and on legislature-executive relations at the national level" (Raunio 2015: 113). There is nevertheless considerable variation in the ability of national parliaments to "fight back" against "deparliamentarisation" and to subject executives to tighter scrutiny when they are involved in European policy-making. The most successful national parliaments in this regard are those with strong formal rights regarding their access to information, or their ability to issue resolutions and mandates, and having also established an effective infrastructure to deal with EU matters (Auel et al. 2015a; 2015b; on the Swedish Riksdag see Auel 2018). As already mentioned, more parliamentary strength tends to be converted into domestic interinstitutional bargaining power: parliaments are more influential if they succeed in becoming involved in informal negotiations with the government. This also happens because of the tendency to treat EU-politics as foreign policy that primarily serves to promote the national interest. The goal of strengthening the government's negotiating power by showing domestic cohesion and support is at the detriment of public debate and the expression of opposition. In the end, there is a trade-off: governments become more accountable to parliaments on EU matters if parliaments exercise their control outside public scrutiny, but this causes prejudice regarding the accountability of parliamentary action to the citizenry. In other words, the accountability relationship between national executives operating at EU level and national parliaments has been strengthened in some EU member states, but was to the detriment of the accountability relationship between national parliaments and voters, and thus had unforeseen (and in all likelihood unintended) negative effects on public accountability.

The influence of national parliaments has also expanded with the Lisbon Treaty, as institutions enjoying direct democratic legitimacy as part of a Union founded on the principles of representative democracy (art. 10 TEU): "The Lisbon Treaty of 2009 was hailed as a 'treaty of parliaments', intended to overcome some of the criticisms of the EU by (re-) empowering national parliaments in conjunction with the European Parliament" (Cooper and Smith 2017: 728). The Lisbon Treaty also introduced new control mechanisms that create rights for national parliaments to hold the European Commission to account by providing them with a direct say in policy-making at EU level. The treaty contains an

"early-warning mechanism" that allows each parliament to indicate, with a reasoned opinion, whether they find that a proposal by the Commission violates the principle of subsidiarity. The review should focus on whether or not it is appropriate to act at EU level, and the exercise is performed at an early stage of the legislative process (within an eight-week period). If more than one-third (or one-quarter in the area of "justice and internal affairs") of opinions from a coalition of national parliaments are negative, the Commission must reconsider its proposal. If a simple majority of parliaments issues such objections ("orange card"), then this triggers a vote at the EP and the Council. This mechanism granting national parliaments a formal gatekeeping role (Sprungk 2013) also includes the ability for them to turn to the Court of Justice – yet another accountability forum – for violations of the subsidiarity principle.

Research findings are ambivalent with respect to the effective contribution of the early warning procedure to "parliamentarisation" and to the improvement of political accountability (Brandsma et al. 2016: 629). Winzen (2017) argues that national parliaments are more successful at improving their individual domestic scrutiny than acting jointly through the early warning mechanism, and suggests that this is in line with their priorities, as national actors see their parliamentary role in EU affairs as influencing and controlling the national government, so that the limitations to networking and collective action (Sprungk 2013) should not be surprising. No "orange card" has so far been issued, and a sufficient number of national parliaments issued a "yellow card" only three times. The early warning mechanism has thus been employed infrequently, and with great variation in its use by national legislatures, however, we do not know whether there have been many blatant infringements of subsidiarity in the initial Commission proposals. Parliaments also tend to be more reactive to salient and urgent draft legislative acts (Gattermann and Hefftler 2015), which shows a sense of priority. More alarming is the fact that only one yellow card resulted in the proposed legislative piece being withdrawn (the Monti II Regulation on the right to strike, which was withdrawn in 2012 after receiving the first "yellow card"), while the legislative process continued for the two others: the 2013 proposal for a European Public Prosecutor's Office (EPPO) and the 2016 revision of the Posted Workers Directive (Cooper 2019). The Commission's responsiveness to the yellow card procedure is thus limited.

Some scholars are more positive about the early warning mechanisms and point out the indirect and more diffuse effects thereof. Indirectly, the sheer existence of the early warning procedure forces the Commission to pay more attention to subsidiarity, and some of the concerns raised by national parliaments were indeed reflected in the final text (Cooper 2019: 921). The procedure also encourages national parliaments to get involved in the decision-making process, and thus to take control over their government's actions. This work has also been facilitated by the treaty-based right for national parliaments to access relevant information (Brandsma et al. 2016: 626 and 629). More diffuse effects include

learning: parliaments become more sensitive about EU affairs (Miklin 2017). Cooper (2019) finds that the early warning mechanism triggers deliberations within parliaments by making them participants (even though peripheral) "in the day-to-day legislative politics of the EU" (p. 937), something different from just controlling and seeking to influence the positions of their national governments in the intergovernmental arena. Overall, this more indirect and diffuse contribution to "parliamentarisation" should not be ignored, although it remains rather limited. Interestingly, it is the Eurozone crisis that triggered a more significant, albeit uneven, re-empowerment of national parliaments.[20]

[20] See Section 7.2. below.

4 Accountability deficits of executive dominance: the opacity and informalisation of intergovernmental bargaining

As already mentioned, Fabbrini (2019) distinguishes between the supranational and the intergovernmental regime in EU governance. The "intergovernmental regime" involves policies of high domestic political salience: first the two intergovernmental pillars of Common Foreign and Security Policy and Justice and Home Affairs (the distinction between pillars was abolished in the Lisbon Treaty), and then the European Monetary Union in 1994 (the economic policy side of which was put under the control of the intergovernmental institutions, while the monetary policy side was delegated to the independent European Central Bank). In this section we will show that the dominant role of the European Council, the informal status of the Eurogroup, and the peculiar status of the European Stability Mechanism, all engender accountability gaps.

4.1 The European Council and the Council of the European Union

In addition to an enhanced role for the European Parliament, the Lisbon Treaty brought the main intergovernmental institution, the European Council of heads of state and government, within the legal order of the EU. The European Council is "the principal agenda-setter, the ultimate arbiter in decision-making, and the motor behind European integration" (van de Steeg 2010: 119). It is the highest political institution of the EU, and the driving force of political developments, assuming the tasks of strategic planning and leadership (Crum and Curtin 2015: 80; Fabbrini 2019: 419). With the Lisbon Treaty, the European Council was not only fully recognised as a European institution, but was also separated from the council of ministers (Council of the European Union), although they share a common administration. It has taken on a purely executive function, leaving the task of implementing its decisions to the council of ministers and the Commission (Fabbrini 2019: 424). It should be noted that the work of the executive European Council continues to be prepared by the General Secretariat of the legislative council of ministers, a sign of an unhealthy confusion of responsibilities (Fabbrini 2021a: 11).

The Lisbon Treaty entering into force coincided with the outbreak of the Eurozone crisis. Set up in a situation of "state of exception", an emergency regime then led to an unconventional and discretionary decision-making system (Dyson 2013; Joerges 2016), presented as a functional adaptation to crisis pressure, so that "decisions are rationalized as unchosen and unavoidable both in substance and timing" (White 2019: 6, see also 129–134). Crisis management has made the migration of power to executives wider and deeper, leading to the centralisation of decision-making (F. Fabbrini 2016).[21] "The most consequential acts of authority carried out as a crisis response were often accompanied by opaque procedures, backdoor bargaining, or temporarily withheld information" (Kreuder-Sonnen 2018: 959), so that one can speak in Jonathan White's terms of "an emergency politics informally co-produced by the many" (White 2019: 3), and of "informal and hasty coordination across multiple sites of executive power" (White 2019: 133). Other critical moments such as the migration crisis, Brexit, and more recently the consequences of the pandemic were also subject to primarily intergovernmental management.[22] However, the institutional improvisation during the Euro crisis produced effects on the Eurozone institutional balance that were lasting, and not just *pro tempore* (Dawson and de Witte 2013).[23] As stated by the European Commission (2017: 17) itself:

> The institutional architecture of the EMU is a mixed system which is cumbersome and requires greater transparency and accountability (…) This 'in-between' governance (…) also reflects the fact that many new rules or bodies were established in an ad hoc manner over time, often in response to emergencies (…) While every institution and body strives for greater legitimacy and accountability, in practice this means complex decision-making, criticised for not being understandable and transparent enough.

The European Council has significantly increased its power in this context, gradually becoming "a type of default 'crisis manager' of the EU" (Curtin 2014: 7). Negotiations on crisis management and procedures to monitor budgets mainly took place between governments (Schimmelfennig 2015: 187ff.).[24] The European

[21] For example: "As the establishment of the bailout funds took place outside the EU legal framework, the ordinary legislative procedure was not applied and the EP could not be involved as a co-legislator in the process." (Maatsch and Cooper 2017: 648).

[22] On the management of the migration crisis seen under the lens of emergency politics see White (2019: 78–85). First analyses of the management of the pandemic crisis highlight a partially different mode of emergency politics that left more space and time for deliberation (Truchlewski et al. 2021), however, executive dominance and the sidelining of the EP continued (Kreilinger 2020).

[23] "Eurozone history and the story of its democratic legitimisation is effectively divided into a pre-crisis and post-crisis phase" (Barrett 2018: 250). See also White (2019: chapter 4).

[24] The intergovernmental management of the Euro crisis had a clear asymmetric character between countries as a consequence of their unequal bargaining power, with domination by creditor member states. Although the Commission initiated proposals and initiatives, they were only successful if they were in line with German preferences (Schimmelfennig 2015: 187). Germany reluctantly acquired a "semi-hegemonic status" at the beginning of the crisis, due to its leadership regarding both demography and economy (Bulmer and Patterson 2014).

Council has emerged as the centre of political gravity in the field of economic governance (Puetter 2012), and, despite the absence of a formal legislative role, it managed, for example, to set the legislative agenda by establishing the frameworks for the Fiscal Compact, the "Six-pack" and the treaty on the ESM (Dawson 2015: 979).[25] Such a role calls for discussion of the democratic legitimacy and accountability of this intergovernmental body:

> More robust accountability is all the more important and necessary given that both the Lisbon Treaty and the euro crisis have contributed to the European Council becoming more powerful (Fromage 2017: 174).[26]

More generally, the intergovernmental method is prominent in new domains of EU activity, such as economic governance, but also foreign affairs, which operate mainly outside the community method, and in policy sectors with a mix of legislative and non-legislative decision-making mechanisms, such as justice, home affairs, and energy (Fabbrini and Puetter 2016). Surprisingly in view of its strategic power, the European Council is not considered the EU's government and, unlike in national parliamentary systems, its powers do not derive from any delegation by the European Parliament nor does the Council need its approval for decisions. There may not appear to be accountability deficits in the European Council, since its members are democratically elected national heads of government and state. This is the argument of those who more generally deny the existence of a democratic deficit in European integration, as it is conducted by democratically elected governments who are accountable to their national constituencies. Such a view is, however, misleading for many reasons.

Intergovernmental negotiations are prepared *ex ante* by administrators who can enjoy considerable discretion, and this *de facto* extension of the delegation chain creates accountability problems. The Council's Secretariat General has incrementally been endowed with executive tasks (Curtin 2009). For example, Juncos and Pomorska (2011) studied EU foreign policy, and highlighted the unforeseen important role of the Council secretariat, and the fact that representatives of national administrations underwent a socialisation process, so that even this formally intergovernmental policy is to a large extent "Brusselised". They concluded that the electoral sanction of national governments loses its weight as an accountability instrument.

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[25] On these instruments see also Section 5 on the Commission.

[26] See also Kratochvil and Sychra (2019: 169): "While it is clear that the solutions to the crisis chosen by EU leaders have generally led towards more integration (for instance, integrated banking oversight, better coordination of fiscal policies, etc.), this complex set of measures cannot be reduced to a simple shift on the axis of deeper integration vs. more national autonomy. Paradoxically, many of the measures in fact deepened the integration process while at the same time strengthening the intergovernmental aspect of the accompanying decision-making. This, together with the emergence of the stronger redistributive aspect of the economic integration (cf. Börzel 2016), means that the questions of EU legitimacy and the related democratic deficit have to be asked anew."

Even though each member of an intergovernmental body is formally accountable to their own national parliament and electorate, even parliamentarians may not be sufficiently informed about the content of negotiations (not to mention ordinary citizens), and such informational asymmetry allows governments to play a "two-level game" (see above) and shift the blame *ex post* for potentially unpopular decisions to their negotiation partners. This is connected with difficulty in assigning responsibility in situations plagued by the "paradox of shared responsibility" (Bovens 1998: 45–52). When many participants are involved in negotiated decision-making, it becomes more difficult for outsiders to decipher who is responsible for what, how much, and for which part of the decisions, and this is particularly true if negotiations are opaque. Therefore, the involvement of "many hands" (Thompson 1980) in decision-making allows policy-makers to "circle the wagons" and spread responsibility across numerous actors (Hobolt and Tilley 2014a: 103).

The Council is a relatively opaque institution: only its conclusions are publicly available, but even this limited transparency does not apply to the decisions of its informal meetings. The Council's decisions are frequently taken by consensus after informal and secretive negotiations, because "pre-cooking" under conditions of "black out" and diplomatic secrecy is necessary for forging compromises (Curtin 2014; Novak 2013). This reduces the ability to hold Council members accountable, as the procedure hides their preferences in the negotiation process. Visibility – or accessibility, in Crum's and Curtin's terms (Crum and Curtin 2015: 71) – is indeed a necessary condition for accountability. It is therefore problematic if the account-holders lack relevant information to evaluate the actions of the accountees in a reflexive manner, and even if information is disclosed, only those who are aware of the details of intergovernmental negotiations can make meaningful use of it, so that transparency is not the "holistic medicine" it is sometimes deemed to be (Curtin 2007b): [27]

> The participation and control by NPs of Council decisions, however, will remain weak and insignificant, as long as Council meetings are not public, and as long as national parliamentarians are not familiar with EU procedures and the situation in the other Member States. (Pernice 2017: 134).

As compromises can only be forged if those involved in negotiations enjoy discretion, ultimately intergovernmental bargaining implies, or even requires, the autonomisation of the negotiation partners from their domestic principals (citizens or parliaments): "governments in most policy areas face only limited

[27] Naurin (2006) makes a useful distinction between transparency and publicity. In his analysis, "transparency" means the availability of information, but it does not mean that access to information is effective. By contrast, "publicity" refers to a situation in which information is not only disseminated but also received, processed, and digested by the public. Transparency is thus a prerequisite but not a guarantee of publicity, which in turn is a necessary condition for accountability.

constraints from their own publics or parliaments when negotiating with their counterparts at the EU level" (Hurrelmann and Baglioni 2019: 914).

What is more, intergovernmental bodies make decisions that have Europe-wide, and not just national implications, without being held accountable by the electorates or the representative institutions of the other member states that are subject to joint decisions (Crum and Curtin 2015: 78-79; Offe 2016: 113).[28] This is particularly problematic if intergovernmentalism takes asymmetric forms, which hampers the development of peer forms of accountability:

> The Council can achieve a kind of mutual accountability as a deliberative body, with its members holding one another accountable for their decisions. But this assumes that deliberation meets certain standards, in particular that it proceeds without major inequalities in the exercise of power or voice, or at least that these are balanced out in such a way that member states don't feel unduly disadvantaged. In many domains, this may be the case. It remains in question with regard to Council decision-making during the Eurozone crisis (Schmidt and Wood 2019: 732).

When intergovernmentalism is asymmetric, not only is peer accountability between unequal partners impossible, but more fundamentally there is a lack of congruence between those who design policies and those who are affected by them. Some governments are confronted with decisions imposed by others, so that their constituencies get the impression that their vote in elections does not count for policy (Ruiz-Rufino and Alonso 2017, and that national democracy is "pre-empted" (Scharpf 2011), generating cynicism and widespread anti-political and anti-integration sentiment. Although the European Council formally enjoys indirect national legitimacy as the main intergovernmental arena, the fact remains that national governments are neither primarily elected to make decisions with their European counterparts, nor primarily held accountable for that kind of decision. In reality the Council is thus a sort of self-sufficient institution that operates in an accountability vacuum (Fabbrini 2019: 426), and it is indeed paradoxical that the institution holding ultimate political authority is not effectively accountable at European level (Crum and Curtin 2015: 85).

It has already been noted that the EP does not hold the Commission accountable as national elected assemblies do in parliamentary systems. This obviously applies to the supranational regime, but it is paralleled by a more blatant weakness in the intergovernmental regime: the EP's incapacity to check the European Council when it acts as an executive (Fabbrini 2019: 424). In fact, the European Parliament has "very thin" powers that "do not lead to meaningful accountability

[28] See also Schmidt and Wood (2019: 732): "most collective EU-level decisions go beyond the aggregation of member state governments' individual interests in ways that cannot be adequately assessed by any individual national parliament on strictly national accountability grounds".

of the European Council by the EP" (Curtin 2014, 26); "unlike at the national level, where parliaments largely serve as forums of accountability for national executives, the EP has little de jure authority with regard to the Council, leaving the Council with no formal EU-level forum that can both hold it to account and to which it has to give account" (Schmidt and Wood 2019: 731-732). The *de jure* accountability arrangement between the two institutions is limited, and the hard option of sanctions from the EP is conspicuously absent, unlike between governments and parliaments at the national level (Crum and Curtin 2015: 81-82). After the semi-annual summit of chiefs of government, the President of the European Council[29] regularly appears in front of the EP to inform it of matters discussed. The President presents a report to the EP, but there was no reporting after "non-ordinary" meetings on a regular basis, despite their importance (Fromage 2018: 283-285), and the fact that the European Council increasingly meets without formal documents does not facilitate the oversight role that the European Parliament could play.

Kelemen's (2019: 58) assessment is clear: "the Council represents democratically elected governments, its practices are often opaque and undemocratic."[30] This accountability gap is indeed problematic, having to do with the strategic manager of European integration, who takes that role on issues that are highly salient, sensitive, and potentially divisive for member states, such as the financial crisis, or the refugee crisis (Fabbrini 2019). It is a positive development that in many member states, national parliamentary control over the participation of governments in European Council meetings became more regular and expanded in many ways, such as the personal and increasing involvement of Prime Ministers, or the shift from *ex post* to *ex ante* control (European Parliament 2013). Intergovernmental negotiations also take place in the shadow of national elections, and this forces governments to be responsive to their domestic constituencies by defending positions that are in their interest (Schneider 2018). However, despite the rise of intergovernmental decision-making, there is no accountability forum able to control the European Council as a collective organ whose members jointly make decisions with EU-wide effects, although these decisions entail the redistribution of costs and benefits in a context in which conflict between member states has been on the rise (Schmidt 2019). Electorates and national parliaments can, in theory, hold their governments accountable for what they do in Brussels and vote them down, but there is no control on what is collectively undertaken at EU level.

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[29] Since the Lisbon Treaty, the European Council elects its own President, by a qualified majority, for a term of two and a half years, renewable once. It should be added that the rotating biannual country presidency continues to operate for the regular Council of ministers, alongside the Presidency of the Commission, introducing hybridity and confusion into the system that impede the attribution of responsibility.

[30] See also Schmidt (2020: 117): "As for transparency, inclusiveness, and openness, these have long been in short supply with regard to the Council".

As regards the Council in its meetings at ministerial level (Council of the European Union), it has made some progress with respect to transparency (as has the Commission), yet, despite improvements on paper, some caveats persist with respect to transparency practice. Since the Treaty of Lisbon, the Council is bound to debate in public when it drafts legislation (Crum and Curtin 2015: 73). Almost all legislative deliberations in the Council's different ministerial formations have been videotaped and made public since then; however, actors are still able to evade transparency requirements, as indicated in the following excerpt:

> The Lisbon Treaty of 2009 introduced a distinction between legislative and non-legislative Council activities and mandated that the former be televised and open to the public. Intended as a transparency-enhancing innovation, this measure (…) revealed that most Council formations spent most of their time on non-legislative issues such as information exchange and policy coordination – in particular since much of the legislative business is taken care of in preparatory bodies below the ministerial level. In addition, the duration of informal meetings – such as breakfasts and lunches – augmented considerably (Braun and Hübner 2019: 31).

Informalisation thus allows pressures for more transparency to be circumvented. Decisions at ministerial level in the regular meetings of the Council are also often reached by consensus, even where qualified majority voting applies, although there has been a steep post-Lisbon increase in contested voting. Kelemen (2019: 57) refers to a "deep-seated pattern whereby the Council (both the European Council and regular Council formations) still seeks whenever possible to operate behind closed doors and to reach agreements by unanimity".[31] In 2018 the European Ombudsman sent a special report on the lack of Council legislative accountability to the European Parliament, after the Council did not react to the ombudsman's recommendations aiming to improve transparency in the Council's legislative activity. The report criticised, for example, failure to systematically record the identity of Member States taking positions in Council preparatory bodies, and the widespread practice of restricting access to legislative documents.[32] This is indeed problematic, but also a source of more general concern with the style of executive politics: within many national democracies, negotiations between ministries, or between central and subnational jurisdictional levels, also frequently take place under conditions of secrecy.

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[31] See also Fromage (2017: 175): "Because the Council and the European Council mostly function on the basis of consensus even where qualified majority voting applies, secrecy is particularly important for government representatives to be able to negotiate freely and reach a consensus".

[32] https://www.ombudsman.europa.eu/fr/special-report/en/94921 (accessed August 12, 2020). The EP supported the ombudsman with a very large majority, and also pleaded for a real bicameral legislative system to be set up, with the Commission acting as the executive, and to replace consensus-based decision making with qualified majority voting to ensure that a formal public vote takes place. See https://www.europarl.europa.eu/news/en/press-room/20190111IPR23224/ep-urges-council-to-become-transparent-expands-ombudsman-s-recommendations (accessed August 12, 2020).

4.2 Eurogroup and Euro Summits

The constitution of the Eurogroup of the ECOFIN Council is probably the most salient example of the growth of informal executive power and is emblematic of the increasingly autonomous logic of decision-making in the Eurozone and characterised by limited transparency and impediments to accountability. The Eurogroup is the Council of ministers of economy and finance of EMU countries.[33] It "exercises very considerable power over policy and planning for states that subscribe to the euro, and is also at the centre of implementation and execution of such policy" (Craig 2017: 234). This happens although it cannot adopt legally binding decisions, given its informal status. Unlike the larger ECOFIN Council, whose composition is quite similar (it includes the members of the Eurogroup plus representatives of the non-Eurozone member states), it is not an organisation that is part of the formal structure of the EU (Braun and Hübner 2019: 7). Its creation as a compromise in 1997 was communicated in the form of a European Council conclusion (Crum and Curtin 2015: 80). Its legal base is minimal: Article 137 of the Treaty on the Functioning of the European Union (TFEU) provides that "arrangements for meetings between ministers of those Member States whose currency is the euro are laid down by the Protocol on the Euro Group", and Article 1 of Protocol 14 (On the Euro Group) provides that euro area ministers shall meet informally when necessary "to discuss questions related to the specific responsibilities they share with regard to the single currency" (Craig 2017: 235). The powers of the Eurogroup grew considerably with the financial crisis, which "created the need for an institution that could orchestrate the response of the euro-area Member States" (Craig 2017: 240) and contribute to the coordination of national fiscal and budgetary policies, with wide-ranging socio-political consequences. Meeting on a monthly basis before the ECOFIN Council, the Eurogroup fulfils a crucial function as a forum that formulates important decisions, in spite of its status as an informal body.

The role of the Eurogroup should be seen in relation to the role of Euro Summits. The appearance of such Eurozone-specific political arenas is a typical symptom of the governance of the Eurozone developing as a *de facto* separate governance layer (Fromage and van den Brink 2018: 242). The Euro Summit was not mentioned in the EU Treaties, and emerged as an institutional player and a potential rival to European Council summits. Euro Summits are composed of the Euro area heads of states or governments, the President of the Euro Summit, and the President of the Commission. Initially organised irregularly, they are officially intended as informal meetings by Article 12 of the Fiscal Compact, and take place before European Council meetings. The agenda of the Euro Summits is prepared by Eurogroup meetings, the Eurogroup is responsible for their follow-up and the Eurogroup President is invited to attend Euro Summits. The Eurogroup is

[33] The section on the Eurogroup is largely based on Craig (2017) and Braun and Hübner (2019). Puetter (2006) is a pre-crisis, book-length, account of the Eurogroup based on interviews.

"an executive body sui generis" (Craig 2017: 240), which enjoys considerable decisional autonomy and managed to become, together with the European Central Bank, the "beating heart" (Braun and Hübner 2019: 8) of European economic governance. Its president is elected by the majority vote of the other ministers for two and a half years. This is a high-profile function ("Mr Euro"):

> The President sets the agenda, chairs Eurogroup meetings, and draws up the long-term work programme. He is the visible face of the Eurogroup, and represents the Eurogroup in international fora, such as the G7 and IMF. The fact that the current President is also Chair of the Board of Governors of the ESM adds further to his importance (Craig 2017: 235).[34]

Although the Eurogroup – despite its informality – is officially an accountability *forum* for the European Central Bank, which must report to it on the Single Supervisory Mechanism (Article 20 of the SSM regulation), it has its own accountability problems. It has an executive function as a collective, but its members also operate as legislative actors when they meet within the broader ECOFIN, with a problematic fusion between executive and legislative functions (Fabbrini 2021a: 11). Enjoying wide discretion in practice, the Eurogroup is thinly accountable to another executive body, the European Council (Craig 2017: 241), and Eurozone finance ministers are *de facto* accountable to their political superiors (heads of government) who comprise the Euro Summit. Not being an official body, its output is not subject to judicial review by the Court of Justice, regardless of its influence, which prompts Craig (2017: 244) to point out a "gap between legal form and substantive political reality" and a "disjunction between power and accountability".

The use of informal working methods in the Eurogroup has become ever more extensive (Puetter 2012). In order to guarantee proper public access and parliamentary control, the EP called for the Eurogroup's role to be fully formalised during the next revision of the Treaties.[35] Informality and confidentiality are part of a deliberate design, facilitated by the small number of participants in meetings (a strict minister-plus-one rule including the minister's alternate) and the absence of minutes (Braun and Hübner 2019: 11), and highly valued for collegiality, the development of mutual trust in an atmosphere of intimacy, and the achievement of compromises (Braun and Hübner 2019: 30). Due to the Eurogroup's lack of institutional status, EU transparency provisions and regulations for public access do not apply, and the European Ombudsman even opened a case on that matter in 2016.[36] In the same year the Eurogroup adopted a "transparency initiative" on the initiative of its president, and agreed "to publish complete draft annotated

[34] See the next section.

