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Accountability in the post-Lisbon European Union¹

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Abstract

This special issue takes stock of recent post-Lisbon additions to the European Union's accountability toolkit. It provides indications that older decision-making tools tend to be more accountable than newer ones, and that, in some areas, decision-making is shifting towards less accountable arenas. This introductory article reviews the debate on the gradual evolution of the European Union's accountability system and introduces key aspects of the post-Lisbon era that can be expected to affect accountability in the European Union, and that have been overlooked by the literature thus far: delegated acts, economic governance and regulatory evaluations. The contributions to this special issue address each of these domains in detail and highlight the degree to which accountability has been enhanced. A final contribution shows how these arrangements fit into the wider landscape of already-existing European Union accountabilities and how this landscape has developed over time.

Points for practitioners

There is an apparent link between the relative novelty of the institutional setting in which a governance system is embedded and its accountability. Settings that include a strong role for the European Commission tend to be the most accountable ones, while those that rely mostly on intergovernmental logics, including those that have been created outside the Treaty framework, come with significant gaps.

Keywords

accountability, European Commission, European Parliament, European Union, multi-level governance

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Introduction

Accountability is considered a cornerstone of democracy (Mulgan, 2003), and the European Union (EU) has often been accused of showing shortages of accountability (e.g. Follesdal, 2006; Gustavsson et al., 2009; Juncos and Pomorska, 2011). Originally, students of European integration portrayed the development of effective accountability in the EU as a futile undertaking – and state a strong ‘impossibility thesis’. Accountability at the EU level was argued to be inconceivable given the absence of a European demos (Gustavsson et al., 2009) and the presence of myriad lower-level actors (Papadopoulos, 2010) and multiple principals exerting variant pressures on agents (Dehousse, 2008; Kelemen, 2002).

Various recent empirical contributions have questioned these sobering expectations, arguing that the set of accountability mechanisms in place in the EU has grown increasingly dense (e.g. Bovens et al., 2010; Wille, 2013). Much of the empirical basis of these studies dates from the pre-Lisbon period. This special issue shifts focus to the functioning of accountability in the post-Lisbon area, covering trends linked to the new treaty and beyond. Three characteristics of this period stand out. First, adoption of the Lisbon Treaty, and the institutional changes adopted in its wake, can be expected to have affected accountability. Mainly, ‘Lisbon’ aimed at strengthening the European and the national parliaments vis-a-vis both the Council and the Commission. Second, various treaties outside the EU *acquis* have been established in response to the financial crisis, which confer new powers on existing EU institutions outside the scope of the Lisbon Treaty. Third, in the wake of better regulation programmes, the usage of *ex post* legislative evaluations (an instrument introduced before) has received more attention by the Commission. The value added of this special issue is that it goes beyond the studies that evaluate the implications of the Lisbon Treaty on accountability alone. It puts the accountability changes introduced by the Lisbon Treaty into the broader context of treaty changes, and devotes special attention to follow-up measures adopted in the wake of the financial crisis, outside of the scope of the Lisbon Treaty itself. In doing so, this special issue zooms in on relevant empirical cases in order to investigate the wider evolution of the EU’s accountability framework.

Empirical studies into accountability, including EU accountability, used to be scarce, but for about a decade, their numbers have been on the rise. This resulted in a modest set of snapshots of the state of accountability in particular cases, and occasionally also in analyses that include a longitudinal component (e.g. Jantz and Jann, 2013). However, it has proven hard to aggregate findings from individual studies on accountability and present either a general diagnosis of the overall state of accountability, or to discern trends in the development of accountability regimes over time (cf. Bovens et al., 2014: 2, 6, 17, 649–682). Scholars have attributed this to two factors: first, there has been a tendency for students of accountability to keep developing new definitions of accountability; and, second, consequently, conceptualizations of accountability that seek to capture the variety of accountability instruments, as well as benchmarks for the appropriateness of those instruments, also differ (cf. Bovens et al., 2014: 3–15, Brandsma and Schillemans, 2013).

In this special issue, we take this call for more cumulative research seriously. We take stock of post-Lisbon additions to the EU's accountability toolkit and assess whether EU accountability has been strengthened. Our contribution is twofold: first, the studies in this special issue indicate that the trend towards more accountability at the European level (cf. Bovens et al., 2010) persists; and, second, they provide indications that older regulatory and decision-making tools tend to be more accountable than newer ones.