[35] https://www.europarl.europa.eu/news/en/press-room/20190111IPR23224/ep-urges-council-to-become-transparent-expands-ombudsman-s-recommendations (accessed August 26, 2020).

[36] https://www.ombudsman.europa.eu/en/case/en/48285 (accessed August 26, 2020).

agendas Eurogroup summing-up letters (reflecting what has been discussed in meetings), and at least some meeting documents" (Barrett 2018: 256). In summer 2019 the Eurogroup reviewed its transparency policy and adopted some additional measures, although their impact should not be overestimated.

Apart from the Eurogroup itself, one should mention the Eurogroup Working Group (EWG), which is an influential preparatory body composed of secretaries of state and also involving representatives from the Commission and the ECB. The EWG deals with all technical matters and non-controversial issues, including in subgroups composed of high-level administrative officials. It plays an important role in the discussion of national draft budgetary plans and Euro area recommendations as part of the European Semester (Braun and Hübner 2019: 18). Its secretariat, which, for example, drafts the Eurogroup meeting summaries (Braun and Hübner 2019: 25), also operates without any formal procedures and in a confidential manner.[37] In a letter to the Eurogroup President dated 13th May 2019 the European Ombudsman wrote that the transparency of this body is an outstanding matter of concern, and suggested the proactive publication of EWG meeting documents, however, the Eurogroup decided to preserve the full confidentiality of the EWG meetings (Braun and Hübner 2019: 32).

In summary, the Eurogroup – to whose operation must be added the role of its Working Group and of numerous subgroup meetings, as just noted – is emblematic of the accountability gaps in political-administrative bodies that enjoy *de facto* authority in the absence of a status of formal delegation, and that operate with limited transparency. Despite being intergovernmental, it is "a rather pale imitation of a democratic body", as acknowledged by ex-Commissioner Pierre Moscovici (cited in Braun and Hübner 2019: 33). Such complex governance arrangements also qualify the intergovernmental-supranational distinction if we take, for example, the influential role of the Commission's administrative services, and the more discrete input of the ECB, in the operations of the Eurogroup (Braun and Hübner 2019: 25-26). *Ex post* accountability gains in importance if we consider that the diversity of the inputs flowing *ex ante* into the Eurogroup may be limited due to its closure (Braun and Hübner 2019: 30). It is true that the Eurogroup's President regularly appears before the European Parliament to answer questions, however, this is too thin an accountability mechanism, and contains no sanction mechanisms (such as the capacity to remove the Eurogroup President, who is elected by their peers). Similarly to the reporting exercises of other European bodies, this kind of merely "discursive" (or explanatory: Tucker 2018: 263 and 451) accountability to a "talking shop", which is also voluntary in the case of the Eurogroup, cannot be considered sufficient. As noted in a report

[37] https://www.politico.eu/article/eurogroup-urged-to-tackle-its-own-deficit-governance/ (accessed August 26, 2020).

by Transparency International on the Eurogroup: "The goal stated in the 'Four Presidents Report' of 2012 that 'democratic control and accountability should occur at the level at which the decisions are taken' is not currently met for the Eurogroup" (Braun and Hübner 2019: 42).

4.3 European Stability Mechanism

The Eurozone member states agreed the creation of a permanent funding mechanism in March 2011, the European Stability Mechanism (ESM), that came into effect as an intergovernmental organisation after ratification in September 2012. The ESM "was created by means of a fully-fledged treaty between the 17 euro member states even though arguably a EU legal instrument could have been used. The ESM was constituted as a separate international organization established under international law rather than as an EU agency" (Curtin 2014: 11). It is a successor to the temporary European Financial Stabilisation Mechanism and European Financial Stability Facility, the Eurozone's permanent bail-out mechanism, and the source of loans to debtor countries.

Although the ESM is legally an international institution possessing formal decision-making authority, it is actually an alternative incarnation of the Eurogroup and "little more than an extension of the finance ministries of the Eurozone member states" (Ban and Seabrooke 2017: 16). The ESM Board of Governors is composed of the finance ministers of the currently 19 shareholder countries of the Euro area (in fact the Eurogroup), and presided over by the chair of the Eurogroup. In practice, meetings of the Eurogroup and meetings of the ESM Board of Governors usually take place on the same day and in the same room (Braun and Hübner 2019: 15). More importantly, decisions seem to be taken in the Eurogroup before being formally endorsed by the ESM (Ban and Seabrooke 2017: 22). Most decisions of the ESM require unanimity, while votes for decisions on capital are weighted according to the size of national contributions to the ESM capital stock (with a *de facto* veto power for Germany that played a crucial role in the establishment of the ESM: Donnelly 2021). Operational decisions are taken by the ESM's Board of Directors, whose composition follows the same intergovernmental logic, as each state is represented by an appointed official, usually a deputy of the finance minister (Howarth and Spendzharova 2019: 899).

The ESM emphasises both that it has improved its transparency and that it engages with civil society and the media (European Stability Mechanism 2018: 12), but the Eurogroup's informal nature and the ESM's intergovernmental set-up allow finance ministers to circumvent EU provisions on transparency, and the ESM "makes its decisions for lending to countries in need of bailout in complete secrecy, on the grounds that transparency would hurt the very countries it sought to help" (Schmidt 2020: 144). Some amount of secrecy may be claimed as necessary, and it would also be exaggerated to state that the ESM operates in an accountability vacuum: there are, for example, no less than three

auditing layers (European Stability Mechanism 2018: 11), however, the image is less positive if we look into political accountability.[38]

The Ministers of Finance comprising the ESM Board of Governors are accountable to their national parliaments. In about half the EMU member states, the Minister of Finance can commit to the disbursement of loans or guarantees, while in the other half this requires a mandate or *ex post* approval by the national parliament (Crum and Merlo 2020: 404). When unanimity rules are applied, this gives these parliaments a *de facto* right to veto,[39] which is a relatively influential role in these matters. In practice, as with other matters, national parliaments are unevenly involved, although there is a rough correlation between formal competences and actual involvement. Again, as with other matters, interactions sometimes take place *in camera* (Howarth and Spendzharova 2019: 902- 904), which may be necessary for sensitive issues, but is not beneficial for public accountability.

Ministers are not accountable as a collective for the decisions that they take in the ESM (Crum and Merlo 2020: 405). We know that this problem also affects the other EU intergovernmental bodies as collectives. The accountability gap in the ESM is, however, even more serious given the formalisation of asymmetric intergovernmentalism on capital matters, an incentive structure reminiscent of "régime censitaire" that allows the biggest contributors to force recipient countries to accept conditionality measures that restrict their sovereignty (Papadopoulos and Piattoni 2019: 69). Further, the ESM is not accountable to the European Parliament. This lack of accountability to the EP is in all likelihood related to the fact that this institution was sidelined in the creation of the ESM: "A clearly negative case where the EP failed with its demands was the establishment of the ESM. Here, the EP was excluded from treaty negotiations, and it did not obtain any role in the rescue mechanism's institutional design" (Meissner and Schoeller 2019: 1087).[40] The European Parliament thus considered that the ESM's creation "outside the institutions of the Union represents a setback in the development of the Union, essentially at the expense of Parliament, the Court of Auditors and the Court of Justice" (European Parliament 2019b: 12). Despite the absence of a formal accountability relationship with the EP (or even of a "dialogue" with it), the ESM claims that it pro-actively cooperates with this body:[41]

[38] The same can be said about judicial review (Ban and Seabrooke 2017: 32-34), whose study exceeds the scope of this report.

[39] In the case of the German *Bundestag* confirmed by a judgement of the German Constitutional Court (see Ban and Seabrooke 2017: 39).

[40] Rittberger (2014) contrasts this with the EP's more successful role in the case of the single supervisory mechanism. See also below Sections 7.1. and 8.1.2.

[41] As it also increasingly interacts with national parliaments (Howarth and Spendzharova 2019: 902-903).

> Since 2013, on a voluntary basis, the ESM Managing Director has regularly attended hearings before its Economic and Monetary Affairs Committee. Moreover, the European Parliament is informed about the ESM's activities when it receives copies of the ESM Annual Report and the Board of Auditors' Annual Report to the Board of Governors, as provided for in the ESM Treaty. (European Stability Mechanism 2018: 11).

The ESM is therefore aware of criticisms against its transparency and accountability deficits, and seeks to counteract them. It may be argued that this alleviates the formal accountability deficits of the ESM and indicates that *de facto* accountability may be higher than *de jure* accountability, while we usually expect the opposite given the limitations observed in the capacity or willingness of forums to hold to account. On the other hand, this form of voluntary accountability cannot be considered sufficient, and remains thin because it is limited to the provision of information.

There is actually no reason to avoid incorporating the ESM into EU legislation. The Five Presidents' report ("Completing Europe's Economic and Monetary Union") concluded about the ESM that "largely as a result of its intergovernmental structure, its governance and decision-making processes are complex and lengthy" and proposed that in the medium term it should be fully integrated within the EU Treaties.[42] The Commission, supported by the EP, proposed the creation of a European Monetary Fund with new powers for that purpose, however, there is no political will on behalf of governments, who want to keep the mechanism under their control. In its resolution on the Establishment of the European Monetary Fund (EMF), adopted in March 2019, the EP proposed the establishment of a Memorandum of Cooperation with the ESM that would specify *inter alia* the EP's rights with regards to access to information, reporting by the ESM, and answering MEP questions (European Parliament 2019: 13–14).[43] The improvements that this would make in terms of political accountability should not be overstated, however. It would make accountability to the EP more mandatory, but not thicker:

> All of these possibilities of action open to the EP would clearly enhance its position as it currently has no capacity at all to intervene in the ESM. But these instruments are rather weak, and their main potential lies in the possibility they offer to enhance transparency and public accountability on the EMF's decisions. (Fromage 2018: 291).

[42] https://ec.europa.eu/commission/sites/beta-political/files/5-presidents-report_en.pdf (accessed August 13, 2020).

[43] In the same resolution the EP stressed that the Managing Director of the ESM should be elected by and report to the EP, following a proposal by the Council.

5 The partial parliamentary accountability of the powerful European Commission

The European Commission enjoys considerable power in the legislative process. Of course, this power is not unconstrained: the Commission initiatives must find sufficient support in Council and in Parliament to translate into legislation, and forging interinstitutional compromises implies that each negotiation partner explains and justifies its choices and preferences to the others. Recent developments in the field of economic governance have further strengthened the role of the Commission, even if crisis management has largely been intergovernmental.[44] The final outcomes of intergovernmental bargains on EMU reform have been shaped by the Commission, and the latter played a crucial role in translating them into legislation (Kudrna and Wasserfallen 2020). Although the Commission's agenda-setting power has decreased to the benefit of the increasingly active European Council, it has acquired stronger implementation competences in terms of surveillance and compliance (Bauer and Becker 2014).[45] Actually, "inter-governmental forms of agreement and supra-national models of implementation are combined" (Dawson 2015: 982), with governments being the key players in the "control room", while European institutions are active in the "machine room" (Smeets and Beach 2020: 1139).

The so-called Euro crisis law was approved hastily in a state of emergency, but it had lasting effects on the *de facto* constitutional balance of the European Union (Dawson and de Witte 2013). It is generally considered to be composed of the EU Six-Pack legislation of 2011 and Two-Pack legislation of 2013; the Treaty on the European Stability Mechanism, set up in October 2012 following an *ad hoc* Intergovernmental Treaty signed in February 2012 by the governments of the Euro Area Member States and creating a permanent mechanism to finance bailouts; and the international Treaty on Stability, Coordination and Governance

[44] As correctly stated by Dawson (2015: 976), "post-crisis economic governance increasingly combines the decision-making structure of inter-governmentalism with a supervisory and implementation structure closely reminiscent of the community method".

[45] In a very different area, the Commission recently acquired the competence to initiate budgetary sanctions against governments that do not respect the rule of law and Europe's democratic values. Cuts are then decided by the Council under qualified majority, and a veto by a single country is no longer possible.

(TSCG), signed in March 2012 by all EU member states except the UK and the Czech Republic (which joined later). [46]

Euro crisis law was adopted to safeguard the euro, and for that purpose the TSCG, for example, goes well beyond all previous budgetary constraints and generalises austerity requirements (Sanchez-Cuenca 2017).[47] Mechanisms of fiscal discipline and enhanced surveillance (potentially leading to the Excessive Deficit Procedure and the Macroeconomic Imbalance Procedure) strengthened the Stability and Growth Pact of 1997.[48] The Commission was endowed with unprecedented custodial powers regarding the much tighter budgetary requirements, and came to enjoy a significant discretionary space regarding the coordination and supervision of macroeconomic policy (Dawson 2015; Dehousse 2016; Savage and Verdun 2015; Seikel 2016). It exerts an *ex ante* control of national budgets, so that Eurozone member governments draft their yearly budget proposals and have them vetted at the EU level before they are submitted to national parliaments. The Commission thus acquires a prescriptive and intrusive role (Dawson 2015: 980). With the European Semester, set up by the Six-Pack and the Two-Pack to improve budgetary and economic policy coordination, "the Commission vastly increased its supranational powers, with discretionary authority to enforce the various oversight functions of the macroeconomic imbalance and excessive deficit procedures." (Schmidt 2020: 178)

With the Commission turning into the guarantor of agreed commitments, which also implies the power to enforce them, the traditional role of national parliaments – whose budgetary sovereignty is a key prerogative – has been reduced (Kratochvil and Sychra 2019: 174). The European Parliament has only consultative and advisory powers, and it carries no formal powers to veto or amend the country-specific recommendations issued by the Commission (Braun and Hübner 2019: 59; Crum and Melo 2020: 406). It is not able to balance the Commission's extended powers, which is a surprising marginalisation given its involvement in drafting the Six- and the Two-Pack and its significant role

[46] The TSCG is a case of differentiated integration though intergovernmentalism (see Fabbrini 2021b on this method). It was adopted on the basis of Article 136 of the Lisbon Treaty as amended at the end of 2010 by the European Council.

[47] The TSCG entered into force on 1 January 2013 and is also called the Fiscal Compact, which refers to its Title III. It is binding for the Euro-area and the main rules are that the budgetary position of a country should be balanced or in surplus, that the structural deficit should not exceed 0.5% of GDP and that the reduction of debts over 60% of GDP should take place at one twentieth per year. On these important changes in economic governance see also Eriksson (2018: 20–21).

[48] The Six-Pack and the Two-Pack introduced the Macroeconomic Imbalance Procedure to take account of non-fiscal imbalances likely to hamper competitiveness. It is an alert mechanism based on a scoreboard with indicators on dimensions of macro-economic imbalances and losses of competitiveness (Schoeller and Héritier 2019: 282). In 2020 the Council activated the general escape clause, and, as a response to the Covid-19 crisis, suspended the stringent rules linked to the Stability and Growth Pact. On policy responses to the pandemic see the special issue "Pandemic Politics and European Union Responses", *Journal of European Integration* 42(8), 2020.

in the establishment of the European Semester (Barrett 2018: 55; Fromage 2018: 290).[49] Member state compliance with the commitments is enforced under the ultimate shadow of sanctions.[50] It is the ECOFIN Council of economic and finance ministers, one of the ten configurations of the Council of the European Union, which decides to adopt corrective measures for a member state with excessive budget deficits. The Eurogroup is the decision-making body for measures that concern member states of the Eurozone (Fabbrini 2019: 423). The recommendations of the Commission become binding unless the Council objects by the peculiar procedure of reverse qualified majority voting, interestingly demanded by the EP (Schmidt 2020: 213). It also seems that debates on these recommendations – if any – are confined to bureaucratic circles:

> The 'efficient secret' of the European Semester is that much of the ongoing real debate regarding EU-level policy recommendations and their implantation actually occurs not between politicians but between officials from Commission DGs and from member states (Barrett 2018: 261).[51]

The excessive deficit and the macroeconomic imbalance procedures remain within the sphere of soft law, and as such are largely insulated from national and European judicial review (Dawson 2015: 982-983). These developments make the issue of the Commission's political accountability particularly topical. In her seminal study of the Commission, Wille (2013) found that it underwent a process of "normalisation". In the 1950s, it started out as a technocratic international organisation, but following a series of treaty reforms and internal administrative transformations after the resignation of the Santer Commission, a reinforced regime of political and administrative accountability politicised the selection of EU commissioners, and at the same time changed the relationships between politicians and bureaucrats in the Commission. The Commission has become increasingly accountable to the European Parliament, which can be considered the most legitimate accountability forum for an executive organ such as the Commission, as it is the only body directly elected by Europe's citizens (notwithstanding the tenuous links between MEPs and European voters that have already been mentioned). This is a facet of the relative, yet significant, democratisation of the EU system of governance, whose "semi-parliamentary" (Egeberg et al. 2014) aspect makes it partially resemble national democratic systems. Commissioners are nowadays more exposed in committees of the EP, they must answer MEPs' questions, and there are many day-to-day interactions between the Commission and the EP, as well as informal agreements on the exchange of information (Brandsma et al. 2016: 628; Egeberg et al. 2014: 3).

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[49] Van der Veer and Otjes (2021) found significant intra-institutional conflict *within* the EP with regards to the extension of its powers.

[50] It is of note, however, that no sanctions have been enforced so far for lack of compliance with fiscal recommendations, according to Sacher (2021), because the Commission finds punitive action inappropriate for different reasons.

[51] See also Papadopoulos and Piattoni (2019).

The Eurozone crisis meant that "the 'master' to whom the Commission saw itself accountable was narrowed to the Council as a result of the massive increase in intergovernmental decision-making and the sidelining of the EP" (Schmidt 2020: 178). Interactions with the Council became strongly politicised, and the Commission was subject to criticism for its activism by member states belonging to rival coalitions with increasingly divergent preferences. Despite improvements, there is still a major weakness in the Commission's accountability: unlike in parliamentary government, the EP does not keep the Commission under check (Fabbrini 2019). A motion of censure against the Commission requires a supermajority of two-thirds of the votes cast, and a majority of all MEPs, to be accepted, and the EP cannot dismiss the Commission just because of political disagreement, even though the Commission is nowadays clearly a political body:[52]

> It is extremely costly to dismiss it even when there is intense dissatisfaction with how it carries out a particular task. The collegial nature of the European Commission further complicates matters, since the EP has understandably been reluctant to dismiss the entire Commission in order to sanction a single Commissioner (Majone 2014: 195).

There is thus no potential to "throw the rascals out" as a sanction mechanism, and it is also of note that the Commissioners are proposed by their respective national governments and have no connection to parliament. The parliamentary parties in the EP designated *Spitzenkandidaten* in order to bring the election of the Commission's president under the control of the EP, freeing it from the control of the European Council. Despite predictions that it would be hard to reverse such an institutional revolution (Shackleton 2017), the success of that strategy proved to be short-lived, however. It worked for the election of Jean-Claude Juncker in 2014, but failed for the designation of the Commission president after the 2019 European election, for which the EP – unable to find sufficient support for one of the proposed *Spitzenkandidaten* – was left with no other choice than electing Ursula von der Leyen, who was proposed by the European Council but not initially endorsed by her party. Daniel Kelemen (2019: 51) portrays this reversal in a Sieps report as a "debacle" and a "spectacular failure", with Europarties organising "campaigns and debates amongst *Spitzenkandidaten* only to see those candidates cast aside by the Council" (p. 51). In summary, the evolution of the EU towards genuine parliamentary government seems unlikely.[53]

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[52] Similarly to a presidential system of separation of powers, the Commission does not have the formal competence to dissolve the EP either.

[53] See Fabbrini (2021a), who considers this form of government alien to federations created by aggregation of their constituent units such as the United States and Switzerland, and by extension alien to the EU too.

It should also be noted that the Commission is now subject to more transparency requirements and performance reports at services level (Brandsma et al. 2016: 628). The Commission has made progress with regard to transparency in relation to the activity of lobbies and its own consultation procedures, and it is now more open and pluralist in its consultations than many national administrations. However, as already noted, transparency is not a "holistic medicine" (Curtin 2007b): pluralism is imperfect with regard to access for citizens and civil society groups (Alemanno 2020), the representativeness of the organisations that are consulted is questionable (Kröger 2019), and consultations do not necessarily have a real effect on decision-making (Kohler-Koch and Quittkat 2013). Ultimately, it comes as no surprise that the public continues to view the Commission as a remote and unaccountable body in spite of expectations that more transparency and openness would help citizens to identify with the institutions of the Union.

6 Accountability in delegated legislation: yet another limited improvement

We can also observe progress and limits regarding the accountability of the EU Commission to the European Parliament for the approximately 2000 rules that the Commission issues on average every year based on powers delegated by the Council of Ministers and the European Parliament. Over three-quarters of all EU legislation consists of these executive acts of the Commission. This places the executive (the Commission) in a powerful position vis-à-vis the legislature (Council and EP) (Yordanova and Zhelyazkova 2020: 345). "Comitology" committees including representatives of member states were therefore invented in the early 1960s by member states to ensure that the Commission would not enjoy too much discretion in this process, while the European Parliament was bypassed. The EP has been opposed to comitology as it does not have any say in the adoption of such acts and cannot control them, and there has been almost constant interinstitutional tension regarding the degree of influence that the EP should have as co-legislator in the oversight of legislative implementation (Christiansen and Dobbels 2013). This implementation regime – which implies coordination between the Commission and the member states – has been largely preserved. Meetings of comitology committees serve to discuss and vote on measures drafted by the Commission to implement EU legislation. About 250 committees of national representatives exercise control over implementing acts delegated to the Commission which remain outside the control of the EP (Brandsma et al. 2016: 627). National members of these committees are formally accountable to their hierarchical superiors at "home", but these superiors – who are, by the way, also usually unelected bureaucrats – do not seem to be interested in committee discussions in Brussels (Brandsma 2010).

The Treaty of Lisbon introduced an important change with respect to the accountability of the executive, the distinction between "implementing" and "delegated" acts, which are controlled differently: a slightly amended form of comitology for implementing acts, but full veto and revocation powers for the EP and the Council without comitology committees for delegated acts (Brandsma et al. 2016: 631). We expect the use of delegated acts to tip the balance of power and reinforce the political accountability of the executive by empowering elected bodies to act as forums for accountability:

> The demand for greater democratic accountability has relied not only on the logical point about aligning the EP's powers in the legislative procedure with those it has in the comitology system, but also with more principled points about

> the fact that the powers delegated to the Commission imply a significant degree of political influence – one that requires oversight not only through unelected officials from national executives, but also from elected representatives of the people. (Christiansen and Dobbels 2013: 2014)

Although there are no *ex ante* mechanisms for controlling the Commission in its activity, and there is no formal ability to substantially amend delegated acts, the EP and the Council share the *ex post* "nuclear option" (Christiansen and Dobbels 2013: 1170) to revoke delegation or to object to the adoption of a specific delegated act within a limited time period set by the basic legal act (Yordanova and Zhelyazkova 2020: 346). Brandsma (2016) finds that, compared to the predecessors of the delegated legislation regime, accountability has grown stronger than ever before. At the same time Brandsma and co-authors (Brandsma et al. 2016: 631) also note:

> The effects of the new delegated acts regime on the degree to which the Commission is held to account remain unclear. Vetoes on delegated acts have been very rare (Kaeding and Stack, forthcoming), but it is yet unclear whether this means that the Council and the EP genuinely agree on the contents of delegated acts or whether they apply their powers as accountability forums sloppily now that the new system is in place.

The anticipation of the "nuclear option" (veto) possibly obliges the Commission to take the preferences of the accountability forums into account. The Commission and the EP exchange their views early on in the process so that the eventual delegated act survives legislative scrutiny, however, similarly to the case of trilogues, the empowerment of the EP leads to informal negotiations (this time with the Commission), which are incompatible with public accountability. There are also other reasons why improvements should be relativised.

First, the Lisbon Treaty gives no clear guidance regarding the legal instrument and the procedure that should apply, and so "there is a grey area of types of delegation" (Christiansen and Dobbels 2013: 1173). The consequence of such complexity and ambiguity is that the choice about which delegation regime to apply when new legislation delegates executive powers to the Commission has given rise to many institutional conflicts between the EP and Council (Brandsma and Blom-Hansen 2017):

> The EP generally prefers the provision of delegated measures to supplement secondary legislation, whereas the Council favours either implementing acts or no tertiary acts at all, in which case EU law interpretation and implementation are left entirely to member states. (Yordanova and Zhelyazkova 2020: 359).

Since the choice of delegated measures requires the Council's consent, parliamentary control is constrained. Although the Lisbon Treaty expanded

the powers of the EP in the adoption of secondary legislation, the EP's control over tertiary legislation has remained limited, and the EP continues to be less powerful than the Council. In their recent empirical study Yordanova and Zhelyazkova (2020: 346–347) found that "the Council agrees to delegated acts when its preferences align closer with those of the EP than the Commission".[54] In other words, "the EP is not granted formal powers over the adoption of tertiary acts when it needs them the most; namely, when the EP faces a threat that its policy stances will not be incorporated in the subsequent policy-making process" (Yordanova and Zhelyazkova 2020: 359). The conclusion is rather pessimistic:

> The only EU institution directly representing European citizens is not given a say over executive measures when its preferences depart from those of the Council and the Commission. This finding suggests that the Lisbon Treaty reforms of executive law-making have not helped decrease the democratic deficit of the EU by strengthening parliamentary control. (Yordanova and Zhelyazkova 2020: 347)

There is an additional problem in that, since the exercise of effective control requires resources, accountability may not be as high in practice as expected based on formal arrangements: the relatively subordinate standing of the EP is aggravated by lack of time and expertise of MEPs. Scrutiny "requires considerable resources, given the technical expertise the Commission's services (and their expert committees) as well as member state administrations can muster [...] The EP is traditionally disadvantaged vis-à-vis the other two institutions when it comes to both technical expertise and time" (Christiansen and Dobbels 2013: 1167). Furthermore, the EP mostly relies on its own administrators in order to flag salient issues due to the large number and detailed contents of delegated acts (Brandsma 2016). Unexpectedly, the relative empowerment of the EP as a democratic accountability forum leads to the empowerment of unelected bureaucrats within that forum.

[54] "In other words, the Council concedes to the EP's demands for a parliamentary control of executive decisions when it sees the EP as an ally. Conversely, when the Council sides with the Commission rather than with Parliament, the EP is unlikely to be granted formal control over tertiary legislation through the provision of delegated acts." (Yordanova and Zhelyazkova 2020: 346-347).

7 Post-crisis legislation and the EMU: go… and stop for parliaments as legislators and accountability forums

This section is divided into two subsections, the first – and more substantial – dedicated to the European Parliament, and the second dealing with national parliaments. There are some unavoidable overlaps between the subsections, because this part of the report also addresses issues of multi-level interparliamentary cooperation.

7.1 The European Parliament

As we have seen, until the crisis years the history of the European Parliament was one of its gradual empowerment as a key player in EU governance, cumulating in the prevalence of the so-called ordinary legislative procedure after the Treaty of Lisbon. We should not neglect the parallel development of an intergovernmental regime, however, which according to Fabbrini (2019) applies to issues of high salience for the governments of member states, and in which the EP (and the Commission) has a subordinate position: "When crucial member state interests are at stake, the decisions are taken (or opposed) by national governments, regardless of position of the EP on the issue" (Fabbrini 2019: 420). In the Lisbon Treaty the coordination of national economic and financial policies is thus part of this intergovernmental regime. They are controlled by the Council in its composition as the ECOFIN Council, with a relatively limited role for the Commission (which provides recommendations as a basis for the Council's decisions), and even more for the European Parliament which is consulted on legislative proposals but whose opinion is not binding for the Council.[55] Consequently, there is no significant check on the choices of the intergovernmental institutions (Fabbrini 2015: 45-49).

The Lisbon Treaty coming into force also coincided with the beginning of the Euro crisis. Economic crisis management under executive dominance counteracted progress in terms of the parliamentary control that had been made

[55] Fabbrini (2019: 423-424) adds as an indicator of parliamentary weakness the fact that the EP does not manage a budget that is independent from financial transfers from member states, leading to the curious phenomenon of representation without taxation.

possible by the previous empowerment of the European Parliament.[56] The EP also loses weight as an accountability forum when it is sidelined in economic governance, because the other decision-making bodies can ignore its opinion.[57] Unsurprisingly, Parliament insisted on the need for "full democratic checks and balances through the involvement of the European Parliament on all EMU aspects" (European Parliament 2017: point 24). Even the Commission acknowledged that "most notably, the involvement of the European Parliament and the democratic accountability for the decisions taken for or on behalf of the euro area should be enhanced" (European Commission 2017b: 17), and that "currently, the EU Treaties do not provide much detail about democratic accountability on euro area matters" (European Commission 2017b: 27-28).

The EP did manage to gain some influence in the negotiations leading to crisis legislation, and to benefit from their outcomes to some extent (Fromage 2018: 281; Meissner and Schoeller 2019: 1080 and 1085). It succeeded in incrementally increasing its *de facto* power on economic governance "through skillfully deploying bargaining strategies" (Meissner and Schoeller 2019: 1076). The glass can be seen as half-full or half-empty, but most scholarly evidence points to the half- (or even quasi-) empty side. The EP seems to be better-off in the European Monetary Union than it was before the adoption of Euro crisis law, but has at the same time been ignored on important matters:

> Undoubtedly, the EP is better-off in the EMU than it was before the adoption of Eurocrisis law. It did indeed manage to gain some rights and prerogatives, though its position could still be improved. Additionally, it was largely ignored in mechanisms in whose adoption it did not act as a co-legislator such as the TSCG or the ESM Treaty, though it had an influence on the TSCG's content (Fromage 2018: 292).

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[56] See Schmidt (2020: 208): "Unlike its increasing powers in everyday policy-making as part of the co-decision method with the Council and the Commission, the EP has never had much power with regard to Eurozone governance. Moreover, unlike all the other EU institutional actors, which increased their governance powers in the crisis, the EP was left on the sidelines. The Council took back the initiative from the Commission, the ECB took action, and the Commission exercised oversight through the European Semester", and "for the EP, the Eurozone crisis constituted a major reversal in its slow and steady gains in power and influence through the co-decision method, at least at first" (Schmidt 2020: 212). See also Barrett (2018: 255): "during the worst part of the crisis, Parliament found itself sidelined in respect of many of the solutions adopted to deal with the crisis since many of these were adopted outside the framework of the Community method", and Kelemen (2019: 51 – 52): "The measures put in place by the Lisbon Treaty to strengthen the role of the European Parliament were counteracted to an extent by the tendency that emerged in subsequent years to circumvent the Community method of EU law-making entirely in favour of shifting the locus of decision-making to the European Council and relying on intergovernmental methods."

[57] See also Section 4.3. on the European Stability Mechanism.

Actually, the new legislation designed only a limited role for the EP (Fasone 2014). Despite being negotiated under the ordinary legislative procedure, the EP obtained very little in the Six-Pack and the Two-Pack (Bressanelli and Chelotti 2016; 2018):

> The EP took part in the approval of the Six-Pack and the Two-Pack, which were adopted through the ordinary legislative procedure, but none of this means any substantial increase in the competences of the EP (unlike in the case of the Commission), nor is the EP the institution that initiates and manages the reform process in the EMU (unlike the Council, the European Council and the Eurogroup). (Kratochvil and Sychra 2019: 175)[58]

Treaties outside the EU legal order have been adopted in response to the financial crisis, such as the 2012 European Stability Mechanism and Fiscal Compact (TSCG), and the establishment of the Single Resolution Fund of the banking union in 2014 (to be gradually built). These intergovernmental treaties conferred new powers on existing EU institutions but bypassed both the EP and national parliaments (Kratochvil and Sychra 2019: 176). For example, although the EP had some influence regarding the TSCG's content (Fromage 2018: 292), it was afforded only limited participation in the working group negotiating that treaty. The latter circumvented the Community method, was agreed at an informal summit of European leaders, and for the first time ratification by all contracting parties was not necessary for the treaty to enter into force so as to facilitate agreement (Tsebelis and Hahm 2014; Warren 2018). The treaty establishing the European Stability Mechanism simply does not mention the European Parliament (Dawson 2015: 988-989), and the amendments proposed by the EP were entirely disregarded by the member states (Fasone 2014: 170).[59] According to Hodson and Puetter (2019: 1158) "the creation of de novo bodies over which governments exercise a high degree of control – such as the European Stability Mechanism and the European Resolution Board" should be seen as a signal that governments are taking Eurozone politics into their own hands, and that they, rather than supranational bureaucracies, are in charge of Europe.

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[58] "For instance, the preparation of the Six-Pack took place in the European Council-led task force on economic governance, with representatives from the member states, the Council presidency, the ECB, and the Commission, but not the EP (Warren 2018: 8). The Commission's proposals on the Six-Pack reflected the agreement reached in the task force, giving the EP limited scope to influence the substance of the package. The EP's amendments were largely disregarded or watered down, unless supported by member states, and the final agreement did not deviate much from the Commission's proposal. Similarly, the EP's ability to influence the details of the Two-Pack was modest. The EP's committee report initially suggested introducing a European Redemption Fund and a European Debt Authority. These amendments were removed in the text voted on by the EP plenary after intense member state lobbying of the Parliament's national delegations." (Kluger Dionigi and Koop 2019: 780).

[59] More generally, the measures included are not subject to the provisions on control and oversight (role of the ombudsman, access to documents, data protection, etc.) relating to EU institutions such as the Commission or the European Central Bank (European Parliament 2019: 11).

Overall, "compared to the strengthening of the Commission's position by the 'six-pack' (and to some extent, also by the TSCG), the EP appears to be very weak: it has to be informed and consulted on specific occasions, it can organize hearings and cooperate with national Parliaments, but it is not entitled to take any decision in the framework of European economic governance" (Fasone 2014, p. 174). This limitation is important with regards to the accountability role of the EP, which called for the full integration of the Fiscal Compact into the Community framework of the Union in multiple resolutions.[60] This seems all the more reasonable as the substance of the Fiscal Compact has been included in the Six-Pack and the Two-Pack (Schmidt 2020: 301), however, no progress has been made so far due to reluctance from Council, even though Article 16 of the Fiscal Compact itself provides that within five years of the date of entry into force (before 1 January 2018) the necessary steps must have been taken to incorporate this treaty into the legal framework of the Union.

This is not to say that the EP has absolutely no role as an accountability forum regarding economic matters. There are more and more cases in which representatives of different EU institutions appear before the EP to explain and justify what they do. For example, the Six-Pack and the Two-Pack give the competent committee of the EP the right to invite, as part of the "Economic Dialogue" between EU institutions,[61] representatives of member states, the European Commission, the President of the Council, the President of the European Council and the President of the Eurogroup, to discuss economic and policy issues. This is a thin form of accountability to the EP, however, which does not offset the more general phenomenon of parliamentary sidelining in economic governance. The EP cannot be circumvented through the potential use of such scrutiny tools, but nor can it convert its role into genuine policy influence.

[60] See, for example, European Parliament (2017). The same resolution called for the incorporation of the European Stability Mechanism and the Single Resolution Fund into EU law under a similar rationale of democratic oversight by Parliament.

[61] "Economic Dialogues (ED) are held in order to enhance the dialogue between the EU institutions on the application of economic governance rules and with Member States, if appropriate, to ensure greater transparency and accountability" (ECON Committee on Economic and Monetary Affairs of the European Parliament) https://www.europarl.europa.eu/committees/en/product-details/20150126CPU00944 (accessed September 15, 2020). See also Chang and Hodson (2019) and Fromage (2018 : 285): "Following the EP's request for more democratic surveillance and more participation during the negotiations of the Six Pack rules (Fasone 2014, 171; Manoli and Maris 2015, 282), when the annual European Semester was formalised, the possibility for the EP to enter in an 'Economic Dialogue' both with EU institutions and with Member States was established to discuss the various coordination and surveillance measures". More recently, the Economic Dialogues inspired demands for a "recovery and resilience dialogue" following the adoption of the Recovery and Resilience Facility to mitigate the impact of the coronavirus pandemic. This soft accountability mechanism was proposed by the EP in its claim for transparency in the implementation of the Facility measures, and it is expected that dialogues regularly take place at the request of parliamentary committees.

We can take two examples: the case of information rights and of interparliamentary cooperation. It is of note that in both cases the EP is co-responsible for its relative weakness. In the case of information rights, the glass may again be seen as half-full, and Meissner and Schoeller do so (2019: 1082–1083):

> Concerning better reporting and scrutiny tools, the EP managed to oblige the President of the Euro Summit to present a report to the EP after each meeting (…) In connection with the Economic Dialogue, for instance, the Commission needs to inform the EP on a regular basis (Fasone 2014: 176). In connection with the Two-Pack, the Commission must communicate its assessment of countries under post-programme surveillance to the EP every six months (Regulation 472/2013, Art. 14.3).

In the same vein, Fromage (2018: 290) emphasises the virtues of interparliamentary cooperation for the effective monitoring of the Commission's reporting duties:[62]

> Through the exchange of information with NPs the EP may be better placed to hold the Commission to account in the framework of the Economic Dialogues and in the framework of the hearings it may organise following European Council meetings and Euro Summits. In other words, interparliamentary cooperation represents an avenue for the EP (and NPs) to reduce their informational asymmetry (Curtin 2013) vis-à-vis the EU (and the national) executives.

The informal yearly European Parliamentary Week and the Interparliamentary Conference on Stability, Economic Coordination and Governance based on Article 13 of the Fiscal Compact can be noted in this respect, with the participation of national parliaments and the EP to discuss budgetary issues and other issues covered by the treaty on a bi-annual basis. The EP has the right to organise this formal conference with national parliaments. Such interparliamentary cooperation is increasing (Meissner and Schoeller 2019: 1086):

> Studies reveal that interparliamentary cooperation is each time more intense and takes multiple forms ranging from formalized interparliamentary conferences and meetings to more ad hoc collaborations. (Fromage and van den Brink 2018: 237).

[62] On interparliamentary multi-level cooperation as a precondition for effective scrutiny, see also Kreilinger (2018) and Cooper and Smith (2017: 737) who write: "Members of national parliaments must acknowledge that they cannot – or can no longer – achieve their ends separately and, as an afterthought, look for innovative ways to cooperate vertically (with the European Parliament) and horizontally (with other national parliaments)." In a recent article Crum (2020) finds different cooperation patterns depending on the nature of EU decisions, but also persisting divisions along national lines and, to some extent, inter-institutional competition as well.

Crum (2013: 622) by contrast sees the glass as half-empty:

> All the Fiscal Compact provides in terms of parliamentary control is that the president of the euro summit will report to the EP after every summit. Further, it calls upon the budget committees of the European parliaments to engage in regular exchanges between each other. Nowhere, however, are parliaments provided with any substantial powers to review or amend the agreements of the governments.

Fromage (2018: 287–288) is also concerned with the formal limitations of the reporting mechanisms:

> Nevertheless, the EP's role should not be overestimated as it is confined to the control of the results of surveillance mechanisms and the correct application of legislation: no reporting mechanisms exist (…) Also, only the Commission and the President of the Council are legally obliged to inform the EP; no such obligation rests on the President of the European Council and on the President of the Eurogroup who do have to appear before the competent committee but are under no obligation to inform the EP about their activities except when they concern the results of multilateral surveillance; consequently, the EP cannot hold them to account adequately.

Having the right to be informed and to access relevant documents is naturally essential for an accountability forum, however, accountability is minimal when it is limited to an exchange of views, and when information rights are decoupled from the authority to impose consequences. As pointed out by Schmidt (2020: 214):

> The EP has no formal role as an accountability forum not only with regard to the Council (…) but also with the Commission with regard to the European Semester, even if its dialogues may help increase transparency and a kind of informal accountability.

"Dialogues" are seen as a tool for the promotion of transparency and accountability, and they are an example of initiatives taken with the aim of reinforcing the position of the EP. However, for accountability to be effective, those who are held to account must believe that the course of action may be detrimental to them if the forum is not satisfied with their account. Stated differently, those held to account must anticipate that the positive or negative perception of their accounts by the relevant audience will result in positive or negative consequences for them. There is no such formal setting: "These dialogues are designed 'to ensure greater transparency and accountability', but are largely limited to information and consultation" (Braun and Hübner 2019: 35).

It is also not just the formal limitations in accountability that matter. It seems that the EP also does not fully exploit the potential of its attributed scrutiny capacities, which remain partially on paper. De la Parra (2017) criticized the superficiality

of the debates, because MEPs are very concerned about their visibility and may not be well-equipped to deliberate on an equal footing with the members of the account-giving institution. The interparliamentary conference established by the Fiscal Compact has not been a greatly successful initiative, although it was intended to remedy the double marginalisation of the European and national parliaments (Cooper and Smith 2017: 733–734). It is mainly a forum for the exchange of information, so not really able to exert effective oversight, and its influence remains limited. The EP called for its "further development" (European Parliament 2017), but it nevertheless seems that the limitations are mainly due to conflicts between the EP and national parliaments (Lupo and Griglio 2018). The fact that the conference does not possess any standing secretariat and cannot resort to COSAC's secretariat[63] also plays against its strengthening, and the varying attendance of MPs, with several Member States not being represented or being represented only by administrators, is also a problem (Fromage 2018: 289). It therefore comes as no surprise that "it has been criticized as a 'missed opportunity', because there is no clear membership, it has no decision-making powers, and it meets only twice a year" (Pernice 2017: 134).[64]

Ultimately, the EP was co-responsible for its own disempowerment, when it was able to influence the course of things: Schmidt (20202: 213) found it "surprising" that the EP "voted for the European Semester and the Commission's discretionary authority without demanding even an oversight function", but this

[63] COSAC is the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union.

[64] Due to lack of space, this report only briefly mentions various proposals to improve parliamentary control in the EMU. Chang and Hodson (2019) propose the creation of an EU subcommittee for Euro area oversight, but there are also more ambitious proposals: in his electoral campaign French President Emmanuel Macron proposed a Parliament of the Eurozone, composed of members of the European Parliament from the Eurozone countries. A group of academics, including left-wing economist Thomas Piketty, proposed a "Treaty for the Democratisation of the Eurozone" (endorsed in 2017 by the presidential candidate of the French Socialist Party, Benoît Hamon), which would create a powerful new Eurozone parliamentary assembly made up of 80% national parliamentarians and 20% MEPs (Hennette et al. 2019). See also Pernice (2017: 138–139): "Joint decision-making would require a 'Joint Assembly', encompassing the budgetary committees of the EP and NPs meeting in plenary where decisions of a general character are taken, but also meeting in country-specific compositions where country-specific decisions are at stake. This assembly should have the power of co-decision with the European Council on general guidelines and with the Council on any specific decisions related to the economic and fiscal policies of the Union having an impact on national budgetary, economic, and redistributive policies." EMU specific institutions tend to lose their reason for being after Brexit, however, because non-Eurozone countries make up only a small proportion of the EU as a whole (see Cooper and Smith 2017: 736), and Brack et al. (2018) prefer the empowerment of the EP. There was also an older proposal by Tony Blair to create a second EU-wide parliamentary chamber composed of members of national parliaments. Catherine de Vries (2015: 230–232) finds this appropriate because it goes in the direction of the reinforcement of controls over the intergovernmental circuit, which has gained power. For a discussion of different variants see Kreilinger and Larhant (2016).

was because the parliamentary majority acquiesced to intergovernmental fiscal discipline (Warren 2018). A (relative) learning process seems to have taken place in recent years, however. Partly on request of the EP president, the Five Presidents' Report of 2015 "recognizes the need to involve both the European Parliament (EP) and national parliaments, based on the high impact of economic policies on and in the Member States. The level of abstractness and generality of that part of the report, however, remained high, especially on how to achieve better democratic legitimacy" (Fromage and van den Brink 2018: 236), even though the European Council itself had already recommended in 2013 that "concrete new steps towards strengthening economic governance will need to be accompanied by further steps towards stronger democratic legitimacy and accountability at the level at which decisions are taken and implemented".[65] More recently, the European Parliament insisted in its resolution of 16 February 2017 on budgetary capacity for the euro area on the necessity of multilevel control: "The European Parliament and national parliaments should exercise a strengthened role in the renewed economic governance framework in order to reinforce democratic accountability … To improve ownership, national parliaments should scrutinize national governments, just as the European Parliament should scrutinize the European executives."[66] Beyond increased scrutiny rights, one may also envisage formal co-decision (and thus veto) rights, moving thus to a harder version of accountability in which the forum has the right to stop action:

> The overall picture that emerges is that the traditional fora for democratic representation have mostly lost power in the post-crisis era. One obvious way to reverse this trend is to turn the soft powers that the EP has now been given in 'economic dialogues' into more decisive powers to veto and amend decisions of the ESM, the Commission, the ECB and the SRB (…) much like the EU legislative process, also EMU policies can in principle be subject to two channels of parliamentary control that operate as a double democratic lock on the policies that are adopted (Crum and Merlo 2020: 409).[67]

[65] See point 12 in its conclusions: http://data.consilium.europa.eu/doc/document/ST-104-2013-REV-2/en/pdf (accessed August 13, 2020).

[66] See Section 3: https://www.europarl.europa.eu/doceo/document/TA-8-2017-0050_EN.html (accessed August 13, 2020).

[67] Among the recommendations of the Transparency International report on the Eurogroup features the proposal to strengthen the EP's role in the European Semester with co-decision powers on draft budgetary plans and country-specific recommendations (Braun and Hübner 2019).

7.2 National parliaments

The Eurozone crisis also had an impact upon the role of national parliaments in the EU institutional architecture. While the Lisbon Treaty implied the empowerment of NPs, the management of the Eurozone crisis halted this process by instead empowering executive organs:

> National parliaments' strengthened position as it resulted from the entry into force of the Lisbon Treaty was immediately challenged by the economic crisis. Indeed, further competences had to be transferred to the EU level to counter the crisis which resulted in an important empowerment of executive organs (Fromage and van den Brink 2018: 237).

On the core issue of budgetary competences, the Commission and the Council gained power without being subject to checks:

> While the Commission and the Council have acquired stronger powers to influence national budgets, parliamentary scrutiny has not been correspondingly strengthened. In particular, in budgetary matters, national parliaments can only hold their own governments accountable. Neither national parliaments, nor the EP, can effectively control the process of formation of country-specific recommendations at the EU level, which are proposed by the Commission but debated and adopted by the Council. (Maatsch and Cooper 2017: 650)

Unlike the European Council, very few national rules target the political control of Euro summits (European Parliament 2013), whose policy role is – as mentioned above – quite significant. The general picture is that parliaments do not have any substantial powers to review or amend the intergovernmental agreements in the field of economic governance (S. Fabbrini 2016; Crum 2018). This pattern is nevertheless subject to cross-country variation. In the period of crisis management, some parliaments – such as that of Germany or of Austria – even gained control powers, and beyond that the crisis and the subsequent developments in economic governance generated a proliferation and intensification of parliamentary activity in budgeting and EU affairs (Raunio 2015; Jančić 2016). However, the gap between strong and weak parliaments in the EU member states was widened, with regards both to formal rights and to actual involvement. The asymmetric effect of the crisis mainly hit the activities of the institutionally weakest parliaments, most of them concentrated in vulnerable debtor countries that were anyway deprived of their policy prerogatives with the signing of Memorandums of Understanding (Auel and Höing 2014). Unsurprisingly, the degree of parliamentary involvement is also related to the politicisation of the issues under debate. Somewhat paradoxically, however, when policies become more politicised, they also tend to be negotiated in secluded arenas (Raunio 2015; Neuhold and Rosén 2019), confirming a trend that has already been alluded to above.

It should also be noted that crisis legislation has not always undermined parliamentary scrutiny. For example, the Fiscal Compact encourages the budget committees of national parliaments to engage in regular exchanges with each other. If scrutiny by parliaments was limited, then it was due to self-restraint:

> It is also noteworthy that although a number of NPs have scrutinised the Six Pack and the Fiscal Compact for gatekeeping, networking and unitary scrutiny, only a few of them protested against these acts, which is remarkable given that the reform touches on the core of their budgetary powers. Part of the explanation could be that many NPs did not find EU economic reform overly offensive to national sovereignty but instead harmonious with the general goals of the EMU. (Jančić 2016: 237)

The European Semester now challenges the effective budgeting power of national parliaments. According to Dawson (2015: 989): "The primary mechanism of national parliamentary disempowerment is the timetable mandated by the newly institutionalized European semester … Their ability to scrutinize and contest supra-national constraints on the budget is severely limited." Objection could be made that there is no real need for national parliaments to be more closely involved in the ES given that they still are in charge of approving the final budget draft, and no decision-making power is formally taken from them. A word of caution on this overly formalistic argument is, however, expressed by Crum (2018: 269), who highlights how "although the eventual right to adopt the budget is preserved at national level, governments' economic decisions are increasingly constrained and parliaments thus find themselves at the losing side of a reinforced two-level game". If not *de jure*, the budgetary rights of national parliaments have been *de facto* affected by EU economic governance, which deeply intrudes into the autonomy of national economic policy-making (Lord 2017). For example, it is very unlikely that members of national assemblies will use their veto rights at the very end of a cumbersome multi-level mix of different policy-making modes which include complex intergovernmental bargains and several rounds of negotiations between individual member governments and the Commission (Dunlop and Radaelli 2016: 117–119). The complicated geometry poses severe challenges for effective parliamentary scrutiny because it is difficult to understand how things work, and, consequently, who is responsible for what (Rasmussen 2018):

> The complexity of the system of coordination and surveillance – consisting of common guidelines and principles, reporting, monitoring, recommendations, financial sanctions – a system established by primary law and further developed by secondary law, political agreements, and international treaties, has reached a point at which people in general, but also political leaders, have problems understanding it (Pernice 2017: 135).

Ways have been sought to compensate for parliamentary disempowerment, such as reinforced scrutiny over budgeting, improved access to information, and the creation of opportunities for deliberation (Fromage and van den Brink 2018: 239). These are indeed embryonic steps in the parliamentary adaptation to the EU fiscal regime, and parliaments have undergone further Europeanisation, but the magnitude of this adaptation should not be overestimated: "Statistics produced by COSAC on hearings held with the European Commission in 2013 in the context of the European Semester indicated that 71% of all parliamentary chambers had not held hearings of this nature" (Barrett 2018: 258). Similarly to parliamentary reaction to EU crisis legislation, there are gaps in the involvement of national parliaments in the European Semester. Apart from the impact of unequal formal monitoring capabilities (Rasmussen 2018), the degree of parliamentary involvement in the Semester is also contingent on motivational factors: although parliamentary powers in EU affairs and budgetary matters are a precondition for efficient involvement, they do not suffice (Auel et al. 2015a; 2015b; Kreilinger 2018).

More fundamentally, the adopted measures aiming to empower parliaments do not outweigh the centralisation of EU powers (Jančić 016). Pernice (2017: 134) thus believes that "the economic dialogue not only needs to be strengthened, but also give representatives of the budget committees of the NPs concerned a say in order to make their positions and problems heard and to have them seriously taken into account".[68] The (fatal?) question is whether all this is really necessary: less than 20% of policy guidance provided in the European Semester is complied with (a proportion which is decreasing) (Barrett 2018: 254). As the rates of implementation of even formally binding recommendations are limited, the Semester appears relatively ineffective, and although it operates under the shadow of sanctions, these sanctions are not applied in practice. The paradox is that, its intrusiveness notwithstanding, the Semester does not really "bite" (Schmidt 2020: 204–205).

[68] For a sophisticated normative analysis of standards that national parliamentary involvement should comply with see Lord (2017).

8 The role of the unelected and the guardian institutions: the technocratic complex

The role of the so-called "guardian" institutions in the EU system has been considerably strengthened in recent decades. To the constitutionalised (treaty-based) independence of the Court of Justice of the European Union, should now be added that of the European Central Bank, which became a "front-stage" actor (Crum and Curtin 2015: 74). The ECB became a key activist player in the Eurozone during the crisis, and managed to consolidate its role thereafter. Sanchez-Cuenca (2017: 361) refers to the advent of a "technocratic order", and Scharpf (2015: 401) to "non-political domination". As mentioned above, the European Central Bank is the main institution of the European Monetary Union. Although its independence can be well defended, the issue of its accountability remains relevant. This is because the ECB's independence level is exceptional and guaranteed at treaty level, and therefore the ECB is less vulnerable than national central banks, whose independence can, at least in theory, be challenged by parliamentary majorities.