The introductory article sets the stage for this analysis by conceptualizing accountability and reviewing the debate on the (im)possibility of accountability in the EU's governance system. The debate on the (im)possibility of accountability serves to illustrate the evolution of EU accountability in face of the academic debate that parallels it. After surveying existing empirical findings on the EU's gradually evolving accountability system, it discusses three recent institutional changes and regulatory tools that are expected to affect accountability in the EU: delegated acts (Brandsma); economic governance (Naert); and regulatory evaluations (Zwaan, Van Voorst and Mastenbroek). Against this background, the fourth contribution (Wille) shows how these arrangements fit into the wider landscape of already-existing EU accountabilities and how this landscape has developed over time.

Conceptualizing accountability

Conceptualizations of accountability abound. A multiplicity of theoretical contributions flesh out the meaning and origins of the term and discuss its relevance for democracy (e.g. Behn, 2001; Black, 2008; Bovens, 2007; Mulgan, 2003). Notwithstanding this conceptual heterogeneity, Bovens (2010: 948–54) identified some family resemblance among the many definitions of accountability, which can be organized into two main categories.

The first category of conceptualizations – particularly used in the US – treats accountability as a *property* of individuals or institutions. Accountability is associated with being responsive and transparent. The second category – particularly used in continental Europe – conceptualizes accountability as a *mechanism* by which actors are held to account by forums, which they are obliged to explain and justify their conduct to. The forums can ask questions, pass judgement and impose consequences on the actor. According to this latter category, accountability is functional for specific relationships between institutions or individuals. Accountability is treated not as a virtuous property, but rather as a means of connecting public agents to a variety of audiences, and is thus usually considered a precondition for democratic legitimacy.

The latter type has commonly been used in recent studies of EU accountability (e.g. Brandsma and Schillemans, 2013; Buess, 2015; Busuioc, 2013). We follow this approach in this themed issue, understanding accountability 'as a social "mechanism" or an institutional relation or arrangement in which an agent can be held to account by another agent or institution' (Bovens, 2010: 948). More precisely, this

theme adopts Bovens's (2007: 450) widely applied conceptualization of accountability as 'a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct; the forum can pose questions and pass judgment, and the actor may face consequences'. In analyses of accountability, the focus may be on either formal obligations or the actual behaviour of actors and forums.

Hard benchmarks for assessing the quality of an accountability arrangement that are amenable to empirical investigation unfortunately do not exist. Nonetheless, it is possible to evaluate accountability using a democratic, a constitutional or a cybernetic perspective. According to the democratic perspective, accountability shortages arise from insufficient opportunities for the electorate, through its elected representatives, to hold public actors accountable. From a constitutional perspective, shortages arise from a lack of checks and balances (or a lack of mutual dependencies, accordingly) between public institutions, failing to protect the people from a 'tyranny of the executive'. According to the cybernetic perspective, accountability is in deficit when public institutions do not learn from past mistakes.

Despite these three positive effects that result from accountability, it would be a mistake to conclude that more accountability is always better. Accountability scholars repeatedly warn against overloads and conflicts resulting from a multiplicity of accountability relationships in which public actors are embedded. In extreme cases, multiple accountability disorder occurs. In EU governance, the potential for conflicts between multiple arrangements is high. Often, both supranational and intergovernmental accountability logics are at work simultaneously, which may turn the humble task of checking upon delegated activities into a competence trench war between EU institutions and member states (Dehousse, 2008).

For the three empirical cases investigated in this special issue, we not only seek to establish to what degree they are accountable; we also elucidate in this introductory article how this affects the overall accountability of EU governance. Do the recent changes to the EU's accountability architecture provide for stronger or weaker accountability overall?

EU accountability: Mission impossible?

As briefly pointed out earlier, three arguments basically support the 'impossibility thesis' that views accountability and EU governance as incompatible. All three reasons can be linked to the defining features – or, one may say, inevitable problems – of multi-level governance. It is worthwhile to repeat these three arguments in the introductory article as they point to weaknesses in EU accountability.

The first argument argues that the *multitude of lower-level actors* involved in EU decision-making hinders accountability. The problem outlined is that the inclusion of national authorities in transnational networks precludes accountability. These networks, consisting of various national authorities interacting horizontally or

under the auspices of EU institutions, involve different and many more actors than those traditionally conceived of in international decision-making. Often, lower-level policy experts are involved in governance settings such as expert groups (Gornitzka and Sverdrup, 2011; Larsson, 2003), Open Method of Coordination (OMC) networks (Borrás and Jacobsson, 2004), the management boards of supranational agencies (Flinders, 2004) or comitology committees (Brandsma, 2013b; Egeberg et al., 2003). The fact that these governance structures mostly deal with matters of low political salience and mostly have a technocratic character enables actors to conceal their behaviour and, knowingly or unknowingly, act against the preferences of their constituencies (Brandsma, 2010; Papadopoulos, 2010: 1039). This eventually undermines pre-existing chains of control (in a Weberian sense).