Regulatory policy – one of the main areas of EU competence – has also been delegated to independent agencies, both European and national, which now form dense networks comprising a genuine multi-level administrative system (Trondal and Bauer 2017). Agencies have been growing in recent decades at European level, with a proliferation more recently. They are seen as an important instrument for shaping and implementing EU policies throughout a large number of policy areas, so that the issue of their accountability is no doubt also relevant (Busuioc 2013). Both the ECB and many agencies have seen their mandate expand, which raises the issue of the adjustment of accountability mechanisms to their new tasks.

8.1 The political accountability of the increasingly powerful European Central Bank

The initially narrow mandate of the ECB – the exclusive conduct of monetary policy in the Eurozone with the purpose of maintaining price stability – generated a broad consensus on its "accountable independence" (despite, or rather due to, the vagueness of the concept). This institution has deliberately been placed outside the democratic circuit: its independence is guaranteed by treaties and no attempts at democratic control should undermine it. For example, the members of the bank's Executive Board are appointed by the Council but

subsequently enjoy independence and are protected from dismissal. However, the crisis and ensuing developments have considerably "disrupted this *modus vivendi*" (Fromage et al. 2019: 13): the nature and degree of ECB accountability became an increasingly important issue "because of the recent radical expansion in the ECB's role with the establishment of European Banking Union (involving a major supervisory role for the Bank), with the ECB's own increased use of unconventional measures to combat the crisis and with the large increase in the number of economic governance fora in which the Bank (or its President) now participate" (Barrett 2018: 251).

8.1.1 Crisis management and discursive accountability of the ECB

During the Euro crisis, governments either delegated new tasks in banking supervision to the ECB or accepted the informal expansion of the ECB's mandates. In a speech delivered at the Global Investment Conference in London on 26 July 2012, ECB president Draghi promised "to do whatever it takes" to preserve the Euro, including adopting unconventional monetary policies such as the introduction of Outright Monetary Transactions to prevent speculation against member states under market pressure (by signalling the bank's willingness to purchase sovereign debt),[69] and, from 2015, quantitative easing (large-scale purchases of financial assets). The ECB has empowered itself to buy the sovereign bonds of financially distressed member states, and, as a corollary, became deeply involved in detailing, approving, and monitoring austerity reforms in debtor states – as part of the Troika but also in its own right. The bank used its power to pressure member states to adopt fiscal and structural reforms as a guarantee for the purchase of bonds, with obvious distributional effects (Kreuder-Sonnen 2018: 974).[70] The self-empowerment of the ECB can be interpreted as a step in the direction of further supranationalism (Hooghe and Marks 2019: 1119; Schimmelfennig 2014: 335), which qualifies the intergovernmental nature of post-crisis integration (Dawson 2015: 980).

According to, among others, Curtin (2014: 10), it is the ECB that is "the real 'winner' in terms of tasks at the supranational level that is given a leading and unprecedented role in the day-to-day management of financial markets." Curtin refers to this as the "legitimacy of epistocracy" and, in another paper, qualifies the ECB as "the most central – and powerful – supranational institution of our times" (Curtin 2017: 29). ECB policies have been at the centre of the struggle

[69] The Court of Justice of the European Union gave green light to the ECB's extension of powers in the Gauweiler and Others case on the ECB's programme of Outright Monetary Transactions (Tridimas and Xanthoulis 2016).

[70] Scicluna and Auer (2019) criticise the ECB's (over-)empowerment related to coercive enforcement as part of EU emergency governance. The confidential character of ECB correspondence on these matters, in which the bank put pressure on the Irish, Italian and Spanish governments, and made its support dependent on conditionality, has been criticised (including by the European ombudsman). Kilpatrick (2018) refers to these texts as "secret normative sources". For details on the Irish controversy see Curtin (2017: 41-42).

to save the euro, and the activist role of the ECB was necessary because it counterbalanced initial political inertia and intergovernmental stalemate. The ECB has even been depicted as the "hero" of the crisis (Schmidt 2020), and its President a charismatic leader (Tortola and Pansardi 2019, however, one has to take stock of the bank's mandate stretching:

> The Eurozone crisis pushed the European Central Bank (ECB) in another dimension. Its role in saving the single currency from total collapse, its ambitious interpretation of its own mandate, and the new powers it has been endowed with, be it as a member of the Troika or as the financial supervisor of the Eurozone, profoundly altered the ECB's role, standing and function within the European Union (EU). (Fromage et al. 2019: 4).

Kilpatrick (2018) identified at least six new crisis roles for the ECB, pointing out that many measures taken by the ECB are officially considered by the bank itself to be "non-standard" or "unconventional," and considered a number of ECB actions to be manifestations of "legal abnormality". The ECB now wears numerous "hats" (Fromage 2019: 49). Accountability thus becomes more pressing as a balance to independence:

> The issue of the ECB's accountability becomes all the more existential when the institution innovates in policy terms, relies on unorthodox instruments, uses its powers and competences in an unconventional manner, and is endowed with novel prerogatives well beyond the limited realm of monetary stability. (Fromage et al. 2019: 5).

The formal mechanisms and arrangements through which the ECB is held accountable to the EP have been structured mostly around reporting obligations for the ECB. The bank's independence limits political accountability to answerability – reporting and justification – excluding the enforcement of sanctions.[71] The vice-president of the ECB presents the bank's annual report to the ECON Committee of the EP,[72] which subsequently adopts a resolution. The ECB also holds a Monetary Dialogue with the EP (Article 284(3) TFEU), which began to be organised regularly at the introduction of the common currency, and is, for the same reasons, also of a soft nature (Fromage et al. 2019: 12). In that framework, the ECB's President must appear before the ECON Committee four times per year to speak and then take questions. It is of note that MEPs increasingly address questions to the ECB. Both questions and answers are published on the ECB's website (Fromage 2019: 52-54).

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[71] Only the CJEU has enforceability, in the case of clear violations, as part of the bank's legal accountability (Transparency International EU 2017: 38).

[72] This report is also sent to the Council, the Commission, and the European Council (Article 15(3) of Protocol (No 4) on the statute of the European system of central banks and of the European Central Bank).

There are no similar relationships between the ECB and the Council. For example, no hearings are organised based on the ECB's annual report, however the President of the Council and a member of the Commission can participate, without having the right to vote, in meetings of the Governing Council of the ECB.

> The Council has even less ability to influence the ECB than the EP. The Council does not in any way constitute a political accountability forum for the ECB, since the ECB is by charter not required to take direction from member-state leaders. (Schmidt 2020: 153).

National parliaments have also historically been peripheral entities in relation to the ECB, but the ECB has recently developed its interactions with them, which is necessary given the effect of ECB decisions at national level (Barrett 2018: 260). The President of the ECB agreed to appear before some national parliaments,[73] however this practice is not formalised and is thus at the discretion of the ECB, and has been portrayed as unconventional and "ceremonial" accountability, aiming to superficially reassure and satisfy the audience without revealing any meaningful information (Tesche 2019). As it is limited to an exchange of views, it cannot fulfil the function of parliamentary control (Jančić 2017: 154).[74]

It should also be noted that the ECB is subject to standards of professional secrecy, which imply trade-offs: "there is indeed a very fine line to tread between the appropriate oversight and the effectiveness of monetary policy" (Diessner 2015). With the bank becoming more activist, however, it has voluntarily opted to communicate to the public, the media and markets (Schmidt 2020: 152–154). The ECB demonstrated its own attention to the need for accountability in a lecture by its President in October 2018, among other occasions (Fromage et al. 2019: 5). It has increased the level of information it releases and progressively elaborated on its justification. This is in all likelihood related to the increase in media coverage and thus visibility of the ECB, to public controversies generated by its decisions, and to declining trust for the institution in the immediate post-crisis years, which has not climbed back to pre-crisis levels since then (Högenauer and Howarth 2016; Koop and Reh 2019).[75] Although officially the minutes of its Governing Council meetings are not public, the ECB agreed in 2015 to publish

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[73] For details about Mario Draghi's *tour des capitales* see Jančić (2017: 152-154).

[74] Hix (2015: 195) proposes that national parliaments require the ECB to provide regular reports on its activities to their European affairs committees and the option to request hearings with the ECB president on highly salient issues.

[75] Moschella et al. (2020) show that an expansion of the scope of ECB communication is associated with negative public opinion. Högenauer (2019) shows that, even in the unlikely case of the German Bundestag, which values central bank independence, the policies of the ECB gained salience and generated more conflictual debates, with increasing dissatisfaction and demands for scrutiny. These are indicators of the politicisation of the ECB's role (Tortola 2020).

Governing Council accounts, in the form of shortened and non-attributable minutes, and press conferences are organised following the monetary policy meetings of this Council. The ECB also voluntarily participated in exchanges that were not formally prescribed with both the EP and national parliaments (Chang 2020: 319), and it intensified its press conferences and exchanges with the EP (Koop and Reh 2019: 68). It has also begun to answer to the resolutions that the EP adopts on its annual reports, thereby establishing a sort of dialogue with the EP.

On the one hand, it has been argued that accountability channels between the ECB and other institutions have intensified, and so has scrutiny, demonstrating an ongoing step towards an increased accountability regime (Petit 2019). On the other hand, density of interactions should not necessarily be equated with relevance (Dawson et al. 2019: 87), because several gaps remain.

The first gap is that, in the absence of sanctioning mechanisms, accountability is limited – as for the Eurogroup (see above) – to its discursive, or explanatory, dimension:

> However, the precise substance of the term 'accountability' remains under-specified (Amtenbrink and Markakis 2019). The text of the regulation suggests that accountability in both supervision and monetary policy is mostly an exercise of transparency and dialogue (e.g. Fraccaroli, Giovannini, and Jamet 2018). Presumably, the ECB is expected to explain what it does and how it does it, but there is no way the EP can remove executives from office or revise the mandate of the institution. (Crum and Merlo 2020: 408).

In addition to the obvious absence of consequences for the ECB beyond potential reputational damage, Barrett (2018: 252) criticises the lack of a true debate in the EP on the bank's reports and the relatively poor quality of the ECB's answers to questions from MEPs. The quality of deliberations is negatively affected by both the existing strict confidentiality requirements, and the more recently expanding mandate of the ECB, which negatively affect the level of in-house expertise of forum actors. The consequences of this asymmetric information, to the detriment of the EP as an accountability forum, are that MEPs have difficulty identifying the most salient issues that would allow them to substantively challenge ECB decisions (Dawson and Maricut-Akbik 2020: 10), and that there is no real discussion of the quality of justifications provided by the ECB (Fromage et al. 2019: 13):

> The ECB's mandate has become increasingly broad and blurred, and the matters it decides upon ever more technical so it is legitimate to wonder whether MEPs, or MPs, can appropriately assess its actions. This is more difficult when transparency is not fully guaranteed and access to relevant information is not straightforward. (Fromage 2019: 61).

Data provided by Transparency International EU (2017: 42) offers a more differentiated picture: although monetary policy, conventional and unconventional, accounted for less than half MEP questions, financial stability and supervision, country surveillance, and the agenda for institutional reform of the EMU – all areas that certainly cannot be considered irrelevant – together account for roughly 50% of MEP questions. MEPs, however, often focus their questions on issues that fall outside the ECB's mandate or on requests for confidential information that the ECB is legally prohibited from providing (Economic Governance Support Unit 2020a: 21):

> There is thus a mismatch between the issue that MEPs care most about and the likelihood that they will receive the information they publicly seek. Contestation is bound to be limited from the outset. (Maricut-Akbik 2020: 1208).

8.1.2 Mandate expansion of the ECB: a mixed picture of accountability

Related to the ECB's mandate expansion, mention should be made of the European Banking Union that was agreed in 2012 as a response to the Eurozone crisis. Common to all Euro area countries, the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM) are both subordinated to the ECB. Under the SSM Council regulation, a major institutional reform devised under a special procedure in which the EP was only consulted, the ECB acquired the power to grant banking licenses and to supervise credit institutions. Given the formal separation between monetary policy and supervision tasks by the central bank, a new body, the Supervisory Board, was created inside the ECB to carry out most supervisory tasks, and its decisions are adopted unless the bank's Governing Council raises any objections (Fromage 2019: 54-55). The ECB achieved its self-empowerment, by wielding active influence on institutional design (Heldt and Mueller 2021), as the main banking supervisor in the Euro area, directly responsible for supervising all the large banks:

> According to the SSM Regulation, the ECB will have investigatory powers similar to those granted in the area of competition to the Commission (Wolfers and Voland 2014); it will be able to impose fees, carry out on-site inspections and impose sanctions on credit institutions. (Crum and Merlo 2020: 408)

With regards to SSM accountability the glass appears again to be half-full or half-empty. It is half-full in that although the ECB enjoys less discretion in banking supervision than in monetary policy, the bank's relationship with the European Parliament became central in terms of political accountability. The design of the banking Union includes more provisions for ECB accountability than the Bank's monetary framework (Koop and Reh 2019: 68), so that some scholars suggest that the "banking dialogue" between ECB, EP and national parliaments ought to serve as a model (Fromage and Ibrido 2018).

While unable to do so for Members of the ECB Executive Board, the EP obtained through bargaining new powers regarding the right to appoint (Rittberger 2014: 1180), together with the Council, the chair and vice-chair of the SSM (and decide, also jointly with Council, on a removal proposed by the ECB, however under very restrictive conditions). The EP also strongly insisted on increasing the transparency of the SSM procedures. An inter-institutional agreement was therefore concluded in 2013 between the EP and the ECB, providing that the ECB should regularly inform the EP on the surveillance process, and making detailed arrangements for organising discussions, with a view to balancing accountability obligations with secrecy requirements.

There are indeed numerous instruments that are part of the "discursive" accountability of the ECB related to its supervision activities. Articles 20 and 21 of the SSM regulation on "Accountability and Reporting" stipulate that the ECB must produce an annual report on its supervisory activities, which is presented to the ECON Committee of the EP, and sent to the Eurogroup, the Council (both instances having previously been consulted on a draft version), the Commission, and national parliaments (Crum and Merlo 2020: 409).

> In practice, the ECB's annual reports on supervisory activities have been presented to the ECON Committee, and two ordinary meetings and two to three ad hoc exchanges of views have, on average, been organized every year between the EP and the ECB thus far. (Fromage 2019: 56)

The Chair of the Supervisory Board may also be heard by the EP, the Eurogroup, and national parliaments, and the ECB must reply to questions by these bodies. In the EP, "confidential oral discussions between the Chair and the Vice-Chair of the ECON Committee and the Chair of the Supervisory Board may also be organized. MEPs may also consult a comprehensive and meaningful record of the proceedings of the Supervisory Board in a secure reading room" (Fromage 2019: 55). The EP can also decide to set up a Committee of Inquiry, with which the ECB must cooperate.

Nevertheless, the glass can also be seen as half-empty again. Firstly, there are still some transparency gaps regarding the disclosure of financial supervisory data in banking supervision, which contrasts with the European Central Bank's monetary policy practice where transparency has been prioritised over time (Beroš 2019). Secondly, although "confidential" forms of accountability more easily lead to genuine debate and may be considered a compromise with regards to imperatives of secrecy,[76] the lack of publicity is a problem: "in camera" meetings between the ECON chair and vice-chairs, the coordinators of EP political groups, and the chair

[76] Tucker (2018: 522) argues that lessons can be learnt from the world of security and intelligence, "where briefings of legislative committees in-camera (in secret) are used in some jurisdictions to ensure accountability while protecting against perversely premature public transparency".

of the Supervisory Board are reported to be more controversial than public hearings, but this creates "different classes of legislators" (Curtin 2017: 38). Such limitations affecting the horizontal accountability between institutions are similar to those of "trilogues" and other interinstitutional negotiations (see above), in which the EP negotiators gain in terms of influence, but this happens to the detriment of public accountability. Thirdly, the consequences of critical scrutiny and deliberation should not be over-estimated either. According to Maricut-Akbik (2020: 1209 and 1211), the ECB indicated openness to addressing requests for information and justification emanating from the EP, and demonstrated a fairly positive track record in answering questions. It even agreed to make the required adjustments, but there were few cases where MEPs demanded a change of conduct, so that the general evaluation is that the SSM rarely changes its policies or conduct as a result of MEP questions (Economic Governance Support Unit 2020a: 18).

In summary, as regards the accountability of the ECB to the EP: the sheer informational part of the process is effective, notwithstanding the secrecy limitations (Collignon and Diessner 2016), however the deliberative part leaves something to be desired (although this is not solely the bank's responsibility), and it is by design that the accountability process remains without formal consequences for the bank. Sanction mechanisms would threaten the bank's independence through their effect on its incentive structure. The only way to conciliate independence with accountability is therefore to promote the discursive dimension of accountability. Explanatory accountability is not without merit, because it creates an imperative for justification, however, as the EP cannot formally impose consequences on the ECB, it is institutionally weak as an accountability forum, and the accountability of the ECB is quite thin. It has also been criticised that much emphasis is put on the procedural aspects of accountability, to the detriment of accountability about substance.[77] In the absence of the "Damoclean sword" of sanctions, the substance of ECB's decisions cannot be easily corrected, procedures that do not allow for effective contestation remain "paper tigers", and ultimately accountability is a "false promise" (Dawson et al. 2019).

There is also a mixed picture with regard to the accountability of the ECB to the Eurogroup, as part of the ECB's accountability to Council (which includes representatives from member states participating in the banking union whose currency is not the euro) for banking supervision. Unlike "in camera" meetings in the EP, the problem is not that most addressees of reporting by the ECB are excluded from the conversation, but that the Eurogroup as a whole is an informal structure that lacks transparency and therefore lacks legitimacy as a forum. In the actual accountability process, the Memorandum of Understanding with Council mandates two exchanges of views per year, but there are years with

[77] A telling example is that of the ECB's annual report on banking supervision, which includes data on the number of meetings and exchanges without reference to the topics discussed (Dawson et al. 2019: 85-86).

up to six exchanges of views (Economic Governance Support Unit 2020a: 18). This can be interpreted as a sign of the Eurogroup's vigilance, but it also seems that the accountability of the ECB does not feature among the top priorities of the Eurogroup (Dawson et al. 2019: 86).

For a number of reasons, as seen above, the SSM Regulation also establishes some accountability relationships between the ECB and national parliaments, who can invite the Chair or another member of the Supervisory Board for an exchange of views on the supervision of national credit institutions, and may also submit written questions and observations (Fromage 2019: 50 and 55). However, national parliaments are less – and, as usual, unequally – active in that respect, despite the transfer of national powers to the EU.[78]

The Single Resolution Mechanism, which applies to banks covered by the SSM, is the second pillar of the banking union, whose primary purpose is to provide a uniform framework to ensure an orderly resolution of failing banks with minimal costs for taxpayers and to the real economy. A new agency was created and has been operating since 2015 with far-reaching powers for that purpose, the Single Resolution Board, in which the ECB and the Commission have an observer status. The SRB draws up the resolution schemes and has the power to directly enforce them if the national regulator does not comply. It also has investigatory powers, and sanctioning powers vis-à-vis financial institutions and national resolution authorities (Timmermans and Chamon 2020: 293).

An interinstitutional agreement between the SRB and the EP places transparency obligations on the SRB. The political accountability mechanisms established for the SRB are similar to those of the ECB in the SSM, including the approval of a candidate before the Council appoints its Chair. Unlike for most other agencies, in order to ensure the SRB's autonomy, Parliament does not give a budgetary discharge and therefore cannot use this tool which is crucial for the purpose of affecting the operations of delegated bodies. Furthermore, the Single Resolution Mechanism is a system of composite decision-making, spread over a multitude of actors at different levels. Its governance is indeed complex, as its decision-making processes involves the SRB and national regulatory authorities, the ECB, and also the Commission and the Council (Economic Governance Support Unit 2020a: 22). The Council's involvement is optional, depending on a decision by the Commission, and both institutions must act within very short time frames. However, the fact that the Commission has an *ex post* endorsement power (a tacit one, and without the power to amend) over decisions taken by the SRB gives it quite a strong position as an observer in the SRB executive session that prepares the SRB's decisions. This is an interesting case in which the threat of a *de jure* veto *ex post* is converted into a *de*

[78] The same applies to parliamentary control over euro area national central banks, which obviously varies according to parliamentary strength, but also depending on the tradition of central bank independence and the way it is interpreted by political actors (Högenauer and Howarth 2019).

facto ex ante power resource in decision-making (Scholten et al. 2020: 323), which is likely to reduce the autonomy of the SRB's operation.

To summarise: on the one hand, political control in financial supervision is less of a "taboo" than in monetary policy, and the accountability framework more developed, but on the other hand the ECB's mandate is broader and "fuzzier", making the practical exercise of accountability more difficult (Transparency International EU 2017: 40). The division of competences on financial regulation between the ECB, the European Banking Agency (responsible for regulation), the Single Resolution Board and national competent authorities also further impedes the allocation of responsibilities. As is frequently the case with the European multi-level and networked system of governance, the complexity of the banking union makes it "difficult to understand the differences between banking regulation/supervision/resolution or between national and EU-level competences" (Maricut-Akbik 2020: 1210).

Overall, not only is the ECB much more independent than national central banks since its status can only be changed with a Treaty revision that requires unanimous support from all member states, but its accountability is lower (Schmidt 2020: 152), also because it is more difficult in practice. The institutional framework is particularly complex and difficult to understand, the proliferation of ECB functions makes it increasingly hard to identify the arenas in which it should be held to account, and for what, and the ECB's role in different bodies varies between theory and practice, which further complicates the allocation of responsibilities (Fromage 2019).

There are proposals for the better accountability of the European Central Bank and the Single Resolution Board to the European Parliament and the Council (plus administrative and judicial review, that are not touched upon here). Unsurprisingly, and notwithstanding the delicate balance with the necessary degree of secrecy, enhanced procedural transparency and easier access to documents are considered to be pre-conditions.[79] Proposals also include the

[79] A report by Transparency International EU (2017) recommended that the ECB should reduce the number of exceptions to disclosure of information, proactively explain exceptions to the EP (notably its ECON committee), and publicly report to the EP on the positions of its representatives in international bodies, such as the Basel Committee on Banking Supervision. It should also join the EU Transparency Register, and prohibit meetings with unregistered private interests. A report by the Economic Governance Support Unit (2020a: 26) recommends that the ECB and SRB make the findings of their internal bodies publicly available (subject to constraints on professional secrecy), so that a forum such as the EP can use them for accountability purposes. Another report, based on empirical research, shows that it is quite difficult to find questions of MEPs and answers of the ECB or the SRB on the EP and the ECB sites (Economic Governance Support Unit 2020b: 26-27). The same report (pp. 27-30) pleads for, among other things, (initially sensitive) information to become public after a five-year "lock-down", or for the EP reporting to the public about responses received from the ECB and the SRB to MEPs' questions (pp. 42–43), with the expectation that this would increase citizen awareness of these issues and increase the EP's own public accountability regarding how it performs its account-holding function.

development of thematic dialogues between the EP, the ECB and the SRB on a number of topics (selected by the ECON Committee). It appears from these proposals that responsibility for better accountability also lies with the forum or audience, especially the EP, because it is (also) responsible for practical gaps: although one might expect that MEPs become more active as account-holders if incentivised to do so, it is not certain that they have the resources to live up to such expectations. In addition to improving this thin kind of accountability, there are also claims for the EP to become more directly involved in the designation procedure of the President of the ECB (Fromage et al. 2019: 16), and Transparency International EU (2017: 49) recommends that the EP, via its ECON Committee, be given confirmation power (after parliamentary hearings) in the appointment of the bank's Executive Board members.

Finally, it should be clear at the end of this section that the issue of the ECB's accountability cannot be disconnected from the bank's independent position. It suffices to think about the lack of realism, and probably also of relevance, of the establishment of sanctioning mechanisms. Let us note, however, that, in line with Tucker (2018: 539), it would be positive for the democratic legitimacy of independent bodies if "independence is tossed around, criticized, applauded, tolerated", in other words if it is not cast in stone and remains on the agenda of public debate. Transparency International EU (2017) formulated recommendations that are partly in a similar direction: that the EP and Eurogroup (provided its status is formalised) publicly approve any measures that lead to an expansion of the ECB's mandate, coupled with a review of the accountability status of the ECB by a high-level commission (possibly co-chaired by the Chair of the ECON Committee and the President of the Eurogroup).

8.2 Agencies: the mushrooming of outposts

Many agencies have been created at the European level since the 1990s as part of the composite EU executive, initially with the aim of restoring trust and credibility in the EU after a period of scandals and mismanagement (Vos 2016: 209).[80] Although the numerous – about 35 today – EU agencies vary considerably with regard to their tasks, powers and size, a substantial amount of regulatory power has been *de jure* or *de facto* delegated to these "outposts" (Bovens et al. 2010a), which cover a wide range of areas, and whose activities are expanding. Their decisions, but also their "softer" recommendations, can have a significant effect on state policies, stakeholders, and individuals. This obviously raises the issue of their accountability (Busuioc 2013; Scholten 2014.)[81]

[80] Along with a recommendation by the Committee of Independent Experts, established after the Cresson affair.

[81] These two volumes deal extensively with the issue. In order to keep pace with the latest developments this section mainly draws on Vos (2018), and on chapters in the recent book edited by Scholten et al. (2020), to which the author has contributed.

Similarly to the ECB, the existing accountability mechanisms may not keep pace with frequent situations of mandate expansion (Vos 2018). Take, for example, the case of the European Asylum Support Office (EASO), in which the *de facto* transformation of the agency creates a mismatch between powers and controls:

> EASO has recently been involved at the domestic level in the admissibility procedure of asylum applications (…) This has shifted the agency from a purely expert consulting role to undertaking interviews with asylum seekers and submitting recommendations that are followed and formally endorsed by domestic authorities. For example, in the case of the Greek hotspots, although EASO's recommendations have no direct legal effect on the Greek asylum officials, EASO's opinion has *de facto* quasi-binding consequences, since the Greek Asylum Service does not usually undertake any assessment of applications, but just rubberstamps the agency's decisions. Therefore, assessments by EASO agents on the ground may strongly impact on the fate of individual asylum seekers (…) EASO also plays a significant role at the appeal stage, although neither EASO's original regulation, nor the Greek legislation provide a legal basis for such a role. The reports of EASO do not mention in detail the activities, competences and any concerns regarding the engagement of the EASO staff at the operational level. Hence the issue of 'street-level accountability' for operations on the ground remains unsolved. (Scholten et al. 2020: 320).