The second argument for the impossibility thesis refers to the voting rules used in EU governance, which typically range from qualified majority voting to merely giving input to EU institutions without voting. Unanimity rules are applied evermore rarely, which makes it *unjustifiable to hold individual actors to account for the content of a collective decision* (Thompson, 1980). National authorities in the Council are only able to individually and autonomously control decisions made in a supranational setting if unanimity voting applies (Strøm et al., 2003: 744). In most instances, the Council of Ministers uses qualified majority voting, as do other EU bodies or forums composed of national actors (such as comitology). Other forms of governance that do not include voting, such as the Open Method of Coordination (OMC), use informal ways of producing effects that may well include the overruling of minority positions. In this sense, it has been argued that multi-level governance encourages blame-shifting and dilutes responsibilities (Oliver, 2009: 13–14; Papadopoulos, 2010: 1033–1034), in particular, in situations where the actual decision-making procedures are not transparent.

The third argument sustaining the impossibility of effective accountability in EU policymaking relates to the *vast number of accountability forums as a result of the EU's multi-level distribution of powers*. The European governance system does not have an ideal-typical simple delegation structure; quite the contrary is the case. Many actors in the European system have multiple principals, and each principal tries to mould the set-up of systems that control the behaviour of actors to its own exclusive needs (Dehousse, 2008; Kelemen, 2002). As a result, agents in EU decision-making may receive conflicting steering signals and accountability pressures. On top of this, these principals are often located at different levels in the system. EU agencies, for instance, typically tend to be accountable to the EU Commission, the European Parliament (EP), the EU Court of Auditors, the EU Court of Justice, but also to their management boards, which are typically composed of member state representatives working for national ministries. These persons, in turn, are embedded in national hierarchies (Busuioc, 2013). In sum, EU governance settings may be accountable to myriad forums, each having different agendas and powers (Papadopoulos, 2010: 1039; Vaubel, 2006). The vast number of forums thus negatively impacts upon the quality of accountability processes.

For these three main reasons, various authors have argued that the delegation of policies to the EU has not only stretched lines of accountability, but also blurred them (Agné, 2009: 55; Palumbo, 2010: xii). Already before the enactment of the Lisbon Treaty and the two related processes identified here (further treaty changes, political programmes), the impossibility thesis was challenged. To evaluate accountability in the EU post-Lisbon, it is relevant to take these arguments into account because the outlined measures might have further strengthened existing trends or added actual new responses.

Challenging the ‘impossibility thesis’

In recent years, several authors have challenged the thesis that EU accountability is impossible – thus formulating what we will call the ‘possibility thesis’. First, the central importance of accountability via national governmental representatives has been put into perspective. As deplored by advocates of the impossibility thesis, the accountability mechanisms in the EU system have become ever-less exclusive to national governments. Yet, defenders of the impossibility thesis downplay the relevance of accountability through the EP, which directly represents citizens. Over time, the rise of the EP has made the EU’s system of checks and balances arguably more complex, but it counterweighs the weakened accountability of national governments. While the EP still does not possess all powers normally found in national parliaments (Follesdal and Hix, 2006), above all, the formal right to initiate legislation (Brandsma, 2013a), it has increasingly become a veritable co-legislator. Even though voter turnout is relatively low and EP elections remain ‘second-order’ (Hix and March, 2011), it does feature institutionalized mechanisms to hold the European Commission accountable. The first element of the ‘impossibility thesis’ is thus challenged by the development of other input-legitimizing channels and constitutional checks and balances. This article – supported by the following contributions – claims that this trend has been further strengthened in the post-Lisbon framework. More so, in addition to strengthening checks and balances between EU institutions, genuinely new control mechanisms have been introduced by creating rights for national parliaments to hold the Commission responsible when it issues legislative proposals (so-called yellow card), which also increases national parliaments’ control over their own governments’ actions as parliaments now have their own access to relevant information, and, in some areas, even control over actual decision-making at the EU level (e.g. the Lisbon Treaty introduced control rights for policing).

In face of the other two ‘impossibility’ arguments, alternative conceptualizations of accountability processes have been proposed that do not demand a single, centralized system, and argue that accountability can equally be produced in networked or loosely coupled systems. Scott (2000: 54), for instance, argued that a multiplicity of accountability forums does not necessarily come with conflicting interests between them; in fact, when multiple forums with similar accountability functions cooperate across levels, accountability becomes ‘redundant’. In addition,

it has been shown that accountability forums have multiplied and taken on differentiated tasks rather than diluting accountability (cf. Bovens et al., 2010).

To give just two examples of this, the accountability deficit can be challenged, in particular, with a view to EU agencies and comitology. At the turn of the century, the gradual rise of agencies was explained by the need to institutionalize specific forms of expertise for the management of credible, technically complex policies. At the same time, however, the fear was widespread that their formal independence would create accountability deficits, namely, agency drift because agencies would not be effectively held responsible (e.g. Shapiro, 1997). Recent empirical studies have, however, offered competing evidence. One is that many agencies are, in practice, less independent than is suggested by their formally independent legal personality. Directors and managers of agencies are under continuous pressure from – mainly – the European Commission and the member states, which effectively control the agencies' resources or take the final policy decisions (Busuioc, 2009). Due to its continuous involvement in agency affairs, the Commission effectively limits the discretionary space of the agencies, thus making them materially dependent on the Commission (Wonka and Rittberger, 2010) – hinting to the fact that agencies are effectively held accountable. Second, as briefly indicated earlier, many agencies are, in fact, embedded in a dense web of accountability relationships, including the EP, the Council of Ministers, the Court of Justice, the Ombudsman, the Court of Auditors and the agencies' own management boards as forums. Accountability problems, if they appear at all, tend to arise not as a result of a lack of accountability, or as a result of competition between forums, but as a result of practicalities such as a lack of management expertise in management boards or a lack of interest in the EP for discussing, for instance, the agencies' annual reports (Busuioc, 2013). In short, there is no unaccountability by design, not even due to overlapping accountability responsibilities.

The other example is the comitology system, which becomes ever-more accountable over time. Comitology refers to a set of about 250 committees composed of policy specialists from every member state, advising and often voting on executive measures drafted by the Commission (e.g. Brandsma, 2013b). When the Council and the EP pass legislation, they agree that many executive decisions should be made down the line. Comitology has traditionally been the default option for controlling those executive decisions, including member state civil servants, but excluding the EP. One of the main accountability concerns was that the Commission and the member states could potentially sneak politically relevant issues into executive measures, bypassing the EP (Héritier et al., 2012). Also, before the turn of the century, the comitology system was almost completely secretive. However, things have changed much for the better over the past 15 years. Comitology is now subject to the same transparency rules as the Commission (Dehousse, 2003), and the EP – as well as the Council of Ministers – has been equipped with extensive veto rights applying to a large subset of executive measures (Brandsma, 2013b; Neuhold, 2008). Again, adding to this trend, the Lisbon Treaty has created full control rights for the Council and the EP, as opposed to member

state expert committees, for a particular class of executive rules, namely, 'delegated acts'. The trend here, thus, is clearly towards stronger accountability at the EU level, even though accountability within member states for the input given by its policy specialists remains a matter for concern (Brandsma, 2010). In addition, the distinction between delegated and implementing acts created some more legal clarity on procedural decisions. Further examples could be added, but for the purpose of this introductory article, it suffices to highlight that traditional control instruments such as legal review, comitology and the EP's power to dismiss the Commission as a whole have been supplemented by transparency requirements, performance reports at services level, more exposure of individual Commissioners in parliamentary committees and informal agreements between the Commission and the EP on the exchange of documents and the dismissal of individual Commissioners (Brandsma, 2013a; Wille, 2013). As the literature that challenged the 'impossibility' thesis shows, this issue is not new. The contribution of this special issue is to go beyond the known mechanisms and highlight where these have been further strengthened by the post-Lisbon measures, or even added qualitatively new elements.

To sum up, various recent empirical studies have provided evidence of the increasing density of accountability relationships. These rest on strengthened checks and balances between EU institutions, reformed transparency and accountability procedures, informal controls, and the expansion of control relationships across levels and units in the system (most prominently involving national parliaments). Even if the glass cannot be claimed to be anywhere near full, one may conclude that it is filling up (cf. Bovens et al., 2010). Taking a broader look at not only the Lisbon Treaty but also the follow-up measures it triggered, we hence consider it timely for a further investigation of the evolving accountability landscape of EU governance.