The dilemma regarding the accountability of EU agencies is to some extent similar to the dilemma regarding the ECB: how to conciliate accountability with independence, or more accurately how to ensure a delicate balance between them. We need "to allow agencies the necessary freedom to act whilst keeping a close eye on what they do and making agencies accountable for what they do" (Vos 2016: 227). Turning this the other way round, we may think it necessary for expert bodies to remain under control, and at the same time, we may wish to avoid the risk that – whatever the formal autonomy of such bodies – the shadow of control undermines in practice their insulation from the political process. In the case of EU agencies, however, independence is a multi-facetted concept: it entails not just insulation from politics and commercial players, but also from national interests. Another distinctive feature of most EU agencies is that they have a hybrid character, as regards both the tasks accomplished and their organisation. EU institutions (mostly the Commission, sometimes the Parliament too) and member states are represented in the steering bodies of agencies, with the expectation of safeguarding internal ongoing control over their operations.

Accountability is, however, about *ex post* control. Despite the (non-binding) "common approach" on EU agencies adopted jointly in 2012 by Commission, Council and EP, there is no comprehensive and coherent system of control over their operation (Scholten et al. 2020: 3). This is related to the fact that agencies can have multiple "masters" who delegate power to them (depending on their

founding decision, the European Parliament and/or member states through Council), and that they accomplish a whole panoply of very diverse functions. Clearly one size does not fit all: in theory, one should expect that more agency prerogatives should go together with the agency being subject to more "biting" accountability procedures (Brandsma and Moser 2020: 66–67), however, the most powerful agencies, such as the European Securities and Markets Authority (ESMA) with strong enforcement competences, do not appear to be subject to a much stricter accountability regime than less powerful agencies such as the European Food Standards Agency (EFSA), with its formal advisory role (Scholten et al. 2020: 322).

As already mentioned, transparency is a prerequisite for accountability. With treaty revisions EU agencies became formal EU entities, subject to the usual formal EU rules regarding transparency and access to documents, and the European Ombudsman has significantly contributed to translating this into practice (Brandsma and Moser 2020: 72). Furthermore, there is a general trend of agencies spontaneously becoming more transparent, thus attempting to preserve and enhance their reputation (Busuioc and Lodge 2017).[82] As to agency accountability itself, EU agencies typically tend to be accountable to the EU Court of Auditors, the Court of Justice and the Ombudsman, and, as regards the political dimension of accountability, to the Commission, the EP, and the Council.[83] On the one hand, this challenges the idea that technocracy is politically unaccountable. On the other hand, given the existence of multiple "accountability eyes", agencies may be overloaded in such complex accountability regimes by conflicting steering signals from accountability forums with different agendas (Brandsma et al. 2016: 625). For example, ESMA must submit an annual report to the EP, Council, Commission, Court of Auditors and the ECON committee of the EP, as well as a specific report on its enforcement powers for EP, Council and the Commission (Brandsma and Moser 2020: 74).

The Commission performs an active monitoring function with regards to EU agencies because, apart from resorting to them for expert advice, it delegates specialised executive tasks to them and appears to be their closest "master". Agencies appear to in fact be integral components in the policy-making and implementation activities of Commission departments (Egeberg et al. 2015). The Commission can make use of the "alert or warning mechanism", request from an agency to refrain from a decision, and inform the EP and Council if the agency board does not comply. It is, however, unclear whether this mechanism has been used in practice (Vos 2018: 43-44). While the Council is more loosely involved, the European Parliament has been increasingly involved in scrutinising agencies (Font and Pérez Durán 2016). For example, in addition to formal reporting

[82] This has also been observed in the case of the ECB (see above).

[83] One should add "social" accountability to participatory forums such as stakeholder boards: it is however limited and, when this is not the case, it entails the risk of capture by powerful interests (Arras and Braun 2018: Busuioc and Jevnaker 2020).

duties, there are now meetings of the directors of many EU agencies with committee members of the EP. Written questions are also posed and hearings are organised, however, the limits resulting from forum passivity observed elsewhere seem to apply to the accountability of agencies too. Accountability deficits tend to originate more in the lack of motivation of those supposed to hold agencies accountable than in intentional attempts of these bodies to evade accountability. As observed about the European Aviation Safety Agency (EASA):

> In the case of EASA for example, invitations to its Executive Director by the European Parliament do not work as genuine reporting exercises, and invitations by the Council, although formally possible, never take place. Rather, for the agency's performance to trigger debates, exceptional focusing events such as plane crashes with tragic consequences seem to be a necessary pre-condition. Sanctions are also limited, for instance the procedures for removing executive staff from office are quite cumbersome. (Scholten et al. 2020: 316).

This case shows that agencies operate with a significant degree of autonomy in often highly technical fields, which makes the practical exercise of control difficult in the absence of "focusing events".[84] Not only can the *de fac*to influence of agencies therefore be higher than their *de jure* power through their influential expert advice and "soft" recommendations, but their *de facto* accountability can be lower than might be expected considering the existing formal controls (Scholten et al. 2020: 324). This generates an obvious accountability gap, however, as agencies increasingly proactively seek contacts with the EP, to avoid excessive dependence upon the Commission, accountability should not be seen as merely adversarial. Accountability is not only a constraint for the actor who has to account, because a benevolent attitude from the forum may be used as a resource.[85]

In addition to the formal accountability mechanisms, scrutiny by the EP is ensured via informal contacts such as delegation visits to agencies or contacts between committee rapporteurs or chairs and agency representatives. Obviously, there is nothing legally binding in them, but these mechanisms are "hardened" if we take into consideration that agencies may fear the "Damoclean sword" of sanctions in the form of budget cuts from the EP. As budgets for most agencies are only released if the specialised committee has given a positive assessment of the agency's performance, exchanges in informal arenas are instrumental in preventing this "nuclear option" (European Parliamentary Research Service

[84] Legal accountability, for instance, tends to be of limited intensity because courts tend to defer to the expertise of agencies on complex matters that they have to judge (Scholten et al. 2020: 9).

[85] Eriksen and Katsaitis (2020) studied the parliamentary hearings with agency staff from ESMA organised by the ECON committee of the EP, and describe them as a mechanism of mutual support that serves learning purposes. In an amicable atmosphere of deliberative reasoning both sides develop a shared space of understanding that leads to the mutual attunement of expectations and to co-ownership of standards.

2018a: 65-66). The EP's budgetary prerogatives do matter, and the EP has not been inactive in that respect. In 2009 and 2010 it postponed the requested budget discharge to the EFSA and the European Medicines Agency (EMA), not because of mismanagement of funds but out of serious concerns about conflicts of interest and the lack of independence of their staff (the "revolving door" phenomenon). Interestingly it is in the name of their necessary independence and prevention of capture (by market parties) that agencies have not been shielded from politics, showing that their independence entails trade-offs. As a result, the EFSA and EMA revised their policies on independence (Vos 2016): a clear case in which sanctions from the forum induced a corrective effect, unlike thinner discursive accountability mechanisms.

Finally, assessing the accountability of individual agencies needs to take into account the overall European regulatory space. The EU Commission and EU agencies seek to exert influence on national agencies by forging partnerships with them in a large number of EU-wide rule-enforcing and coordination networks. Such a shared administrative space, decentralised in organisationally autonomous but functionally integrated bodies, is considered necessary for the implementation of EU policy and harmonisation across member states (Egeberg and Trondal 2017; Saz-Carranza et al. 2020). This results in centrifugal trends within national executives (Bach et al. 2015), because not only do national agencies operate at arm's length from governments, but, similarly to their EU counterparts, they also tend to become "double-hatted", by developing loyalties with respect to EU institutions, which – as we know – are themselves imperfectly (to a varying degree) democratically accountable. In such a case, the effects of agencification and Europeanisation on political accountability accumulate. A lack of space prevents us from discussing in detail the accountability structures of European networks of agencies in which it is difficult to assess who is acting. Let us just note that to the "many eyes" problem, which may undermine the effectiveness of the accountability of individual agencies, one should add the "many hands" problem, which also hampers accountability because responsibility is diluted, and informational asymmetries to the detriment of outsiders are particularly difficult to overcome in multi-level settings (Brandsma and Moser 2020: 70–72).[86]

8.3 A short note on the Court of Justice of the European Union

The Court of Justice of the European Union (CJEU)[87] is not a technocratic body in the sense of the ECB or the various EU agencies. The Court's role, however, also illustrates the phenomenon of the "rise of the unelected" which has been observed at national, supranational and transnational level (Vibert 2007).

[86] See also the previous section on the system of financial supervision in the EU.
[87] A recent appellation that includes the Court of Justice and the General Court.

The CJEU is a central element of the institutional framework of the EU, formally on equal footing with the Council, Parliament, and Commission. It is not just an accountability forum, as it has proved to be a real judicial power in practice – comparable to the Supreme Court in the United States and the Federal Constitutional Court in Germany – and a key actor that led with its rulings to the expansion and deepening of supranational integration, despite the fact that it can only act if other parties appeal to it.[88] This is due to "the 'traité-cadre' nature of the original treaties, whose large indeterminacy bestows immense power on those who are charged with interpreting them" (Ritleng 2016: 106), so that the court went even "so far in some cases as to cross the line between treaty interpretation and de facto treaty amendment" (Ritleng 2016: 112). Following the Eurozone crisis which led to a further development of "integration through law", the Court repeatedly had to arbitrate conflicts of sovereignty, and consistently ruled in favour of supranational integration (Saurugger and Terpan 2019). Although this is a matter of debate (Rasmussen and Martinsen 2019), the Court has also been criticised for being too activist through dynamic methods of interpretation and the constitutionalisation of treaties that affirm the supremacy and direct effect principles, and even for overstepping its mandate by acting *ultra vires* to the detriment of member state competences. National courts – whose relationship with the CJEU is based on an incomplete and unstable implicit bargain, and thus characterised by a mix of circumspection and deference (Tridimas 2015) – have been particularly vocal in that respect. This has been prominently shown recently by the controversy raised by the German Constitutional Court's ruling on the Weiss and Others case, which stipulated that a previous ruling of the CJEU which declared legal the ECB's Public Sector Purchase Program – a cornerstone of the bank's "whatever it takes" approach to quantitative easing– has no binding effect on Germany because the CJEU acted beyond its powers by interpreting the Treaties incomprehensibly and arbitrarily.[89]

[88] Thorough studies of the policy role of the CJEU are Saurugger and Terpan (2016), Schmidt (2018), and Martinsen (2015a) who is more reserved on the Court's power. Blauberger and Martinsen (2020) and Martinsen (2015b) show for instance that the joint effects of governmental and public opposition constrain the Court which strategically anticipates such reactions, so that the effects of unwelcome jurisprudence can be attenuated. Studies with a policy analysis approach highlight cross-sector differences and the impact of specific configurations of institutional and private litigants (Adam et al. 2020; Mathieu et al. 2018; see also by the same group the special issue of the *Journal of European Integration* "From High Judges to Policy Actors: How Stakeholders Condition the CJEU's Influence", 40(6): 2018).

[89] The *Bundesverfassungsgericht* found the ECB's measures disproportionate and *ultra vires* (see among many others Maduro 2020), and the ECB was pushed to disclose information and justify its programme. The Commission launched an infringement procedure against Germany after that ruling of its apex court as it constitutes according to the Commission a precedent in challenging the primacy of EU law. According to an interpretation (Fontan and Howarth 2021), the role of private plaintiffs turning to courts is a form of national level "fire alarm" on ECB policy-making in view of its weak accountability at EU level. On the crucial role for European matters of the domestic legal debate *within* Germany see Vauchez (2020).

As for courts in general, the legitimacy of the CJEU rests on its independence by design, as well as the perceived fairness of judicial process and impartiality of court rulings. The potential reappointment of judges after a relatively short six-year term has been criticised for in theory allowing member states to exercise pressure over their nationals, however, judges usually serve more than one mandate and are somewhat protected because there are no dissenting opinions, and votes in the Court are not disclosed. More generally, the CJEU is considered immune from political pressure and from "court curbing" measures likely to undermine its independence. If we refer to sanctions in the form of budget cuts, the EP approves the EU budget, and it is likely to block efforts to use the budget to punish the Court (Kelemen 2012: 46). Unlike the other EU institutions, including those enjoying independence such as the ECB or EU agencies, the accountability of the CJEU is not an issue, and control over the Court is considered harmful. Actually, one could imagine only very soft/thin forms of discursive/explanatory accountability, most notably with a more regular dialogue between the Court (for example based on its annual report) and the European Parliament.

When the issue of accountability is raised, it is in fact in the spirit that *too much* accountability enforced by sanctions would harm the Court's necessary independence. Actually, the problem is less one of the Court's defective accountability, and more the problem of the Court's excess of power. Unlike national constitutions, European Treaties contain relatively detailed policy prescriptions (most notably favouring market integration, but also including the protection of human and social rights), which cannot easily be reversed and leave the CJEU discretion to interpret them through its case law in the direction of more integration, based on the Court's "teleological" approach. As already mentioned, Grimm (2017) describes the situation of policy goals elevated to constitutional status as "over-constitutionalisation" (see also Blauberger and Schmidt 2017): policy choices are locked in and insulated from political contention, so that the domain of democratic decision-making becomes narrower, even though such choices may be controversial. To give an example of the *problématique*: although proposals that CJEU rulings be endorsed by Council would clearly violate the principle of separation of powers (Schmidt 2018: 248), opting for the "deconstitutionalisation" of part of the European law included in the Treaties – as suggested by Scharpf (2017) – would result in less material that the Court can exploit and would permit past intergovernmental choices to be more easily "unlocked".[90]

[90] For recommendations on the de-constitutionalization of the legislation on economic governance see Griller and Lentsch (2021).

9 Networks and accountability in European multi-level governance[91]

Up to now this report has been dedicated to the study of inter-organisational accountability relations involving bodies composed of heads and members of governments of member states, such as the European Council and the Council as well as Euro Summits and the Eurogroup (including in its European Stability Mechanism clothes), the European Commission, the European and national parliaments, the European Central Bank and the numerous EU agencies, and the Court of Justice. Accountability to the broader public as a forum has also been considered, although more tangentially so far, for example with national parliaments and their domestic constituencies as forums, or when pointing out the indirect effects of informal negotiations between EU institutions.

We have nevertheless seen that in many cases, even when intergovernmental and supranational bodies are formally accountable individually, their embeddedness in the composite and multilayered political-administrative system of EU governance dilutes responsibility. As Kandyla (2020: 27) correctly notes: "intergovernmental and supranational forms of decision-making co-exist and are increasingly complemented by less hierarchical decision-making structures organized along functional and sectoral lines in the context of EU governance". More specifically, "policy-making in the EU increasingly takes place through procedures which do not conform to the traditional organisation of political power in political institutions (…) Instead, policymaking occurs through non-hierarchical or less-hierarchical structures and processes of interaction between political, public and private actors" (Kandyla 2020: 20).[92]

Many sorts of weakly visible advisory bodies and working groups configure policy networks that include actors from multiple levels, and enjoy *de facto* authority in the EU's day-to-day policy-making: "the growth of informal networks and negotiations in which multiple levels and forums, and a diversity

[91] This section draws on past work by the author on the topic, among others Papadopoulos (2010 and 2014); see also Papadopoulos (2017) on the related topic of the link between multi-level governance and depoliticisation.

[92] See also Stephenson (2013: 828) who refers to "the dispersal and redistribution of powers and competences to different levels of policy-making activity, and roles for both existing and newly-created institutions and bodies, i.e. of interconnected public and private actors".

of actors have been part of policy formulation and implementation cannot go unnoticed", writes Czada (2015: 232). To understand this, we need to climb down "from the level of 'history-making' decisions to that of the ordinary legislation and implementation taking place in-between treaties" (Tortola 2017: 238). For example, European environmental policy directives usually mandate the participation of multiple decisional levels for policy implementation and the involvement of non-state organised interests or the wider public (Newig and Koontz 2014). Networks may be formal, as in the case of European networks of regulatory agencies, but also informal, simply because when power is fragmented, as it is in the EU, actors need to discuss, cooperate and bargain with each other to come to decisions.

Some of the accountability issues in network forms of governance stem from gaps in the accountability of the actors in the networks. The latter include actors without a democratic mandate, such as members of bureaucracies from multiple jurisdictional levels (from the regional/subnational to the European/transnational), various kinds of stakeholders, such as interest group representatives, and even private companies, and experts. Such actors do individually face accountability obligations, but these are subject to important limitations:

- Members of the administration are key players because they make important decisions regarding the design of networks, their participants, their attributions, the framing of issues on their agenda, and their management. They are subject to vertical accountability to their political superiors, and the latter are subject to democratic accountability through the risk of electoral sanctions. However, the accountability chain – which runs in the reverse direction from the delegation chain – is more cumbersome at the EU level, involving the administrative structure (Directorates-General) of the European Commission, the European Parliament, and European electorates, or when independent agencies are key players. The length of the chain of delegation combined with the magnitude of administrative discretion can also *de facto* make the accountability chain fictitious.
- Representatives of interest groups and non-governmental organisations (NGOs) are accountable to narrow segments of the population, most notably the rank-and-file and donors (whose expectations are not necessarily aligned), and also formally to passive members of their organisation. Many organisations do not escape problems of elitism that reduce the internal accountability of their leaderships, and their external accountability to the communities affected by their action is also limited. Organisations act as "surrogates" (Rubenstein 2007) for certain populations whose well-being is of concern to them, but usually no procedures exist to subject self-proclaimed representatives to a test recognising their claims. Accountability becomes even more nebulous whenever an organisation legitimises itself by claiming to

represent the public interest, embodied, for example, in environmental protection or health and safety.

- Experts are not bound by a delegation relationship, on the contrary they are more credible if considered independent. They may be held to account (usually informally) by their peers and risk reputational damage, if for example they are not objective in their assessments. This form of professional accountability may be necessary for policy efficiency and the quality of governance, but it cannot be considered a substitute for political accountability.

As mentioned above, participants in networks may be caught in accountability dilemmas: they must satisfy multiple accountability forums whose claims differ or even collide. Actors subject to multi-level accountability may especially have to account for their actions not only to their constituencies (or more broadly to affected populations), but also to negotiation partners with different preferences and expectations.[93] This soft form of mutual accountability can operate to the benefit of the common good only if network members share strong public-minded values, or if they are sufficiently representative of social pluralism, which are quite demanding conditions. Control *in* and *by* the network is not a proper substitute for control *over* the network.

In order to exert their rights effectively, accountability forums – such as grassroots members in organisations and peers in professional communities – need to be aware that their representatives or colleagues participate in governance networks, and to be informed about their action. This is not self-evident, because there are also accountability gaps related to the collective properties of networks. Outsiders find it difficult "to grasp what exactly takes place and to scrutinise the positions expressed and the decisions taken" (Kandyla 2020: 21) in networks. This happens because of the "many hands" problem, which is exacerbated by the fact that policy-making by networks usually takes place backstage. This also applies to formalised networks – such as European networks of agencies – which may not be visible to the wider public because they deal with issues on their agendas that are not publicly salient and do not generate media coverage. Although lack of visibility is not the result of purposeful concealment, it facilitates "multilevel blame-games" (Heinkelmann-Wild and Zangl 2020). Therefore "multi-levelness" is not just a constraint for network actors, it can also be used as a resource for playing one level against another for the purpose of shifting blame, for example with the aim to justify unpopular measures through pressure from other network participants. It is easy to understand that, in such a context, accountability forums may lack the necessary information to make sound judgements, not being aware of the role of network members, of the collective influence of networks, or even of the sheer existence of networks: "It is a world that is comprehensible only to experts and specialists" (Vibert 2011: 36).

[93] This constraint is also visible in intergovernmental negotiations.

Bovens et al. (2010b: 192) correctly suggest that "it takes a network to catch a network": networks can be controlled most effectively by other networks. The emergence of complex accountability regimes – composed of "a more diversified and pluralistic set of accountability relationships" (Bovens 2007: 110) – may thus be viewed as an adaptation to the complexities of network governance. Brandsma et al. (2016: 632) refer to "multiple cross-level actor networks, overlapping responsibility in polycentric systems and multiple and over-lapping accountability forums" in an accountability landscape that lacks a dominant organising logic. This raises additional difficulties: the establishment of accountability networks may face collective action and coordination problems. As a result, accountability mechanisms "are in tension with one another, in the sense of having different concerns, power, procedures, and culture, which generate competing agendas and capacities" (Scott 2000: 57). The more complex accountability procedures are, the fuzzier they are likely to be:

> Complex accountability networks … are badly understood, encompass incompatible components, leave things uncovered, provide opportunities for shirking and opportunistic behavior, or result in confusion. (Klijn and Koppenjan 2014: 255).

In summary, the problem with governance by networks is not necessarily that it lacks accountability. It may even be associated with *excess* accountability, as in the case of multiple forums and conflicting demands with unpredictable effects, but paradoxically combined with waning political accountability channels as a consequence of de-institutionalisation (Papadopoulos 2010).

10 Politicisation and the general public as an accountability forum: are citizens able to assign responsibility in the EU system and hold rulers accountable?

Context matters for the practical exercise of accountability. We know, for example, that MPs are more watchful on issues that are salient to them and on more controversial pieces of legislation (Neuhold and Rosén 2019). We also know that the Eurozone and the migration crisis have nourished Euroscepticism in the general public, and a significant proportion of European citizens currently blame the EU for their economic condition and the negative distributive effects of EU-mandated policies (Hobolt and de Vries 2016). Eurobarometer data has clearly shown an erosion of trust in the EU and of its positive public image, and, although there has been a recent catching-up, the values have not reached pre-crisis levels (Schmidt 2020: 261-263).

As the "sleeping giant" of disenchantment with Europe has woken up (Hoeglinger 2015), "constraining dissensus" has gradually replaced "permissive consensus" on integration by stealth (Hooghe and Marks 2009). Consequently, debates on European integration are no longer confined to segmented issue-specific and elitist "bubbles" (de Vreese 2007), similarities in the media's framing of issues have increased across countries (Statham and Trenz 2013), and the discourse of institutions and politicians now aims more directly to communicate with the general public (Schmidt 2019). In recent decades there has been a politicisation of the issue of integration, which involves several dimensions:[94] the issue became more salient to the general public,[95] positions more polarised, and the range of

[94] Politicisation is not a unified trend however: it is triggered by punctuating events and, despite some parallelism in the debates, it tends to unfold differently across regions (Kriesi 2016; Hutter and Kriesi 2019).

[95] For example, there has been an increase in media coverage of European elections, however (especially television) coverage remains cyclical, with a concentration on "horse-races" and major events in which domestic political actors dominate the landscape, and continues to neglect the institutional and policy issues of European integration (Hobolt and Tilley 2014a: 70-75).

actors and audiences involved in the controversies expanded (de Wilde et al. 2016; Hutter et al. 2016). In her 2020 book Vivien Schmidt writes:

> My 2006 catchphrase characterizing the EU level, as consisting of policy *without* politics, based on the tendency to apolitical and/or technocratic decision-making, no longer fully describes EU governance, which has increasingly become 'policy *with* politics' in crisis areas (Schmidt 2020: 13–14, original emphasis).[96]

Actually, such a development transcends crisis management: the politicisation of European integration, above all by anti-mainstream parties and political entrepreneurs, is much wider, as testified most prominently by the case of Brexit in recent years. An important question is whether when politics is "back in" (Risse 2014), this positively affects the accountability of rule-makers by the general public. Knowing that the institutional accountability mechanisms have not changed significantly, and that ordinary citizens usually have difficulty capturing the nuances of the composite EU multilevel system,[97] do they now have better cues for passing judgment and the right channels to reward or sanction?

We can consider campaigns for elections to the European Parliament and electoral outcomes as indicators of whether people praise, blame, or are indifferent to "Europe". Data from the 2014 election shows that established – and especially governing – parties no longer shied away from EU issues, referring to them during the campaign just as often as challenger parties (Eugster et al. 2020). In addition to the relative increase in turnout, the following observation was made about the last election in 2019:

> A transnational cleavage has emerged between parties and voters who want 'more Europe' and those who instead want the repatriation of competences to the member states and distrust the capacity of the EU to provide answers to the important questions of the day. For the first time, such distrust in EU institutions has translated into open Euroscepticism which has engulfed both elites and masses. (Piattoni and Verzichelli 2019: 507).

Do citizens continue to be unclear about responsibility, also because of the relative fluidity of the EU governance system, which "presents a particularly difficult challenge to citizens, as the institutions and divisions of competences are continuously evolving and changing" (Hobolt and Tilley 2014b: 796)? A document of the European Political Strategy Centre (2017: 3) that advocates

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[96] See also Hurrelmann and Baglioni (2019: 915): "EU policies enjoy greater saliency and elicit more widespread political contestation and deliberation in the European population".

[97] Extensive research shows that this is a more general problem with political systems in which responsibility is diluted, through coalition government, partisan division between the executive and the legislative (as occasionally in the United States), or power-sharing between jurisdictional levels (as in federal countries).

merging the function of President of the Council and of the European Commission, in order to ensure more effective and accountable decision-making ("one captain steering the ship") notes "It is in fact of little wonder that many EU citizens still understand only little about the inner workings of the Union". Similarly, Hurrelmann and Baglioni (2019: 913) point out that "it remains unclear to most of the public who deserves praise or blame for EU decisions, and what can be done if one wants to enforce accountability by 'throwing the rascals out'."

Beyond assertions, empirical research into mass attitudes comes to relatively nuanced conclusions about the ability of the general public to adequately allocate responsibility in the EU system. According mainly to survey data (Hobolt and Tilley 2014a),[98] despite the complex and fluid nature of the EU, European citizens are able to make relatively correct distinctions in terms of what the national and the European jurisdictional level do, to distinguish between more and less deeply "Europeanised" policy sectors, and to adjust their allocation of responsibility to policy developments. Predispositions matter as "perceptual screens": EU supporters are more likely to attribute responsibility to the EU when conditions are improving, whereas Eurosceptics tend to deny the EU any responsibility for positive outcomes. Both Europhile and Eurosceptic citizens make less accurate judgments on responsibility (with expert judgments as a benchmark) than those who feel ambivalent about integration, because strong attitudes induce biased information processing. According to these findings, the authors draw a rather negative conclusion:

> The reliance of prior predispositions about the EU to navigate the complex structures of governance in the EU can lead to grave 'attribution errors' (Pettigrew, 1979), as Eurosceptics are more likely to absolve their national governments of any responsibility for poor performance, even in instances where they are to blame, and equally pro-Europeans are prone to credit the EU with improving policy conditions even in cases where the responsibility lies almost exclusively at the national level. (Hobolt and Tilley 2014b: 810).