EU accountability post-Lisbon

As shown, the changes introduced in the aftermath of the Lisbon Treaty are in line with earlier trends and go beyond these. These concern changes to the institutional landscape, including the competences of each institution, as well as regulatory instruments that, often through participation and evaluation, seek to enhance the accountability of EU decision-making towards citizens, stakeholders and EU institutions. We now address these categories in turn and specify to what degree existing studies provide indications of the effect of these changes on the accountability of EU decision-making, and in which areas they do not.

The extension of the co-decision procedure towards yet further policy areas has been one of the most prominent institutional changes introduced by the Lisbon Treaty. This extension includes politically salient areas such as international trade agreements and the common agricultural policy. On the one hand, this suggests an increase in opportunities for public accountability because the EP has a stronger tradition of open decision-making than the Council. On the other hand, the greater

involvement of the EP also increases the need for negotiating political compromises with the Council. Traditionally, this is done behind closed doors in informal trilogue meetings (De Ruiter and Neuhold, 2012). After a compromise has been found, public meetings of the EP and the Council are only used for rubberstamping. The lack of public accountability of this decision-making process has often been lamented (Héritier and Reh, 2012; Lord, 2013; Stie, 2010), even though both the Council and, increasingly, the EP have internal accountability mechanisms in place to keep their chief negotiators in check (Roederer-Rynning and Greenwood, 2015). The extension of co-decision may thus formally improve accountability towards the EP and enhance its role as an accountability forum when overseeing the implementation of EU law, but these gains may be reduced by the informal procedures that are applied in the legislative process. Accordingly, a question to evaluate overall accountability is how these counter-rotating developments interact.

As a second important innovation, the Treaty established the European External Action Service (EEAS). Here, it is not so much the accountability mechanisms that are new, but rather the organisational embedding of the EEAS. The High Representative of Foreign Affairs is a member both of the Commission and of the Council, and the great majority of the EEAS's tasks are not in the realm of co-decision. Hence, one might argue that the EP is not a principal of the EEAS. The budget and the organisational structure of the EEAS, however, are decided under co-decision. Recent research has shown that the EP does not shy away from using the few powers it has to establish accountability relations with the High Representative, which vary greatly in strength depending on the policy at stake and the degree to which it can be linked to policy areas decided under co-decision (Raube, 2015). The EP is thus able to some degree to act as an accountability forum for issue areas in which it has only few competences.

Finally, the Lisbon Treaty has established national parliaments as accountability forums. The 'early warning procedure' has provided parliaments with a direct say in EU policymaking. It has granted them the right to assess whether legislative proposals by the Commission are in keeping with the principle of subsidiarity. If more than a third of national parliaments adopt a Reasoned Opinion judging negatively about subsidiarity aspects, the Commission must reconsider its proposal. Even though criticism abounds in the literature (De Wilde, 2012; Kiiver, 2012), recent research also shows the political potential of the early warning procedure (Bellamy and Kröger, 2014; Kiiver, 2012). According to Cooper (2012), it can positively contribute to the deliberative function of parliaments. A recent study has indicated some cautious (side) effects. Despite the lukewarm approach to the early warning procedure by the Commission and EP, the European Commission is alleged to pay more attention to subsidiarity because of it, and it has arguably enhanced EU awareness and EU scrutiny in various parliaments (Mastenbroek et al., 2014: 20–21).

Turning to decision-making procedures, existing ambitions to foster citizen participation in EU governance are now also explicitly referred to in the Treaty, which

at least suggests that transparency and public scrutiny are deemed politically more important (Alemanno, 2014). Civil society inclusion – and, hand in glove, making the decision-making process itself (i.e. as ‘throughput’) more accountable – has already been a major objective of the European Commission before (Heidbreder, 2012), most importantly in opening up its legislative role – notably, in the online consultation regime (Quittkat and Kohler-Koch, 2013). However, much of what the Commission has promoted in terms of inclusive policymaking in its governance White Paper (European Commission, 2001) has not passed the empirical test (Kohler-Koch and Quittkat, 2013). Its comprehensive 2015 initiative on better lawmaking further underscores open government as a key ambition (European Commission, 2015). Again, we can observe how certain trends have been taken up in different arenas and by varying measures. While the Lisbon Treaty introduced institutional changes to allow for Citizen Initiatives, in particular, the Commission agenda embraced by President Juncker under the REFIT initiative moves the issue further and in a slightly different direction. Under the REFIT programme, civil society is drawn into public consultations and other exchanges without any real impact, except for giving legitimacy to final decisions that they cannot really influence (Rena, 2015).