A contextual factor such as the level of politicisation may mitigate the problem of attribution errors and the risk of shifting blame. Citizens are better able to make correct evaluations in countries in which the integration issue is more salient and conflict-laden. Politicisation increases the information supply through two distinct paths: either because the party system becomes strongly polarised on integration issues, or – interestingly – because media accounts

[98] Hobolt and Tilley (2014a) also use survey experiments and media content analysis in their book. There might be criticism that information presented in the book is outdated (dating back to the beginning of the 2010s or even the end of the 2000s). However, the author of this report does not see any fundamental developments that should make us anticipate a significant change in the logic of responsibility attribution.

acquire a predominantly negative tone (Wilson and Hobolt 2015).[99] The authors this time conclude more optimistically:

> This is reassuring news for those who worry about increasing political contestation and the potential negative impacts on democratic outcomes. In the context of the European Union, we find that increased politicisation improves citizens' knowledge of complex governance structures, which can positively influence democratic accountability and governance. (Wilson and Hobolt 2015: 111).

This positive evaluation should in turn be nuanced if we take into account other results from the same research. Unsurprisingly, the individual level of political sophistication affects the ability to make correct responsibility attributions. People lacking political knowledge are more prone to allocate "excess" responsibility to the EU, while more knowledgeable individuals are also more exposed to high quality media which tends to provide accurate information about the EU. Hobolt and Tilley (2014a: 92–97) find that accurately allocating responsibility requires solid knowledge, which in turn requires regularly reading newspapers (not watching television!) which contain more information about policy, the EU, and its responsibilities, something that only a small proportion of the population does.

Even if politicisation facilitates the assignment of responsibility, it is not sufficient for the effective exercise of accountability. We know that European elections – even though they are less "second-order" than in the past – are primarily an opportunity to reward or sanction the general performance of the incumbent national governments, much less their positions and conduct in European integration. Their outcome is thus a very imperfect benchmark of the verdict of the "elephant of public opinion" on EU policies (Rose 2015: 155). Voters are indeed provided with a direct accountability mechanism through elections for the European Parliament, but what can they do if they wish to sanction the EU? They can vote for Eurosceptic parties, but apart from that who among the other parties can be considered more or less responsible for any positive or negative outcomes? Which are the "governmental" parties in a context where there are often broad interparty agreements in the EP? Despite the formal powers of the EP over the approval (and, more theoretically, the dismissal) of the Commission, there is also no clear link between majorities in the EP and EU policies (Hobolt and Tilley 2014a: 130–131). It is important to remember that the Commission itself is heterogeneous, with its members being proposed by national governments of different ideological colours, that legislative power is shared between the EP and the Council of the EU, and executive power shared between the Commission and the European Council. In spite of politicisation,

[99] Such findings related to cross-national differences highlight the existence of an impact of the degree of politicisation upon the accuracy of responsibility attribution. It is more difficult to assess whether there is an improvement across time triggered by rising politicisation.

European elections therefore continue to be an accountability mechanism with very limited effects.[100] In other words, even the most direct accountability at EU level appears quite loose in practice. This is also a caveat to the optimistic conclusion of Wilson and Hobolt (2015).

More importantly, Hobolt and Tilley (2014a: 133-136) found that, in the absence of a European (partisan) government to be rewarded or sanctioned in European elections so that a change of government and political direction takes place, it is trust for the EU as a whole that declines. It is the prospect of power rotation that facilitates the consent of losers, despite disagreement with policy (Anderson et al. 2005), a perspective that is absent from the EU system. The effect of "citizenship lite" (Rose 2015) is that when citizens find the EU's performance poor, disaffection is likely to spill over into a more fundamental crisis of confidence – with contestation affecting the EU as a whole, rather than just those holding office. As noted by Peter Mair (2007: 7, emphasis in the original): "once we cannot organize opposition *in* the EU, we are then almost forced to organize opposition *to* the EU".

[100] In a large-N comparison of four European elections (1999–2014) Vasilopoulou and Gattermann (2020) found that politicisation also had a limited effect with regards to a better representation in the EP of citizens' views on integration.

11 Summary of findings and conclusion: the glass half-full

This report offers a bird's eye view on the status of accountability in the European Union, and disentangled accountability according to the various loci of power in the complex and multi-level EU decisional system. It focused on accountability in the real world; in other words it scrutinised not just how formal competences to hold decision-makers accountable are allocated, but also whether the monitoring agents have the ability and the willingness to hold effectively policy-makers to account.

Although legal and financial accountability are important dimensions of the accountability regime of the European Union, this report concentrated on the political accountability of EU decision-making bodies: the subset of accountability procedures in which the control function is performed by citizens or their democratically elected representatives. In other words, political accountability includes vertical (democratic) accountability to citizens, and horizontal (interinstitutional) accountability to directly elected representative institutions (legislatures). In the EU system horizontal accountability is more developed than vertical accountability, and it may be argued that as the European and national parliaments jointly perform the function of democratic representation, accountability to them is, indirectly, accountability to the European people. The report therefore concentrated on accountability to democratically elected accountability "forums": on the centralised accountability of European executive bodies to the European parliament (supranational circuit), and to a lesser degree on the decentralised accountability of national governments to the EP's national counterparts, which are the two main channels of multi-level oversight in the compound European system.

This concluding section summarises the main findings of the report:

1) In recent decades, and especially with the Treaty of Lisbon, there have been some significant improvements with respect to the defective democratic accountability of the European Union. The more spectacular step was the slow but sure "parliamentarisation" of policy processes, with parliamentary empowerment at both European and national level, however, this process encounters limits and its contribution to democratic accountability should not be overstated.

    a) Ordinary legislative procedure has extended the number of policy areas with the binding involvement of the EP. On the one hand,

the European Parliament has been empowered vis-à-vis the Council with is role as co-legislator, and is a strong partner in executive–legislative relations, since there is a parliamentary vetting process for individual Commission members before approval of the whole Commission by the EP. On the other hand, the EP still does not play the same role depending on EU policies. EU governance is actually divided between a "supranational" and an "intergovernmental" regime. It is in the former that the EP has increased its institutional power: as the endorsement of rules by the EP is necessary, horizontal interinstitutional accountability exists in practice, because the EP can veto actions from the other EU institutions. In the intergovernmental regime however, the EP remains sidelined, but even in the supranational regime the corrective effect of accountability is constrained by the "constitutionalisation" of principles of market integration that sets material limits to the policy feedback permitted by accountability mechanisms. An unexpected negative side-effect of the empowerment of the EP with regards to accountability is also the development of negotiations ("trilogues") among EU institutions with a view to securing legislative compromises. Such negotiations are effective, but at the same time lack transparency, which inhibits the accountability of decision-makers to outsiders, and even to the EP as a whole. In other words, confidential forms of accountability are to the detriment of public accountability.

b) Some national parliaments have indeed undergone a re-empowerment process as regards EU affairs, but there is nevertheless considerable variation in their ability to "fight back" against "deparliamentarisation" and to control the executive when it is involved in European policy-making. Similarly to what happened with the trilogues at EU level, parliaments are more influential if they succeed in becoming involved in informal negotiations with the government. This implies a trade-off: governments become more accountable to parliaments on EU matters if the latter exercise their control function outside public scrutiny, but this undermines accountability towards the citizenry.

   The legislative influence of parliaments has also expanded with the Treaty of Lisbon (2009). It provides an "early-warning mechanism" that allows them to indicate when the subsidiarity principle is in danger of being violated by a piece of legislation proposed by the Commission. If more than one-third (or one-quarter in the area of "justice and internal affairs") of opinions on the part of a coalition of national parliaments are negative, then the Commission must reconsider its proposal. We do not know whether there are many blatant infringements of subsidiarity in the initial Commission

proposals, but the mechanism is not used frequently and only once has the Commission withdrawn its proposal. Overall, the corrective effect of accountability to national parliaments appears limited, although it may have indirect and more diffuse effects, such as a possible increased sensitiveness on behalf of the Commission and learning effects for parliaments through their direct participation in EU policy-making.

2) The advent of the European Monetary Union has reinforced the intergovernmental dimension in the EU, putting a halt to the strengthening of parliamentary control and influence. What is more, the entry into force of the Lisbon Treaty coincided with the outbreak of the Eurozone crisis. The crisis had lasting effects on the Eurozone institutional balance and led to much institutional improvisation, with new rules or bodies being established informally in an *ad hoc* manner, with the system becoming thus more confused and some of its core components suffering from opacity.

   a) In addition to an enhanced role for the European Parliament, the Lisbon Treaty brought the main intergovernmental institution, the European Council of heads of state and government, within the legal order of the EU. It is the highest political institution in the EU and the driving force behind political developments, assuming the tasks of strategic planning and leadership. Crisis management led to greater migration of power to executives, and to the centralisation of decision-making. The European Council has thus significantly increased its power and emerged as the centre of gravity in the field of economic governance. Intergovernmentalism also prevails in new domains of EU activity. There may not appear to be any accountability problems with that since intergovernmentalism is the realm of democratically elected executives who are accountable to their national constituencies, however, such a view is misleading in many respects, and the electoral sanction of national governments does not have much weight as an accountability instrument for their action in the EU.

      Intergovernmental negotiations are prepared by administrators who enjoy considerable discretion, leading to a *de facto* extension of the delegation chain. Further, even though each member of an intergovernmental body in the EU is formally accountable to its own national parliament and electorate, and although some improvements have taken place in some countries in that respect, it is difficult for outsiders to assign responsibility given the option available to governments to play a "two-level game" and shift the blame for unpopular decisions to their negotiation partners.

Whenever many participants are involved in negotiated decision-making, it is hard to decipher from outside who is responsible for what, how much, and for which part of the decisions. This is particularly true if negotiations are opaque, because visibility is a first necessary step for accountability. Even democratically accountable governments will therefore only be accountable on paper for their participation in intergovernmental decision-making if relevant information is not made accessible to the account-holders, and if the latter lack the capacity to meaningfully digest it (be they national parliaments – whose scrutiny capacity and willingness varies – or even more the less informed domestic popular constituencies). The European Council, for example, is quite an opaque institution: its decisions are frequently taken by consensus after informal and secretive negotiations. In its ministerial formations the Council is subject to more formal transparency requirements, but as it is also subject to functional requirements of secrecy to achieve compromises, its members seek to evade transparency by shifting actual decision-making into informal arenas.

Intergovernmental bodies also make decisions that have Europe-wide, and not just national implications, without being held accountable by the electorates or representative institutions of member states that are subject to joint decisions. Moreover, if intergovernmentalism is asymmetric as during the management of the Eurozone crisis, peer accountability operates imperfectly among governments with unequal bargaining power. In the European Council, although the individual governments do enjoy formal electoral legitimacy in their respective countries, as a collective the Council has emerged as a self-sufficient institution that operates in an accountability vacuum. The European Parliament has very thin powers that do not lead to meaningful accountability of the European Council by the EP. As the formal accountability arrangement between the two institutions is limited, the lack of governments' genuine national level accountability as regards their participation in the European Council is not compensated by the effective accountability of the Council as a whole to the EP at supranational level. As this affects the institution that takes the role of the strategic manager of European integration on highly sensitive issues, its numerous accountability gaps should be taken seriously.

b) The constitution of the Eurogroup is probably the most salient example of informalisation in policy-making. Despite the Eurogroup's considerable *de facto* power on Eurozone member states in terms of the coordination of national fiscal and budgetary policies, which increased after the crisis and has wide-ranging socio-

political consequences, its legal basis is minimal. The role of the Eurogroup should be seen in relation to the role of Euro Summits, which, although not mentioned in the EU Treaties, emerged as an institutional player and as a potential rival to European Council summits. Both bodies illustrate the increasingly autonomous logic of decision-making in the Eurozone.

The Eurogroup's accountability is very limited. It is accountable to another weakly accountable executive body, the European Council. The Eurogroup's President also regularly appears before the European Parliament to answer questions, but this is too thin an accountability mechanism, and contains no corrective mechanisms. As with the reporting exercises of other European bodies, this kind of merely "discursive", and also voluntary in the case of the Eurogroup, accountability to a "talking shop" cannot be considered sufficient. As the Eurogroup is not an official body, its output is not subject to judicial review by the Court of Justice, provisions for transparency do not apply despite some recent progress, and informal working methods are extensively used. An influential preparatory body comprised of secretaries of state and also involving representatives from the Commission and the European Central Bank, the Eurogroup Working Group (EWG), plays an important role in the discussion of the national draft budgetary plans and the euro area recommendations as part of the European Semester. It also operates without any formal procedures, and in a confidential manner. The Eurogroup and EWG are emblematic of the accountability gaps of political-administrative bodies that enjoy *de facto* authority in the absence of delegation and of a formal status, and operate with limited transparency.

c) The *de facto* authority of the Eurogroup serves as the foundation of the power of its *alter ego*, which does enjoy formal authority, the European Stability Mechanism, a peculiar construction as it is an intergovernmental institution outside EU treaties, which to a large extent formalises the asymmetric nature of intergovernmentalism. The Eurogroup's informal nature and the ESM intergovernmental set-up allow finance ministers to evade EU provisions on transparency. The picture is also mixed with regards to political accountability (and judicial control). The accountability of ministers to national parliaments is unevenly developed in law, and in practice it has also developed in closed door meetings to the detriment of public accountability. Since votes on capital matters in the ESM are weighted according to the size of national contributions, decentralised accountability to national parliaments may reinforce domination by the wealthier countries. The absence of accountability to the EP

illustrates the sidelining of that institution in the design of the ESM. The ESM seems aware of criticisms against its transparency and accountability deficits, and proactively seeks to counteract them. It may be argued that this alleviates the formal accountability deficits of the ESM and indicates that *de facto* accountability may be higher than *de jure* accountability, while we usually expect the opposite to be true given that accountability forums may have limited capacity or willingness to hold to account. On the other hand, this form of voluntary accountability cannot be considered sufficient, and remains thin because it is limited to information provision. If the ESM is incorporated in EU legislation then the accountability mechanisms to the EP might be expected to become more binding, but not thicker (beyond an imperative for dialogue).

3) As a supranational organ, the European Commission enjoys considerable power, and the developments in the field of economic governance have further strengthened its role, even if crisis management has largely been intergovernmental. The Commission has been endowed with unprecedented custodial powers regarding the much tighter budgetary requirements, and it came to enjoy significant discretion regarding the coordination and supervision of macroeconomic policy. With the Commission becoming the guarantor of the commitments agreed by governments, the traditional role of national parliaments – whose budgetary sovereignty is a key prerogative – has been reduced. The European Parliament only has consultative and advisory powers, and has no formal powers to veto or amend the country-specific recommendations issued by the Commission. Although the ECOFIN Council and the Eurogroup are the formal decision-making sites, the recommendations of the Commission become binding, unless the Council objects through the peculiar procedure of reverse qualified majority voting.

   Does the Commission's accountability match its power? The Commission has made progress with respect to transparency, and it has also become increasingly accountable to the European Parliament, which can be considered the most legitimate accountability forum for an executive organ such as the Commission. This is an important facet of the relative yet significant "parliamentarisation" of the EU system of governance. Despite improvements however, there is still a major formal weakness in the Commission's accountability, because, unlike in parliamentary government, the EP does not keep the Commission under check, and in practice is not in a position to dismiss it in case of political disagreement. The fact that none of the parties' *Spitzenkandidaten* became Commission president in 2019 (unlike 2014), and the EP had to opt for the person proposed by the Council,

can be seen as a major setback with respect to the parliamentarisation of the EU system.

There have also been both progress and limits regarding the accountability of the Commission to the EP for the some 2000 rules that the Commission issues on average every year, based on powers delegated by the Council of Ministers and the European Parliament. Approximately 250 committees of national representatives exercise control over the implementing acts delegated to the Commission, which remain entirely outside the control of the EP. National members of these committees are formally accountable to their hierarchical superiors at "home", although the latter– who are, by the way, also usually unelected bureaucrats – do not seem to be interested in committee discussions in Brussels.

The Treaty of Lisbon introduced a new category of acts entailing an important change with respect to the accountability of the executive. The EP and the Council have full veto and revocation powers for the newly introduced "delegated" acts (as opposed to the "implementing" acts). Although there are no *ex ante* mechanisms for controlling the Commission in its activity, and no formal potential to amend delegated acts, Parliament and the Council can object to the adoption of a delegated act or revoke delegation. The effects of the new system are unclear, however: vetoes are very rare, and we do not know if these institutions agree with the delegated acts or if they are simply not performing their duties of scrutiny properly. The anticipation of the "nuclear option" (veto) may possibly oblige the Commission to take the preferences of these accountability forums into account. What we do know, is that the Commission and the EP exchange their views early on in the process, so that the eventual delegated act survives legislative scrutiny. However, similarly to the case of the trilogues, the empowerment of the EP leads to informal negotiations (this time with the Commission), which are not compatible with the requirement for public accountability. The improvements should also be relativised for other reasons: the Lisbon Treaty gives no clear guidance regarding the choice of instrument and procedure, giving rise to many institutional conflicts between the EP and Council. Empirical research concludes that the Council agrees to involve the EP only when it considers it an ally, so parliamentary control is limited. The subordinate standing of the EP is aggravated by the lack of time and expertise of MEPs compared with the Commission's services and member state administrations. The EP can rely on its own administrators in order to flag salient issues, with the unexpected consequence that the relative empowerment of the EP as a democratic accountability forum leads to the empowerment of unelected bureaucrats within that forum.

4) Although the Lisbon Treaty has empowered the EP with its role in the ordinary legislative procedure, it also includes an intergovernmental regime that applies *inter alia* to the coordination of national economic and financial policies, and in which the EP's position is subordinate, so that there is no significant check on intergovernmental choices. The treaty entering into force also coincided with the beginning of the Euro crisis, and crisis management under executive dominance counteracted progress in terms of parliamentary control that had been made possible by the previous empowerment of the European Parliament. Crisis legislation and the ensuing intergovernmental treaties were generally unfavourable to the EP. When it is sidelined in economic governance, the EP also loses weight as an accountability forum, because the other decision-making bodies can ignore its opinion. The EP certainly plays some role as an accountability forum, and there are more and more cases in which representatives of different EU institutions involved in economic governance appear before the EP – such as in the "Economic Dialogue" – to explain and justify what they do, however, this thin form of accountability – even intensified – does not offset the more general phenomenon of parliamentary sidelining in economic governance. Having the right to be informed and to access relevant documents is naturally essential for an accountability audience, however, when accountability is limited to an exchange of views, and when information rights are decoupled from the authority to decide on sanctions or to block action, this is no more than a minimalist version of accountability. In order for accountability to be effective, those who are held to account must believe that the course of action may become detrimental to them if the audience is not satisfied with their account. In other words, they must anticipate that the positive or negative perception of their accounts will result in positive or negative consequences for them. This is not the case. Studies come to mixed results, for example, as regards the benefits of both information rights acquired by the EP and of multi-level parliamentary cooperation for effective parliamentary scrutiny. Studies also show that limitations are not just due to formal obstacles but also to the logic of parliamentary agendas, and to collective action problems that parliaments encounter. In many respects it appears that both the EP and national parliaments may be co-responsible for their disempowerment.

5) The crisis and the ensuing developments (such as the establishment of the European Semester) also put a halt to the (partial) empowerment of national parliaments, especially with the centralisation of budgetary competences in the hands of the Commission and the Council (whose "disciplinary" logic did find some parliamentary support). Although there is cross-country variation in the capacity of parliaments to adjust to the new realities, the general picture is of a cumbersome process of

budgetary coordination and surveillance that dilutes responsibility, and of parliaments that in practice do not have any substantial powers to review or amend intergovernmental agreements in the field of economic governance, which intrude into the autonomy of national economic policy-making (even though the formulated recommendations prove in the end to be rather "toothless"). Unsurprisingly, parliaments are more sensitive when they are motivated by highly politicised issues, but then we encounter a familiar phenomenon: their activism translates into stronger bargaining power that is wielded vis-à-vis executives in secluded arenas, to the detriment of public accountability.

6) "Guardian" institutions that form a technocratic complex, primarily the European Central Bank and numerous European agencies are increasingly important supranational actors. The main issue is to conciliate the independence of these bodies with accountability requirements, however, in addition to the deliberate limits that are set on their accountability must be added other limitations that result from practical constraints, and sometimes their formal accountability status does not keep pace with their changing functions.

   a) The ECB is the main institution of the European Monetary Union. The bank's very high level of independence coupled with a significant expansion of its activities in recent years made the issue of its political accountability particularly prominent. The formal accountability of the ECB – primarily to the EP, less so to Council (Eurogroup) – is limited to its discursive dimension, mostly structured around the provision of information and reporting obligations, because the bank's independence restricts political accountability to answerability, excluding the enforcement of political sanctions. Another limitation is that the ECB is subject to standards of professional secrecy, even though it recently opted to be more proactive in communicating to the public, the media and markets, in a context of increased media coverage, the politicisation of its role, and reduced levels of trust. Nevertheless, the higher density of interactions should not conceal the problems. For example, the quality of exchanges between the bank and MEPs is questionable, under the joint effect of confidentiality requirements and the weakness of in-house expertise on technical matters in the EP. MEPs therefore have difficulty posing relevant questions that would allow them to substantively challenge ECB decisions, and there is no real discussion of the quality of justifications provided by the bank.

      A similar mixed picture emerges when looking into the accountability of the ECB in its new tasks as the main banking supervisor in the Euro area. This is a policy field in which the

bank enjoys less discretion and the EP more powers, but at the same time the ECB's mandate is broader and "fuzzier", making the practical exercise of accountability more difficult. The organisation of confidential meetings with committee members is intended to remedy such problems, and these meetings allow a real debate. The EP manages to gain influence through such informal *in camera* channels, although they entail the usual trade-off regarding the absence of public accountability, not to mention that the corrective function of accountability remains relatively limited.

Overall, the EP remains relatively weak as an accountability forum, and the accountability of the ECB is thin, because the procedures do not allow for effective contestation, especially with regard to substance. Finally, the accountability of the ECB to the Eurogroup faces somewhat different problems, primarily because the Eurogroup is an informal structure that lacks transparency and thus legitimacy, and in addition it does not seem to be overly concerned with holding the ECB accountable. National parliaments are unevenly active, and remain peripheral entities in the accountability web of the ECB. Actually, accountability gaps are largely due to the passivity of those who should exercise this function. They are confronted with a multi-level and networked system of governance that makes the allocation of responsibility difficult: the institutional framework is particularly complex and difficult to understand, the proliferation of ECB functions makes it increasingly hard to identify the arenas in which it should be held to account, and for what, and the ECB's role in different bodies varies between theory and practice.

b) There are numerous EU agencies: they vary considerably with regard to their tasks, powers, and size, but a substantial amount of regulatory power has been *de jure* or *de facto* delegated to them, and their activities are expanding. Similarly to the ECB, the existing accountability mechanisms may not keep pace with frequent situations of mandate expansion. The *de facto* power of agencies may not only be higher than their *de jure* authority through their influential expert advice and "soft" recommendations, but their *de facto* accountability can be lower than expected based on the existing formal controls. This creates an obvious accountability gap.

   The dilemma regarding the accountability of agencies is similar to the dilemma regarding the ECB: how to conciliate accountability with independence. Agencies are politically accountable to the Commission, EP, and Council, but there is no comprehensive and coherent system of control over their operation. The most powerful

agencies, such as the European Securities and Markets Authority (ESMA), with strong enforcement competences, do not appear to be subject to a much stricter accountability regime than less powerful agencies.

As the agencies' closest "master", the Commission has an active monitoring function over them. While the Council is more loosely involved, the European Parliament has more recently been relatively strongly involved in scrutinising agencies. It has used its budgetary prerogatives to sanction agencies out of concerns about the lack of independence of their staff from market interests ("revolving door"). These sanctions had a corrective effect, unlike thinner discursive accountability mechanisms, however, the limits due to forum passivity observed elsewhere also seem to apply to the accountability of agencies too. Agencies operate with a significant degree of autonomy in often highly technical fields, which makes the practical exercise of control difficult in the absence of "focusing events". Accountability deficits therefore tend to originate more from a lack of motivation and the passivity of those supposed to hold agencies accountable, rather than in intentional attempts to evade accountability. For example, agencies voluntarily and proactively increasingly seek contacts with the EP, to avoid excessive dependence on the Commission.

Another problem is that agencies may be overloaded in complex accountability regimes by conflicting steering signals from accountability forums with different agendas ("multiple eyes"). It should also be remembered that the EU Commission and EU agencies seek to exert influence on national agencies by forging partnerships with them in a large number of EU-wide rule-enforcing and coordination networks. It is difficult to determine who is acting in such networks, so the "many hands" problem must be added to the "many eyes" problem, which may undermine the effectiveness of the accountability of individual agencies: responsibility is diluted and it is difficult for outsiders to identify who should be held to account in such complex multi-level settings.

c) The Court of Justice of the European Union is not just an accountability forum, but also a key actor in the expansion and deepening of supranational integration. Unlike most national constitutions, the EU treaties contain policy prescriptions, and the Court enjoys discretion in interpreting them. It has thereby significantly contributed to the deepening of integration. More control over the Court is considered synonymous with a blow to its independence, and therefore only very soft forms of discursive

accountability can be imagined, for example through more regular dialogue between the Court and the European Parliament. To remedy what may be perceived as a democratic gap in the key policy role of an unelected body such as the Court, provisions that are unduly (over-)constitutionalised, and thus locked in and relatively immune from change, could be removed from the treaties.

7) Intergovernmental and supranational forms of decision-making co-exist with less hierarchical decision-making structures and procedures which do not conform to the traditional organisation of political power in political institutions. They are instead organised along functional and sectoral lines in the context of day-to-day EU policy-making, in which weakly visible advisory bodies, working groups and networks include public actors from multiple jurisdictional levels together with various kinds of non-public actors. The actors (such as members of the bureaucracy, stakeholder representatives, or experts) that are part of this complex ecology do individually face accountability obligations, however, they have no democratic mandate (or only a narrow or remote one), and there are important limitations in their accountability. Furthermore, as they must frequently satisfy multiple accountability forums whose claims differ or even collide, they may be caught in dilemmas with unpredictable outcomes.