In sum, for the aforementioned areas, the literature offers some clues as to where accountability is heading. As the discussion of the (im)possibility thesis showed, changes go beyond these trends but we still know little to nothing about the effects of these changes. As regards the institutional fabric of the EU, this applies in particular to the system governing economic and monetary governance that was introduced in response to the fiscal crisis. Two legal sources matter in this realm: new intergovernmental treaties (e.g. the ‘Fiscal Compact’) that are outside the EU treaties and hence circumvent all procedural rules and checks and balances strengthened by the Lisbon Treaty; and new EU legislation, including not least the establishment of a Banking Union. Notably, especially during the first phase of the fiscal crisis, the European Council and the Eurogroup acted outside EU procedures. In the macroeconomic imbalances procedure, for instance, the Commission assumes a strong role in monitoring and coordinating, but formal sanctions can only be issued by the European Council (Buti and Carnot, 2012). The Banking Union, in contrast, has marked the most expansive treaty change since the Treaty of Maastricht. We still lack an overview of whether the massive number of institutional changes – in and outside the ordinary related to economic and monetary governance, such as the set-up of the European Stability Mechanism, the Banking Union, the increased role of the European Council and the Eurogroup – resulted in accountable decision-making in this technically highly complex realm.

However, institutional powers have also changed within the realm of ‘ordinary EU politics’, of which the accountability effects have not yet been investigated. Notably, the regime of delegating executive powers to the Commission has changed, explicitly seeking to improve accountability for those powers. Before Lisbon, delegated executive powers were controlled by comitology committees of member

state representatives, largely bypassing the EP. The Lisbon Treaty, however, introduced a distinction between ‘delegated acts’ and ‘implementing 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. The difference between these two regimes has already given rise to many conflicts between the two EU legislators about the choice of which regime to apply when new legislation delegates executive powers to the Commission (Brandsma and Blom-Hansen, 2015). However, the effects of the new delegated acts regime on the degree to which the Commission is held to account remains 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. In other words, the apparent or intended impact of the Lisbon changes is not necessarily the effect it is unfolding, calling for more empirical research that also takes in account related developments.

One of these parallel developments is the Commission’s attempt to reduce the amount of legislation and focus more on its quality instead. These efforts already entered the political scene in the run-up to the failed Constitutional Treaty, but these have been considerably strengthened after the Lisbon Treaty came into force and, in particular, after the Juncker Commission took office. Regulatory evaluations feature prominently in the current agenda of better regulation, although their production has been nowhere near systematic (Mastenbroek et al., this issue). Primarily, *ex post* regulation evaluations have the potential to provide an important knowledge basis for accountability towards the EP about Commission behaviour and results.

In sum, various institutional developments and new regulatory practices bear evidence of the evolution of the EU’s accountability architecture that may have significant effects on the actual working of accountability in the EU and, accordingly, the empowering of particular institutions therein. Newly introduced accountability instruments do not replace the pre-existing order, but rather supplement and extend it. The articles in this themed issue investigate these new instruments, and show how these fit into the general accountability landscape of EU governance at the present day.

Introducing the special issue

The following contributions provide empirical accounts of recent changes to the accountability landscape of the EU, originating in the Lisbon Treaty plus the political and policy follow-up dynamics. Since there has been considerable conceptual heterogeneity in studies of accountability, cumulative research is scarce, so present findings can mostly only be compared generically rather than systematically to those of the past (Bovens et al., 2014: 1–17, 649–682). The contributions in the special issue all aim to add to the extended empirical and conceptual debate on EU

accountability, namely, by investigating how to deal with multiple cross-level actor networks, overlapping responsibility in polycentric systems and multiple and overlapping accountability forums. Identifying how far pre-existing trends are reinforced and complemented or even extended by innovative instruments also contributes to the conceptual contribution of the special issue because it leads to a re-evaluation of multi-level policymaking conditions for accountability.

Naert assesses the accountability of EU economic governance as it developed during the so-called euro crisis. Although this policy area very much remains the domain of the European Council, and more in particular the Eurogroup, and establishes such a least-likely case for accountability, the EP and the Commission are involved to a certain degree. Naert presents a detailed inventory of the power shifts involved, and concludes that the uploading of policies towards the EU level and limiting policy discretion by specifying detailed rules did not solve agency problems. In fact, many accountability processes have shifted from open, democratic arenas to secluded networks of expert peers. In the larger framework of the post-Lisbon setting, this leads to the conclusion that – contrary to the intended direction of the institutional treaty changes – the strengthening of the European Council and the external policy developments have significantly weakened accountability under the democratic as well as the constitutional perspective.