   Collectively, governance networks also face limitations in their accountability. To exert their rights effectively, accountability forums – such as grassroots members in organisations, and peers in professional communities – need to be aware that their representatives or colleagues participate in such networks, and need to be informed about their action. Outsiders have difficulty grasping what exactly takes place in networks, however, because the "many hands" problem is exacerbated by the fact that policy-making takes place backstage. Understandably, accountability forums may lack the necessary information to make sound judgements, not being aware of the role of individual network members, of the collective influence of networks, or even of the sheer existence of such networks. Although lack of visibility is not the result of purposeful concealment, it impedes the allocation of responsibility and facilitates the shifting of blame.

   Networks are increasingly held to account by other networks to remedy such problems, however, this raises additional difficulties: the establishment of accountability networks may face collective action as well as coordination problems, and generate fuzziness, with accountability mechanisms having competing agendas and being in tension with each other, suffering from both redundancy and gaps. The problem with governance by networks is therefore not that it lacks

accountability, but that it may combine an excess of accountability with the waning of political accountability channels as a consequence of de-institutionalisation.

8) As we have seen, the complex EU system does not favour clarity of responsibility. Most notably, many EU citizens are not familiar with the inner workings of EU decision-making, and this is an impediment to democratic accountability. Context matters for the practical exercise of accountability, and in recent decades there has been a politicisation of the issue of integration: with politics "back in", does this positively affect the accountability of rule-makers by the general public? Empirical research on mass attitudes has come to relatively nuanced conclusions on the ability of the general public to adequately allocate responsibility in the EU system. Despite the complex and fluid nature of the EU, European citizens are able to make relatively correct distinctions in terms of what the national and the European jurisdictional level do, to distinguish between more and less deeply "Europeanised" policy sectors, and to adjust their allocation of responsibility to policy developments. However, those holding strong positive or negative views on integration are more prone to attribution errors, and, unsurprisingly, an individual's level of political sophistication affects their ability to acquire the necessary knowledge to make accurate evaluations. On the one hand, politicisation does indeed matter: it increases the information supply in countries in which the integration issue is hotly debated. On the other hand, being able to better assign responsibility does not mean being *ipso facto* able to hold someone accountable. Although voters are provided with a direct accountability mechanism through elections for the European Parliament (for which there was a relative increase in turnout in 2019), the outcome of these elections is a very imperfect benchmark of the popular verdict on EU policies. For many reasons, even the most direct accountability connection at EU level appears quite loose in practice. It is impossible to hold accountable in the EU – through elections in which governmental parties would compete with challengers – something less amorphous than the current executive power and more akin to a European government. The consequence is that distrust and contestation affect the EU as a whole when European people are dissatisfied ("take back control" was the core message of the pro-Brexit campaign) rather than just those holding office. This is a major problem for those concerned with the future and legitimacy of the European Union.

In his book *Representing Europeans* Richard Rose (2015: 17) posits that the EU system is accountable "up to a point". The question is whether democratic accountability procedures are sufficiently developed to justify the label of the

EU as a "multilevel democracy" (Hurrelmann and Baglioni 2019), but this is not an issue on which there can be agreement. What we can say is that the political accountability glass is currently half-full, and there are no clear signs that the glass will be filled soon. The newer decision-making arrangements tend to be weakly accountable, and in some areas decision-making has shifted towards less accountable arenas (Brandsma et al. 2016). The combination of "executive activism" (White 2019), including informal institutions such as the Eurogroup and through treaties outside the EU legal system such as the Fiscal Compact, with the (self-)empowerment and mandate expansion of technocratic bodies is indeed not ideal for accountability.

As regards horizontal accountability between institutions, the gradual strengthening of the dimension of "assertive" parliamentarism should not be underestimated in the system (European Parliamentary Research Service 2018b). By becoming more influential players, parliamentary institutions become *de facto* accountability forums, as the other EU institutions must justify their preferences and run the risk of seeing their action blocked. What is more, some organisations – and namely technocratic bodies for reasons of reputation management – may voluntarily opt to be *more* accountable than formally prescribed, so that their *de facto* accountability may extend beyond the limits of their *de jure* accountability. The accountability forums are often constrained in their control activity by resource limitations, however, mainly in terms of time and expertise, and they may opt to put other issues that are more salient to them higher on their agenda (Schillemans and Busuioc 2015). One might consider increasing the resources of forums, however this would not solve the problem of limited attention due to conflicting priorities.

The "parliamentarisation" of the system has remained uneven, across policy areas at the supranational, and across parliaments at the national level. Although horizontal accountability is important for checking rule-makers,[101] and has to some extent intensified, "discursive" or "explanatory" modes of accountability (Tucker 2018: 263 and 451) plainly indicate only a moderate empowerment of the accountability forums. Accountability is often limited to reporting and the provision of information, possibly followed by debates, while the gains in

[101] Curtin (2007a: 541), for example, considered constitutional checks more effective in ensuring the accountability of executive actors in the EU than more "grandiose" ambitions aiming to democratise decision making.

terms of sanctioning capacity lack substance.[102] Even plain reporting may trigger reactions from actors with a strong interest in a given policy, such as specialised media and interest groups that in turn alert the official accountability forums, however, the author believes that for accountability forums to perform effectively, they need to be credible about their capacity to hold a threat over rule-makers, through their ability to block their action or to impose costs on them.[103] Even though in some cases, such as that of the European Central Bank, one cannot advocate much more than the consolidation of a "thin" imperative to justify, if not just to communicate, a general goal should be not just the formalisation of discretionary accountability relations, but also the "thickening" thereof, to avoid the risk that the soft power of accountability forums means they are simply talking shops.

As regards vertical accountability – the most direct form of democratic accountability in representative forms of government – Rose (2015: vii) writes that "the European Union has a multiplicity of institutions that hold each other to account (…) However, electoral accountability is weak". Vertical accountability is indeed limited in the EU system, as the only directly accountable EU institution is the European Parliament, but the report showed that even the EP's democratic accountability lacks substance given the weak electoral connection between the EP and European citizens. We have also observed a trade-off: the empowerment of parliaments as partners in decision-making and as accountability forums may undermine public accountability. Power fragmentation triggers bargaining strategies, including in informal and sometimes secretive settings and networks, and such confidential *in camera* negotiations also affect accountability relationships. For example, Meissner and Schoeller (2019: 1089) write that "by bargaining for institutional rights behind closed doors, the EP may be perceived as being more interested in empowering itself than in representing EU citizens".

[102] For example, in the crucial case of economic governance "while legislation often offers the EP the opportunity to monitor and interrogate the implementing bodies, the Parliament has hardly any formal sanctioning powers, and has to rely on informal sanctions – including public statements of disapproval – to express its concerns about policy activities." (Kluger Dionigi and Koop 2019: 796). It is also significant that the "key role for the European Parliament and national Parliaments" advocated by the Five Presidents' report on *Completing Europe's Economic and Monetary Union* does not go beyond the intensification of exchange of views and "dialogues" between EU institutions. In that respect, although cooperation between the European Parliament and its national counterparts is useful to reduce information gaps between legislatures (Crum and Fossum 2013), its effects are limited if parliaments are toothless as accountability forums.

[103] The author acknowledges that some might find this an overly adversarial view of the role of accountability, which emphasises the importance of control assorted with hard consequences, unlike the perception of accountability primarily as a cooperative and reflexive process possibly leading to learning.

Parliamentary empowerment tells only part of the story. There are major developments in the direction of an expanded intergovernmental and technocratic executive power. The latter is fragmented between the Commission, the Council, the European Council, the ECB, agencies, and national governments, within an integrated and multilevel political and administrative space layered around existing national orders. Even though there has been significant progress in recent years with regards to the transparency of several EU institutions, horizontal, and even more vertical accountability to the European general public, is hampered by the fact that the allocation of responsibility is difficult in a system of authority that is composite, characterised by complicated geometry, shared tasks, cumbersome multi-level processes, and opaque backstage negotiations. Informality, for example, "makes it difficult for the citizens – and sometimes even their elected representatives – to follow what is going on, to participate in a meaningful way by exerting outside pressure on the negotiations, and to hold decision-makers to account after an agreement has been reached." (Hurrelmann and Baglioni 2019: 914).[104] Informality may be deliberate, or result from improvisation, but whatever its reasons the codification of informal procedures, coupled with their better visibility, can only be beneficial for accountability. To the "many hands" problem should nevertheless be added the "many eyes" problem: the potential for conflicts between multiple accountability arrangements is high in the EU because different accountability logics are at work simultaneously, with the risk of generating accountability dilemmas (Brandsma et al. 2016: 624).

It therefore does not make sense to plead only for *more* accountability. Optimising rather than maximising accountability should be the goal, because accountability overloads may have unintended effects (Halachmi 2014). Research in social psychology shows that the positive effects of accountability are nonlinear, and that accountability can be "too much of a good thing". If individuals feel they are put under too much accountability pressure, they will tend to primarily care about simulating conformity with the expectations of their audiences and to concentrate their efforts on superficial impression management. To cope with perceived "adversity" they may also adopt risk-adverse behaviour that may be suboptimal with regards to problem-solving, or seek to "pass the buck", which undermines responsibility attribution (Hall et al. 2017). Excess accountability may also hamper organisational learning, successful adaptation or innovation (Bovens and Schillemans 2014).

Science does not provide recipes for the optimal modes and level of accountability. It also draws our attention to the fact that it would be an exaggeration to claim that democratic accountability deficits are at the basis of growing Euroscepticism and sovereignism in many countries. Other factors, such as the costs and negative

[104] Studying, for example, the development of informal groupings in EU foreign policy, Amadio Viceré (2021) concludes that their contribution to effectiveness comes at the price of a decrease in accountability.

effects of policies that are correctly or wrongly attributed to the EU, clearly play a role. However, many people already see the EU as unaccountable and lacking democratic legitimacy, despite the fact that (as noted in the report) accountability deficits are not pervasive. Koop and Reh (2019: 77) write that governance at EU level "is one step further removed but increasingly visible, suffers from upwards blame-shifting by national governments, and sits at the core of a political backlash against 'outside rule'".[105] It is not unreasonable to expect that if people also became aware of the existence of less visible accountability deficits, such as those related to the diffusion of informal practice, or to the prevalence in many areas of thin or soft forms of accountability, then their support for the European project might drop further. Even though by no means a panacea, improving accountability is therefore not just a normative *desideratum*: it can contribute to the legitimacy of the European Union, in a context of increased politicisation and contestation of integration issues. The Four Presidents report ("Towards a Genuine Economic and Monetary Union") submitted to the European Council in 2012 acknowledged that "democratic legitimacy and accountability" are necessary and should be strengthened in the European Union. This is no less true today, but, to say the least, not much has been undertaken for that purpose in the last decade. The Conference on the Future of Europe aims, among other things, at "Strengthening European Democracy". The author hopes that the reflections in this report can provide some food for thought in that direction, whatever the outcome of the conference.

[105] The existence of blame shift should be nuanced: empirical research by Hobolt and Tilley (2014a: 100-119) showed that governments are more prone to use credit-taking than blame-avoidance, and to dilute responsibility rather than simply pointing the finger at the EU and deflecting blame to that level of governance.

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Sammanfattning på svenska

1 Rapportens syfte

Denna rapport beskriver olika sätt att utkräva politiskt ansvar från EU:s makthavare. Eftersom de europeiska beslutsfattarna kan hållas ansvariga för sina ageranden på många olika sätt är det svårt att upprätta en lista över de olika förfarandena. Rapporten ger mot denna bakgrund en översiktlig bild över dels vilka formella möjligheter som finns, och dels hur dessa möjligheter faktiskt används i praktiken. Det sistnämnda är särskilt viktigt att utreda eftersom det krävs mer än formella rättigheter för att lyckas med kontrollen av makthavarna (inräknat både enskilda individer i den europeiska beslutsprocessen och EU-institutionerna). Utöver formella möjligheter att hålla beslutsfattarna ansvariga behöver EU:s medborgare och förtroendevalda politiker också veta hur de ska gå till väga. De måste därtill också vilja underkasta de europeiska beslutfattarna en politisk kontroll.

Rapporten utgår från tidigare forskning, däribland av författaren själv. Den fokuserar på det politiska ansvarsutkrävandet av makthavarna när de beslutar om EU:s politik och lagstiftning. En sådan kontroll skiljer sig från rättsliga och finansiella kontrollverktyg. Det politiska ansvarsutkrävandet omfattar de olika förfaranden som kan användas av medborgarna – och deras demokratiskt valda representanter – i kontrollen av de europeiska beslutsfattarna. Detta inbegriper både ett vertikalt och ett horisontellt ansvarsutkrävande. Det vertikala ansvarsutkrävandet innebär att medborgarna håller de förtroendevalda direkt ansvariga, medan det horisontella utgår från att EU:s institutioner håller varandra ansvariga. I rapporten framgår det tydligt att EU-systemet erbjuder fler möjligheter för EU:s institutioner att hålla varandra ansvariga än för enskilda att utkräva direkt ansvar från beslutsfattarna. Forskningen fokuserar därmed framför allt på det horisontella förhållandet, det vill säga hur de verkställande europeiska organen (i första hand Europeiska kommissionen) kan hållas ansvariga av Europaparlamentet, genom direktvalda parlamentsledamöter.

I rapporten tecknas en bild över de fördragsändringar som successivt har stärkt det politiska ansvarsutkrävandet i EU. Särskilt framträdande är Lissabonfördraget från 2009, som på ett markant sätt förändrade maktbalansen mellan de europeiska institutionerna – inte minst genom att det gav Europaparlamentet en stärkt roll i EU:s beslutsprocess. Men en viktig impuls till de förändringar som gjordes för att stärka kontrollen av EU:s beslut var eurokrisen som hade lett fram till nya former för beslutsfattande. Ett centralt fokus i rapporten är utvärderingen av dessa nya beslutsorgan: hur fungerar ansvarsutkrävandet av Europeiska rådet och av den så kallade ”eurogruppen” som båda innehar nyckelroller i den europeiska politiken? Vem kontrollerar och hur kontrolleras Europeiska centralbanken (ECB), vars beslut inte sällan beskrivs som

”aktivistiska”? Vidare belyser rapporten hur EU:s system för politisk kontroll påverkas av att EU:s beslutsfattande förändras – genom bland annat ett utökat användande av ”triloger”, inrättandet av nya myndighetsliknande organ såsom Europeiska stabilitetsmekanismen (ESM) samt tillkomsten av nya styrsätt som exempelvis den europeiska planeringsterminen?

Ett ytterligare fokus i rapporten är dess belysning av de övergripande utmaningar i relation till ansvarsutkrävande som är kännetecknande för ett politiskt flernivåstyre såsom det europeiska. Hur ska medborgare förmå sig att bry sig om att kontrollera EU när de i första hand intresserar sig för mer nationella förhållanden? Slutligen diskuteras hur det politiska ansvarsutkrävandet påverkas av att det europeiska beslutsfattandet i dag sker i ett sammanhang av ökad politisering och polarisering.

2 Rapporten i sammandrag

2.1 Parlamentariseringen är ett steg mot bättre ansvarsutkrävande

För att få bukt med EU:s sedan lång tid påtalade demokratiska underskott, har såväl Europaparlamentet som de nationella parlamenten fått en ökad roll i unionens beslutsfattande. I rapporten skriver författaren att även om den successiva parlamentariseringen av Europapolitiken har ökat det demokratiska ansvarsutkrävandet finns tydliga begränsningar i vad parlamentens deltagande i beslutsprocessen kan åstadkomma:

a) Å ena sidan har Europaparlamentet fått en ökad insyn i europapolitiken genom sin stärkta roll i EU:s beslutsprocess. Europaparlamentet är numera med och lagstiftar i merparten av de europeiska lagstiftningsärendena och kan på så sätt utöva både inflytande och kontroll i det sammanhanget. På så sätt har Europaparlamentets möjligheter till ansvarsutkrävande inom ramen för EU:s överstatliga samarbete stärkts. Å andra sidan utmanas parlamentets möjligheter att utöva kontroll i beslutsprocessen av den växande användningen av ”triloger”. Triloger är informella lagstiftningsförhandlingar som förs mellan Europaparlamentet, rådet och kommissionen. De används i första hand i syfte att få till en mer effektiv beslutsprocess. Men trots att trilogerna kan öka takten i lagstiftningsarbetet riskerar de politiska kompromisserna mellan institutionerna att urvattna systemet för effektivt ansvarsutkrävande genom den inofficiella kohandeln mellan institutionerna.

   Inom ramen för det överstatliga samarbetet har Europaparlamentet även en konstitutionell rätt att godkänna ordföranden för kommissionen. Parlamentet kan också rikta en misstroendeförklaring mot kommissionen om det saknar förtroende för institutionen under en löpande mandatperiod. Det ska dock uppmärksammas att ovan

nämnda möjligheter riktar in sig på det överstatliga EU-samarbetet. Samtidigt görs en stor del av EU-politiken i dag upp inom ramen för mellanstatliga sammanhang, såsom Europeiska rådet och eurogruppen. I de fallen har Europaparlamentet färre möjligheter att kontrollera besluten, åtminstone i termer av politiskt ansvarsutkrävande.

b) Många nationella parlament i EU:s medlemsstater har fått ökade möjligheter att delta på olika sätt i framtagandet av deras respektive regeringars EU-politik. Men det finns fortsatt stor variation i de olika parlamentens möjligheter att kontrollera att de faktiskt får det inflytande som de har rätt till i EU-frågorna.[106] Precis som gäller för trilogförfarandena i EU:s beslutsprocess ökar de nationella parlamentens inflytande när de kan delta i informella förhandlingar med sina regeringar om EU-politiken. Detta leder dock till en svår avvägning för de nationella parlamenten: Å ena sidan innebär de informella förhandlingarna att parlamenten får en ökad insyn. Å andra sidan innebär de stängda dörrarna att medborgarnas möjligheter att kontrollera makten minskar. De nationella parlamentens inflytande i EU:s egen beslutsprocess har också ökat – inte minst sedan Lissabonfördraget gav dem en direkt roll i EU:s lagstiftningsprocess. Det så kallade ”systemet för tidig varning” innebär att nationella parlament har åtta veckor på sig att granska kommissionens lagförslag för att säkerställa att de inte strider mot subsidiaritetsprincipen. Författaren menar att även om granskningsförfarandet kan ha en indirekt positiv inverkan genom att kommissionen aktar sig för att presentera lagförslag som riskerar att kritiseras av de nationella parlamenten, spelar förfarandet en liten roll i ljuset av de nationella parlamentens kontroll av EU:s beslutsfattare. Författaren påminner om att de nationella parlamenten sedan 2009 endast i ett fall har lyckats stoppa ett lagförslag från kommissionen genom förfarandet. Detta kan delvis bero på att inte alla nationella parlament använder sig så aktivt av förfarandet.

2.2 Informella mellanstatliga förhandlingar utmanar ansvarsutkrävandet

Eurosamarbetet har genom åren stärkt den mellanstatliga nivån av EU-samarbete, med vissa effekter för EU:s överstatliga nivå. Som nämns ovan är det i första hand den överstatliga nivån som inrymmer formella strukturer för politiskt ansvarsutkrävande. Genom en upptrappning av mellanstatliga förhandlingar av EU-politiken (i synnerhet inom eurosamarbetet) har således utvecklingen mot ökad parlamentarisk såväl kontroll som inflytande avstannat. Lissabonfördragets ikraftträdande råkade sammanfalla med eurokrisen under

[106] Se rapporten *EU i riksdagen* för en bild av hur riksdagen förhåller sig till EU-politiken, EU i riksdagen (sieps.se)

slutet av 00-talet, och även om avsikten med fördragsändringen inte minst var att förtydliga de institutionella frågorna, kom många beslut under krisen att fattas genom improvisatoriska beslutsforum. Dessa forum lyder under *ad hoc*-regler som med tiden har blivit mer och mer permanenta, trots att de aldrig formellt har antagits.

a) Lissabonfördraget gav inte bara Europaparlamentet en stärkt roll i EU:s beslutsfattande utan det gjorde även Europeiska rådet, i egenskap av mellanstatligt organ, till en av EU:s institutioner. Även om Europeiska rådet inte är ett beslutande organ så är det EU:s främsta politiska institution som står för den strategiska planeringen av EU:s politik. De kriser som har omgärdat EU under se senaste decennierna har successivt stärkt EU:s verkställande makt – och har således omgärdats av mellanstatliga beslut – med effekten att beslut fattas på högre och mer central nivå. Inom euroområdet är Europeiska rådet särskilt starkt, men dess inflytande är även påtagligt inom andra områden. Även om det kan verka oproblematiskt med mellanstatliga förhandlingar, i ljuset av att Europeiska rådet består av regeringsföreträdare som i sin tur svarar inför sina respektive parlament, föranleder denna utveckling en del frågetecken i termer av politiskt ansvarsutkrävande. Möjligheterna att hålla regeringarna ansvariga på nationell nivå skiljer sig stort mellan medlemsländerna. Därtill begränsas de av de ökande informella förhandlingarna mellan regeringarna och parlamenten i EU-politiken som beskrivs ovan. En ytterligare faktor som riskerar att störa de nationella parlamentens möjligheter till effektiv kontroll av regeringarna i EU:s politiska flernivåsystem är att det i mellanstatliga förhandlingarna alltid går att förklara ett förhandlingsresultat genom att ”skylla på” den andra förhandlingspartnern. Så länge medlemsländernas röstresultat inte redovisas öppet är det svårt att granska skeendena i de mellanstatliga förhandlingsrummen. Att beslut som tas inom ramen för mellanstatliga förhandlingar inte redovisas öppet hör till en av de stora utmaningarna för ett effektivt europeiskt ansvarsutkrävande, då öppenhet är en förutsättning för kontroll. Beslut i Europeiska rådet är särskilt svåra att få insyn i, då institutionen oftast beslutar med enhällighet efter hemliga och informella förhandlingsmöten. Även Ministerrådets beslut är svåra att få insyn i trots att institutionen lyder under fler regler som kräver redovisning av beslutsunderlag än Europeiska rådet. I rapporten beskrivs hur rådets medlemmar dock inte sällan försöker undvika EU:s regelverk som kräver öppenhet i beslutsprocessen genom att söka sig till mer informella miljöer där förhandlingar görs upp innan de formella besluten tas. Mot denna bakgrund är det inte så betydelsefullt att regeringarna innehar en demokratisk legitimitet genom att de företräder – och svarar inför – sina respektive nationella parlament.

I rapporten uppmärksammas också hur de mellanstatliga förhandlingarna i första hand förbereds av tjänstemän som i många fall har ett brett handlingsutrymme. Detta leder i sin tur till en *de facto* förlängning av delegationen.

Det europeiska mellanstatliga samarbetet är asymmetriskt eftersom de europeiska beslutsfattarna inte kan ställas till svars av samtliga medborgare som påverkas av deras beslut. Att det vertikala ansvarsutkrävandet i första hand utkrävs på nationell nivå skapar en asymmetri genom att länder har olika förhandlingsstyrka, men samtidigt påverkar ländernas beslut inte bara de egna länderna utan samtliga medlemsstater. Författaren är särskilt kritisk till avsaknaden av kontroll av Europeiska rådet – som benämns som ett ”vacuum av ansvarsutkrävande”. Europaparlamentet har få möjligheter att kontrollera Europeiska rådet och de möjligheter som finns menar forskare saknar praktisk betydelse. Den begränsade kontrollen av regeringsföreträdarnas ageranden i Europeiska rådet kompenseras inte heller av en ökad kontroll av deras beslutsfattande inom ramen för Ministerrådet.

b) Framväxten av den så kallade *Eurogruppen* är kanske det tydligaste exemplet på hur EU:s politiska system har antagit mer informella former. Trots det stora inflytande som eurogruppen har över euromedlemsstaternas nationella beslut, såväl på skatte- som budgetområdet, saknar eurogruppen fortfarande en tydlig rättslig grund i EU:s fördrag. Detta, trots att gruppens inflytande ser ut att växa ytterligare – inte minst genom att dess beslut sedan eurokrisen även kommit att få mer och mer inverkan på de socioekonomiska förhållandena i euroområdet. Eurogruppens roll ska också sättas i relation till Eurotoppmötet, som också det har utvecklats till en institutionell aktör. Eurotoppmötena löper parallellt med Europeiska rådets toppmöten, och de har på så sätt också blivit potentiella konkurrenter till varandra.

Möjligheterna att utöva kontroll över Eurogruppen är mycket begränsade. I första hand svarar Eurogruppen inför en annan svagt kontrollerad institution, nämligen Europeiska rådet. Men Eurogruppens ordförande kan kallas av Europaparlamentet för att svara på frågor. Frågestunderna kan dock inte betraktas som en effektiv kontroll då de inte kan leda till att eurogruppen behöver ändra sina beslut. Ett ytterligare problem med Eurogruppens inflytande över de europeiska besluten är att den inte svarar inför EU-domstolen då den inte utgör en institution. Att Eurogruppen inte är en institution i formell mening innebär också att den inte lyder under EU:s öppenhetsregler, även om en viss utveckling har

skett med några särskilt ställda krav på Eurogruppen under den senaste tiden. En ytterligare aktör med inflytande över de slutgiltiga besluten är Eurogruppens arbetsgrupp (The Eurogroup Working Group (EWG)), med sitt ansvar att förbereda Eurogruppens möten. I denna deltar statssekreterare, företrädare från kommissionen och Europeiska centralbanken. Diskussionerna i gruppen rör bland annat medlemsstaternas nationella budgetplaner och hur de förhåller sig till euroområdets rekommendationer inom ramen för den europeiska planeringsterminen. Varken Eurogruppen eller EWG har som tidigare nämnts formell status, med effekten att deras verksamhet inte heller har delegerats från de förtroendevalda. De har stort inflytande över EU:s strategiska beslut, men insynen i verksamheten är mycket begränsad.

c) Inte nog med att Eurogruppens verksamhet inte har något formellt stöd, utan gruppen urvattnar också betydelsen av den aktör som har den formella statusen att göra dess arbete: nämligen den Europeiska Stabilitetsmekanismen (ESM). Organet är ett finansinstitut med uppgiften att säkra den finansiella stabiliteten inom euroområdet. ESM är ett mellanstatligt samarbete som har formell status, men dess rättsliga grund återfinns utanför EU:s fördrag. På så sätt är den kännetecknande för den asymmetriska karaktären av EU:s mellanstatliga samarbete, då det är medlemsstaterna själva som har skapat organet utanför de formella ramarna för EU-samarbetet. Detta innebär att de nationella parlamenten inte har varit med och godkänt tillblivelsen av ESM. Eftersom omröstningarna i ESM viktas med utgångspunkt i hur stora bidrag medlemsstaterna ger kan den decentraliserade ansvarsskyldigheten gentemot de nationella parlamenten också stärka de rikare ländernas dominans. Att Europaparlamentet har så få möjligheter att kontrollera ESM tyder på att parlamentet aldrig fick någon möjlighet att delta i utformningen av ESM. ESM är dock medvetet om kritiken om det bristande ansvarsutkrävandet av gruppen och verkar för att motverka den. De förbättringar som har gjorts tyder på att *de facto* kontrollen av verksamheten är bättre än *de jure* kontrollen, trots att motsatsen oftast är att förvänta sig. Det vanliga är nämligen att beslutsorgan har begränsad vilja eller förmåga att underkasta sig mer kontroll än vad som krävs formellt. Samtidigt uppmärksammas i rapporten att denna typ av ansvarsutkrävande som bygger på frivilligt samarbete med dem som kontrollerar inte kan tillräknas för stor betydelse. Om ESM skulle inkorporeras i EU:s formella regelverk kan man förvänta sig att Europaparlamentet skulle få rättigheter att kontrollera ESM, men däremot finns det inget som tyder på att det skulle få mer inblick än vad de redan har, exempelvis genom ökad information om verksamheten.