Brandsma investigates the accountability of delegated legislation, in particular, the role of the EP as an accountability forum. Delegated legislation is a new legal instrument introduced by the Lisbon Treaty in which the Council and the EP may delegate quasi-legislative powers to the European Commission while retaining full control over its outputs through extensive veto rights. Brandsma shows that, compared to predecessors of the delegated legislation regime, accountability has grown stronger than ever before. In anticipation of possible vetoes, the European Commission and the EP exchange their views early on in the process so that the eventual delegated act survives legislative scrutiny. However, due to the large number and detailed contents of delegated acts, the EP mostly relies on its own administrators in order to flag salient issues. In the realm of delegated acts, we therefore observe that democratic accountability has been strengthened, but that some challenges still remain as the post-Lisbon exercise of changed rules does not match the intentions of the institutional changes one to one. It leads to a shift to the informal realm, on the one hand, and to the EP bureaucracy, on the other, reducing transparency.

Zwaan, Van Voorst and Mastenbroek also hone in on the role of the EP as an accountability forum, analysing the role of ex post regulatory evaluations produced by the Commission. As part of its desire to map out the effectiveness of EU policies, the EU institutions have agreed to let the Commission produce evaluations when legislation has been in force for a certain number of years. Even though these evaluations would allow the EP to hold the Commission accountable, the results call for more sobering expectations: the EP uses evaluations primarily for a forward-looking, agenda-setting purpose, instead of enquiring into the Commission's past performance. It does not therefore use the potential for

learning, as is underscored by the cybernetic perspective on accountability, and neither is it used as a tool to check whether popular preferences have been translated into policy, which is central to the democratic perspective.

Wille, finally, presents an overall picture of the development of accountability of the European Commission from its inception to the present day. Rather than investigating one mode of accountability, or focusing on one particular legitimizing logic, Wille presents a complex web of accountability, including its dynamics, inconsistencies and interrelations between accountability relationships. The slow but sure parliamentarization of the EU, new modes of regulation and governance, and the accompanying changes in the norms guiding the behaviour of institutions have brought about an ever-denser web of accountability relationships. Specific accountability mechanisms were created to meet specific demands at specific times, which entails that the current set-up of the full EU accountability landscape lacks a dominant organizing logic.

However, putting all contributions in relation, the collected findings call for caution. Their contribution beyond the existing studies is clearly the insight that, on the one hand, the institutional changes of the Lisbon Treaty tackle all three problems spelled out by the proponents of the impossibility thesis. On the other hand, going beyond Lisbon and taking into account how the institutional changes both work in practice and have been influenced especially by the various policy ‘crises’ calls for a much more critical evaluation of the actual effect of the accountability-enhancing measures. The current accountability regime in the EU remains a patchwork of intergovernmental, supranational and regulatory instruments with overlapping spheres of application, lacking a clear organizing logic – in particular, when newer decision-making areas are concerned. This said, the discrepancy indicated in a number of the present contributions may be a matter of transition.

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References

- Agné H (2009) Irretrievable powers and democratic accountability. In: Gustavsson S, Karlsson C and Persson T (eds) *The Illusion of Accountability in the European Union*. Milton Park: Routledge.
- Alemanno A (2014) Unpacking the principle of openness in EU law: Transparency, participation and democracy. *European Law Review* 37(1): 72–90.
- Behn R (2001) *Rethinking Democratic Accountability*. Washington, DC: Brookings Institution Press.