2.3 Den mäktiga kommissionen lyder under en viss ansvarsskyldighet

Kommissionen är en överstatlig institution som med tiden har fått en betydande makt i EU:s politiska system. Utvecklingen inom det ekonomiska samarbetet har gett institutionen ytterligare makt, även om hanteringen av EU:s kriser tenderar att skötas inom ramen för det mellanstatliga samarbetet, i första hand av Europeiska rådet. Ett tecken på kommissionens ökande makt inom det ekonomiska samarbetet är dess befogenheter att kontrollera och sanktionera EU:s allt strängare budgetkrav, inom ramen för planeringsterminen. I sin roll som samordnare och övervakare av den makroekonomiska politiken bedöms kommissionen ha ett betydande skönsmässigt utrymme. Utgångspunkten är att kommissionen antar landspecifika rekommendationer för den ekonomiska politiken i medlemsstaterna. I takt med kommissionens växande ansvar på området minskar också en av de nationella parlamentens mest traditionella roller: budgetansvaret. Inte heller har Europaparlamentet rätten att ändra kommissionens landspecifika rekommendationer. Även om beslut om rekommendationerna tas av rådet, närmare bestämt av ECOFIN och Eurogruppen, kan de bara ändras med ett särskilt beslutsförfarande i rådet som innebär omvänd kvalificerad majoritetsröstning. Detta gör att kommissionens rekommendationer i princip kan betraktas som bindande.

I rapporten ställer sig författaren frågan om kommissionens makt motsvararas av kontrollen av institutionen. Kommissionen har över tid gjort betydande framsteg för att göra förberedelserna av EU:s lagstiftning mer öppna och tillgängliga för såväl lagstiftarna, de nationella parlamenten, medborgarna, företagen och intresseorganisationerna. Europaparlamentet har också fått ökade möjligheter att kontrollera kommissionen, vilket är av stor vikt eftersom Europaparlamentet är det mest legitima forumet för ansvarsutkrävande av ett verkställande organ som kommissionen. Parlamentets stärkta roll i kontrollen av kommissionen ska också ses som en viktig del av helhetsarbetet med att ”parlamentarisera” EU:s styrning. Men trots dessa betydande framsteg finns det fortsatt flertalet formella svagheter i kontrollen av kommissionen. I motsats till parlamentariska styrelseskick håller Europaparlamentet inte kommissionen ansvarig för besluten och kan heller inte i praktiken avsätta kommissionen om det råder politisk oenighet. Att ingen av de ”*Spitzenkandidaten*” som Europaparlamentets partigrupper föreslog inför utseendet av kommissionens nya ordförande 2019, är ett ordentligt bakslag i ljuset av europeisk parlamentarism. I stället tvingades Europaparlamentet rösta på en kandidat som hade föreslagits av rådet.

Men det finns som sagt också positiva trender i utvecklingen av den politiska kontrollen av kommissionen. I relation till vissa av de cirka 2000 rättsligt bindande regler som kommissionen utfärdar varje år har en viss ökad politisk kontroll införts genom Lissabonfördraget. Den nya kategorin regler, delegerade akter, som bygger på att de båda lagstiftarna Europaparlamentet och rådet har delegerat befogenheter till kommissionen, är i dag underkastade lagstiftarnas

alltmer kännbara kontroll. De delegerade akterna kontrolleras nämligen av Europaparlamentet och rådet som har full rätt att dra tillbaka akterna. Institutionerna kan däremot inte ändra de delegerade akterna och det låga antalet återtagna delegerade akter ger viss misstanke om att institutionerna inte intresserar sig nämnvärt för denna kontrolluppgift. Samtidigt innebär rimligtvis kommissionens vetskap om att Europaparlamentet och rådet kan återta delegeringen ett slags motvikt för kommissionen när den beslutar om de delegerade akterna. Forskare menar också att det nya systemet har gjort att kommissionen gärna för informella samtal med Europaparlamentet om akternas innehåll, för att motverka att Europaparlamentet ska återta delegationerna i efterhand. Liksom i fallet med trilogerna begränsar dock de informella förhandlingarna det offentliga ansvarsutkrävandet. Kontrollen av den andra kategorin regler som kommissionen kan utfärda, genomförandeakter, ser annorlunda ut i förhållande till de delegerade akterna. De kontrolleras i stället av cirka 250 genomförandekommittéer, bestående av nationella företrädare. Europaparlamentet har ingen insyn eller kontrolluppgift i relation till genomförandeakterna och även om deltagarna i genomförandekommittéerna ansvarar inför sina respektive myndigheter eller departement rör det sig inte om något politiskt ansvarsutkrävande.

Sammanfattningsvis kan sägas att trots de framsteg som gjorts för att stärka ansvarsutkrävandet av EU:s mest överstatliga institution, kommissionen, finns det fortsatt brister i systemet. Lissabonfördraget är relativt otydligt när det gäller hur kontrollen ska utövas vilket i sin tur skapar institutionella konflikter mellan rådet och Europaparlamentet. Ny forskning pekar på att avsaknaden av en tydlig formell rätt för Europaparlamentet att kontrollera kommissionen gör att rådet ber Europaparlamentet att delta i kontrollen när det vet att Europaparlamentet står på rådets ”sida”, i motsats till när det inte gör det. Europaparlamentets begränsade roll i kontrollen av kommissionen beror också på att parlamentsledamöterna saknar tid och kunskap för att kunna ta rollen på tillräckligt allvar. Både kommissionen och rådet har större administrativ kapacitet än Europaparlamentet, med följden att parlamentarikerna får förlita sig på att tjänstepersonerna larmar om de frågor som de anser behöver kontrolleras politiskt. Även detta ger tjänstepersonerna en oproportionerligt stor (och oväntad) makt över det politiska ansvarsutkrävandet.

2.4 Den påbörjade parlamentariseringen av EU:s styrning avtar i eurokrisens efterdyningar

Åren fram till eurokrisen 2008 innebar en gradvis ökning av Europaparlamentets makt. Att Lissabonfördraget gjorde parlamentet till en jämbördig lagstiftare med rådet inom ramen för det ordinarie lagstiftningsförfarandet är kännetecknande för denna rörelse. Men eurokrisåren ledde samtidigt till att det mellanstatliga samarbetet kom att stärkas, på bekostnad av Europaparlamentets inflytande. Det mellanstatliga samarbetet stärktes alltså, både till följd av att regeringarna kom att sköta mycket av EU:s krishantering, och av fördragsändringar som gjordes

i Lissabonfördraget. Inte minst innebär det att samordningen av nationell ekonomi och finanspolitik sköts i mellanstatliga förhandlingar. Inom ramen för detta samarbete har Europaparlamentet en underordnad roll, vilket innebär att det mellanstatliga samarbetet inte kontrolleras nämnvärt. Som nämns ovan sammanföll också Lissabonfördragets slutförhandlingar med eurokrisens utbrott, med effekten att den påbörjade europeiska parlamentariseringen av EU:s styrning fick stryka på foten till förmån för medlemsländernas önskan om att självständigt få hantera krisen på mellanstatlig nivå.

Att Europaparlamentet åsidosätts i den ekonomiska politiken innebär också att parlamentet, på ett mer generellt plan, förlorar kraft som forum för ansvarsutkrävande av europapolitiken. Detta sker genom att de andra institutionerna i vissa frågor har rätt att förbise parlamentets uppfattning. Samtidigt ökar Europaparlamentets insikter om detta, vilket bland annat går att se genom de ökande antal fall av utfrågningar i parlamentet. I dessa utfrågningar får företrädare från de olika institutionerna svara på frågor från parlamentet inom ramen för den ”ekonomiska dialogen”. Även om den ekonomiska dialogen med Europaparlamentet har en viss betydelse kan denna typ av utfrågningar inte betraktas som ett hållbart system för ansvarsutkrävande, då det förutsätter mer robusta former än ett utbyte av olika uppfattningar mellan institutionerna. För ett robust system krävs rätten till information och handlingar samt sanktionsmöjligheter och vetorätt. Ett effektivt ansvarsutkrävande förutsätter med andra ord att de som hålls ansvariga förutsätter att de som kontrollerar besluten kan påverka dem. Men detta är inte fallet i den ekonomiska politiken. Samtidigt kan forskningen inte entydigt visa att bristerna i det parlamentariska ansvarsutkrävandet av den mellanstatliga ekonomiska politiken handlar om parlamentets brist på information och andra formella rättigheter. Vissa forskare menar i stället att problemet handlar om den parlamentariska logiken, som bland annat bygger på kollektivt handlande. Med utgångspunkt i detta går det att hävda att Europaparlamentet och de nationella parlamenten är gemensamt ansvariga för bristerna i deras kontrollfunktioner av europapolitiken.

I samband med detta kan också nämnas att eurokrisen även medförde ett avbrott i den successiva förstärkningen av de nationella parlamentens roll i det europeiska beslutsfattandet. Centraliseringen av budgetansvaret som lades i händerna på kommissionen och rådet har inneburit en förändring som har varit olika svår för de nationella parlamenten att anpassa sig till. Den övergripliga bilden som tecknas är att de nationella parlamenten har haft svårt att utöva någon effektiv kontroll av den europeiska ekonomiska politiken, vilket är ett särskilt stort problem med tanke på att den europeiska politiken kan komma i konflikt med de nationella parlamentens suveräna ställning i nationell ekonomisk politik.

2.5 Teknokratin stärks på bekostnad av de förtroendevaldas makt

Inom EU har med tiden olika slags institutioner och organ med övervakningsfunktioner vuxit fram. En mäktig sådan är den Europeiska

centralbanken, men även olika typer av EU-myndigheter bör nämnas här. Syftet med dessa övervakningsorgan är primärt att ge dem ett långtgående oberoende i deras kontrollutövande, men ibland tenderar detta oberoende att ge dem alltför stor makt som i sin tur kan urvattna deras tilltänkta huvuduppgift, det vill säga att göra oberoende kontroller.

a) ECB är ett typexempel på en institution med stort oberoende i sitt uppdrag att ansvara för EMU. Men det politiska ansvarsutkrävandet av banken har på senare år aktualiserats mer och mer i takt med att banken har fått nya uppgifter med anledning av eurokrisen. Formellt svarar ECB inför Europaparlamentet (alltså inte inför rådet eller Eurogruppen), men med anledning av behovet av bankens oberoende är bankens skyldigheter inför Europaparlamentet begränsade till att rapportera om verksamheten. Det är alltså inte fråga om något verkligt politiskt ansvarsutkrävande med möjligheter att införa sanktioner mot bankens beslut. En annan utmaning i kontrollen av banken är att de som arbetar vid banken lyder under tystnadsplikt. Medias ökade fokus på ECB har dock gjort att banken har blivit något mer öppen inför att diskutera sin verksamhet. Samtidigt återstår flera utmaningar i systemet för kontroll av ECB. Inte minst saknar såväl förtroendevalda ledamöter som tjänstepersoner i Europaparlamentet mycket kunskaper om ECB:s verksamhet.

   Motsvarande brister i ansvarsutkrävandet av ECB förekommer i relation till dess roll som övervakare av Bankunionen. Såväl den Gemensamma tillsynsmekanismen (SSM) som den Gemensamma resolutionsmekanismen (SRM) lyder under ECB. Men i relation till bankunionen har Europaparlamentet trots allt en starkare position i jämförelse med dess roll inom euroområdet. Parlamentet är bland annat med och utser ordförande för SSM och har fått igenom sina krav på ökad öppenhet i SSM:s beslutsprocesser.

   Den övergripande bilden av hur ECB utkrävs ansvar är dock att Europaparlamentet förblir svagt i termer av politiskt ansvarsutkrävande. Denna bedömning görs i ljuset av att de möjligheter som trots allt står Europaparlamentet till buds (framför allt i relation till bankunionen) inte har något substantiellt värde då de inte får någon nämnvärd effekt för ECB:s beslut. I relation till euroområdet är svagheterna i den politiska kontrollen av ECB ännu större: Eurogruppen verkar till följd av sin informella struktur både sakna de formella förutsättningar som ett effektivt ansvarsutkrävande kräver (i första hand en öppen struktur) och viljan att hålla ECB politiskt ansvarigt för sina beslut. Återstår gör de nationella parlamenten som med varierande grad gör vad de kan, men som i det stora hela förblir perifera aktörer i systemet för att hålla ECB politiskt ansvarigt.

Sist bör nämnas att problem med ansvarsutkrävande i första hand ofta handlar om att de som ska kontrollera inte gör sitt jobb. Men i fallet med ECB försvåras de kontrollerande aktörernas uppgift genom att systemet är uppbyggt i flera nivåer av styrning. Detta flernivåstyre gör att det inte ens är tydligt vilken nivå som bär ansvar. Utmaningarna som detta leder till har vuxit sig större i takt med att ECB har fått utökade befogenheter.

b) EU har i dag ett fyrtiotal myndigheter, eller *byråer*, som de också kallas. Deras uppgifter och befogenheter skiljer sig stort. En del myndigheter har fått *de jure* befogenheter, det vill säga, befogenheterna har överlåtits genom en formell delegation från de förtroendevalda, medan andra myndigheter har *de facto* befogenheter att utföra sina uppgifter. Ansvarsutkrävandet är oftast svagare i förhållande till de myndigheter som har *de facto* uppdrag. Men dessa myndigheter kan samtidigt ha lika stora eller till och med större inflytande över tillämpningen av EU-lagstiftningen, genom omfattande befogenheter att utfärda rekommendationer. Förekomsten av myndigheter som saknar formell delegation skapar ett tydligt problem för effektivt ansvarsutkrävande.

   Dilemmat med EU-myndigheterna och deras omfattande befogenheter att utfärda rekommendationer om tillämpningen av EU-lagstiftningen liknar dilemmat med ECB:s stora oberoende. Myndigheterna lyder under kommissionen, Europaparlamentet och rådet, men det finns inget tydligt system för hur det politiska ansvaret ska utkrävas. Därtill verkar det inte finnas några skillnader i hur en myndighet med starkt inflytande, som exempelvis ESMA med sina sanktionsmöjligheter, och en myndighet med mindre inflytande kontrolleras.

   Myndigheterna ligger primärt under kommissionens ansvar medan rådet knappt har någonting att göra med övervakningen av myndigheterna. Europaparlamentet har under senare år däremot blivit mer och mer involverat i granskningen av EU-myndigheterna. Inte minst har parlamentet använt sina budgetbefogenheter till att ställa krav på att tjänstepersoner vid EU-myndigheter inte har marknadsintressen inom verksamhetens områden. Men granskningen av myndigheterna försvåras av att deras uppgifter omgärdas av högt ställda krav på expertis inom området. Bedömningen är att det bristfälliga ansvarsutkrävandet av myndigheterna i första hand genereras av en brist på motivation från dem som ska kontrollera, snarare än av myndigheternas försök att undkomma kontroll. Ett stöd för denna uppfattning är att myndigheterna har tagit initiativ till att föra en dialog med Europaparlamentet, för att undvika att hamna helt i händerna på kommissionen.

c) EU-domstolen är inte bara den institution som kontrollerar att beslut som fattas av EU:s institutioner och medlemsstater har stöd i EU:s fördrag, utan genom sina domar driver dem också den europeiska integrationen framåt. På så sätt kan institutionen ibland uppfattas som ”aktivistisk”. Till skillnad mot de flesta konstitutionella bestämmelser i medlemsländerna är EU-fördragen formulerade som politiska riktlinjer och det är domstolen som har företrädet att uttolka dessa bestämmelser. Detta ger EU-domstolen ett avsevärt inflytande över EU:s politiska inriktning. Men att göra EU-domstolen politiskt ansvarig riskerar att urvattna dess viktiga oberoende, varför det inte ses som ett alternativ. I ljuset av dess starka inflytande över den europeiska integrationen är det mot denna bakgrund mest rimligt att överväga om det finns bestämmelser i EU-fördragen som kan lyftas ut – för att på så sätt öka det politiska inflytandet över frågor som politikerna genom domstolens rättspraxis, kan ha förlorat inflytandet över.

2.6 EU:s nätverksstyrning utmanar systemet för ansvarsutkrävande

Det mellanstatliga respektive överstatliga formerna för europeiskt beslutsfattande samexisterar med en ytterligare form av styrning: nätverksstyrning. Den utgår från det stora antal nätverksmiljöer bestående av exempelvis arbetsgrupper och rådgivande organ, som gemensamt verkar för att både ta fram EU-lagstiftningen samt för att lämna riktlinjer för hur den ska tillämpas. Nätverken består av tjänstepersoner, marknadsintressenter och intresseorganisationer samt experter som tillsammans med de mellanstatliga och överstatliga systemen för beslutsfattande formar EU:s komplexa ”ekosystem”. Aktörerna inom dessa styrande nätverk saknar däremot helt demokratisk legitimitet, i motsats till de mellanstatliga och överstatliga styrformerna. Däremot svarar aktörerna i dessa nätverk enskilt inför sina respektive arbetsgivare. När olika typer av nätverk agerar tillsammans kan detta dock leda till problem i ansvarsutkrävandet av de gemensamma besluten. Aktörerna i dessa nätverk kan nämligen ha en roll som deltagare i besluten, samtidigt som andra aktörer i samma nätverk kan vara en del av dem som ska kontrollera nätverkens beslut. Detta leder till vad författaren beskriver som ett problem med för *många fingrar med i spelet* (”the many hands problem”). Om det så rör sig om gräsrotsorganisationer eller regeringsrepresentanter som bjuds in att delta i nätverken är det mot denna bakgrund viktigt att aktörerna som deltar i besluten håller varandra informerade om sin medverkan. Detta är särskilt viktigt i ljuset av att nätverken oftast har informella möten som få har vetskap om. Även om sådana möten kanske inte är avsiktligt hemliga, försvårar de ansvarsutkrävandet och möjliggör för deltagarna att skylla besluten på varandra. Men samtidigt syns en positiv trend i att nätverken håller koll på varandra, vilket ökar kontrollen av dem. Detta är dock inte heller helt oproblematiskt då det inte sällan leder till resultat som ingen tar direkt ansvar för. Problemet med nätverksstyrning är nämligen inte huvudsakligen att nätverken inte kontrolleras tillräckligt (primärt av varandra)

utan snarare att flertalet olika nätverk genererar ett överskott av positioner, med svag politisk kontroll.

2.7 Kan medborgarna själva göra jobbet?

Rapporten visar att EU:s komplexa politiska system är en utmaning för mer eller mindre alla som ska kontrollera det. För medborgarna är utmaningen särskilt stor då de har svårt att ”komma nära” EU:s beslutsprocess, vilket de behöver göra för att EU ska kunna ha ett effektivt system för demokratiskt ansvarsutkrävande. Kunskaper om såväl innehållet som sammanhanget i EU politiken är av stor praktisk betydelse för att det ska gå att kontrollera EU:s beslut, och på senare år har EU-politiken i många medlemsstater flyttats närmare medborgarna genom en ökad nationell politisering av den europeiska integrationen. Men har detta betydelse för medborgarnas upplevelse av deras möjligheter att ställa de europeiska beslutsfattarna till svars? Forskning visar att EU-medborgarna har en relativt god förmåga att bedöma vilka politikområden EU respektive medlemsstaterna ansvarar för. Å ena sidan spelar politiseringen på nationell nivå en roll då den ökar medborgarnas kunskaper, vilket är en nödvändighet för att de ska kunna göra korrekta bedömningar om ansvarsfrågan. Å andra sidan ser detta inte ut att öka deras incitament för att ställa beslutsfattarna till svars. Medborgarnas möjligheter att utkräva ett direkt ansvar av Europaparlamentet vart femte år (där 2019 års valdeltagande ökade något i jämförelse med tidigare år) är en dålig indikation på folkets dom över EU:s beslutsfattare. Detta gör att till och med den mest direkta form av ansvarsutkrävande i EU, det vertikala förhållandet mellan medborgarna och de förtroendevalda, är svagt i praktiken.

3 Rapportens slutsatser

I rapporten tecknas en bild av ett europeiskt system för ansvarsutkrävande som är ofullständigt. Författaren beskriver det som ett glas som är halvfullt, och utan tecken på att det framöver kommer att fyllas på. Trots att såväl medlemsstaterna som EU:s institutioner ofta återkommer till behovet av att öka den politiska kontrollen av EU:s beslut ser de nya formerna för europeiskt beslutsfattande snarare ut att försvåra för ett utökat politiskt ansvar. Författaren skriver i sina slutsatser att överstatliga beslut i kombination med en stark byråkrati inte ger särskilt goda förutsättningarna för ett effektivt politiskt ansvarsutkrävande.

Men det finns trots allt en del positiva inslag i systemet. Hit hör de nationella parlamentens ökande inflytande över EU:s beslut. Att EU:s institutioner måste förhålla sig till de nationella parlamentens positioner för att inte riskera att deras egna preferenser blockeras är av central betydelse i termer av ett *de facto* system för ansvarsutkrävande. En annan positiv trend är att bland annat ECB på frivillig basis har öppnat upp sin beslutsprocess, utöver vad som formellt krävs av banken. Trenderna ska dock tas emot med försiktighet då de kontrollerande aktörerna, exempelvis nationella parlament och Europaparlamentet, fortsatt har begränsade resurser till att genomföra effektiva kontroller.

Den parlamentarisering av EU:s politiska system som har skett under de senaste decennierna har sammanfattningsvis gett varierande resultat mätt i graden av ökat ansvarsutkrävande: dels beror det på vilket policyområde man talar om och dels på graden av insatser som görs i de enskilda nationella parlamenten. När det gäller det horisontella ansvarsutkrävandet ser det betydligt bättre ut på EU-nivån i jämförelse med det vertikala kontrollsystemet. I det horisontella systemet håller institutionerna varandra ansvariga, i första hand genom att de ger varandra information om verksamheterna. Systemet får också en viss hjälp av medierapporteringen och intresseorganisationer som gemensamt kan stimulera olika kanaler för ansvarsutkrävande. Rapporten pekar dock på att också det horisontella systemet för ansvarsutkrävande utmanas av att fler och fler förhandlingar sker informellt och att kraven på att tillgängliggöra beslutsunderlag är otillräckliga.

Det vertikala ansvarsutkrävandet är den mest direkta formen av demokratiskt ansvarsutkrävande då den bygger på väljarnas direkta möjligheter att hålla de förtroendevalda ansvariga. Detta system är svagt i EU. Europaparlamentet är den enda EU-institution som innehar denna typ av demokratisk legitimitet, men också denna institutions legitimitet tenderar att urholkas av låga valdeltaganden i Europaparlamentsvalen. Rapporten uppmärksammar också hur nationella parlament genom sina nya roller i EU:s beslutsprocess dras in i slutna förhandlingar, vilket riskerar att minska offentliga debatter som är en förutsättning för ett effektivt vertikalt ansvarsutkrävande. Här uppstår alltså ett slags målkonflikt, där de nationella parlamenten kan öka sitt politiska inflytande över besluten, men inte sällan på bekostnad av medborgarnas möjligheter att kontrollera besluten.

Parlamentariseringen av EU:s beslutsprocess är också bara en del av utvecklingen. En annan utveckling går mot ett ökat mellanstatligt samarbete (det vill säga förhandlingar mellan medlemsländernas regeringar) och mot en ökad byråkratisering av EU:s beslut. Trots att både kraven på EU:s institutioner att bli mer offentliga och allmänhetens rätt att ta del av beslutsunderlagen har stärkts under de senaste tjugo åren, är det en svår uppgift att åstadkomma ett effektivt system för ett vertikalt ansvarsutkrävande på europeisk nivå. Stängda dörrar till beslutsrummen kan ibland vara välgrundade: det kan handla om behovet av effektiva beslut eller om att skapa provisoriska forum för beslut för att lösa akuta kriser. Oavsett skäl sker det dock på bekostnad av möjligheterna att hålla beslutsfattarna ansvariga. Detta gör det viktigt att överväga hur olika typer av informella bestämmelser som beslutsfattarna lyder under i större utsträckning kan kodifieras och synliggöras.

En av rapportens mest övergripande slutsatser är att det europeiska systemet för ansvarsutkrävande huvudsakligen behöver förtydligas. Författaren ser ingen poäng med att skapa fler kanaler för kontroll, utan menar att målet snarare borde vara att förbättra systemet. Men det kan knappast vara forskningens roll

att lämna råd om hur det optimala systemet ser ut, eller om den bästa ”nivån” av politisk kontroll. Däremot visar forskningen att ett av skälen till att EU-medborgarna ibland upplever ett ”demokratiskt underskott”, har sin grund i att de upplever ett bristande förtroende för hur beslutsfattarna utkrävs ansvar för sina beslut. Rapporten visar att denna upplevelse kan grunda sig på en delvis felaktig uppfattning, då en stor del av ansvarsutkrävande sker genom informell praxis, snarare än genom stöd i formella regler. Att kodifiera denna praxis i syfte att göra systemet för det politiska ansvarsutkrävandet mer robust torde mot denna bakgrund inte bara handla om ett normativt önskemål. Det skulle även potentiellt, i ett sammanhang av ökad politisering av den europeiska integrationen, kunna stärka EU:s övergripande demokratiska legitimitet.

"The political accountability glass in the EU is currently half-full, and there are no clear signals that it will be filled up soon."

Yannis Papadopoulos

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