- Bellamy R and Kröger S (2014) Domesticating the democratic deficit? The role of national parliaments and parties in the EU's system of governance. *Parliamentary Affairs* 67(2): 437–457.
- Bergström CF (2005) *Comitology: Delegation of Powers in the European Union and the Committee System*. Oxford: Oxford University Press.
- Black J (2008) Constructing and contesting legitimacy and accountability in polycentric regulatory regimes. *Regulation & Governance* 2: 137–264.
- Borrás S and Jacobsson K (2004) The open method of co-ordination and new governance patterns in the EU. *Journal of European Public Policy* 11: 185–208.
- Bovens M (2007) Analysing and assessing accountability: A conceptual framework. *European Law Journal* 13: 447–468.
- Bovens M (2010) Two concepts of accountability: Accountability as a virtue and as a mechanism. *West European Politics* 33: 946–967.
- Bovens M, Curtin D and 't Hart P (eds) (2010) *The Real World of EU Accountability*. Oxford: Oxford University Press.
- Bovens M, Goodin RE and Schillemans T (2014) *The Oxford Handbook Public Accountability*. Oxford: Oxford University Press.
- Brandsma GJ (2010) Accountability for input in comitology committees: An uncomfortable silence. *Journal of European Public Policy* 17(4): 487–505.
- Brandsma GJ (2013a) Bending the rules: Arrangements for sharing technical and political information between EU institutions. European Integration Online Papers 17.
- Brandsma GJ (2013b) *Controlling Comitology: Accountability in a Multi-Level System*. Houndmills: Palgrave MacMillan.
- Brandsma GJ and Blom-Hansen J (2015) Controlling delegated powers in the post-Lisbon European Union. *Journal of European Public Policy* (ahead of print), 1–19.
- Brandsma GJ and Schillemans T (2013) The accountability cube: Measuring accountability. *Journal of Public Administration Research and Theory* 23(4): 953–975.
- Buess M (2015) European Union agencies and their management boards: An assessment of accountability and democratic legitimacy. *Journal of European Public Policy* 22(1): 94–111.
- Busuioac M (2009) Accountability, control and independence: The case of European agencies. *European Law Journal* 15: 599–615.
- Busuioac M (2013) *European Agencies: Law and Practices of Accountability*. Oxford: Oxford University Press.
- Buti M and Carnot N (2012) The EMU debt crisis: Early lessons and reforms. *JCMS: Journal of Common Market Studies* 50(6): 899–911.
- Cooper I (2012) A 'Virtual Third Chamber' for the European Union? National Parliaments after the Treaty of Lisbon. *West European Politics* 35(3): 441–465.
- Dehousse R (2003) Comitology: Who watches the watchmen? *Journal of European Public Policy* 10: 798–813.
- Dehousse R (2008) Delegation of powers in the European Union: The need for a multi-principals model. *West European Politics* 31: 789–805.
- De Ruiter R and Neuhold C (2012) Why is fast track the way to go? Justifications for early agreement in the co-decision procedure and their effects. *European Law Journal* 18(4): 536–554.
- De Wilde P (2012) Why the early warning mechanism does not alleviate the democratic deficit. *OPAL Online Paper* 6: 1–23.

- Egeberg M, Schäfer G and Trondal J (2003) The many faces of EU committee governance. *West European Politics* 26: 19–40.
- European Commission (2001) European governance. A White Paper. Brussels 25.7.2001: COM(2001) 428 final.
- European Commission (2015) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Better regulation for better results – an EU agenda. Strasbourg, 19 May.
- Flinders M (2004) Distributed public governance in the European Union. *Journal of European Public Policy* 11: 520–544.
- Follesdal A (2006) The legitimacy deficits of the European Union. *Journal of Political Philosophy* 14(4): 441–468.
- Follesdal A and Hix S (2006) Why there is a democratic deficit in the EU: A response to Majone and Moravcsik. *Journal of Common Market Studies* 44(3): 533–562.
- Gornitzka A and Sverdrup U (2011) Access of experts: Information and EU decision-making. *West European Politics* 34: 48–70.
- Gustavsson S, Karlsson C and Persson T (eds) (2009) *The Illusion of Accountability in the European Union*. Milton Park: Routledge.
- Heidbreder EG (2012) Civil society participation in EU governance. *Living Review on European Governance* 7(2). Available at: <http://europeangovernance.livingreviews.org/Articles/lreg-2012-2/koo%3E>.
- Héritier A and Reh C (2012) Codecision and its discontents: Intra-organisational politics and institutional reform in the European Parliament. *West European Politics* 35(5): 1134–1157.
- Héritier A, Moury C, Bischoff C, et al (2012) *Changing Rules of Delegation: A Contest for Power in Comitology*. Oxford: Oxford University Press.
- Hix S and March M (2011) Second-order effects plus pan-European political swings: An analysis of European Parliament elections across time. *Electoral Studies* 30(1): 4–15.
- Jantz B and Jann W (2013) Mapping accountability changes in labour market administrations: From concentrated to shared accountability? *International Review of Administrative Sciences* 79(2): 227–248.
- Juncos AE and Pomorska K (2011) Invisible and unaccountable? National representatives and Council officials in EU foreign policy. *Journal of European Public Policy* 18(8): 1096–1114.
- Kaeding M and Stack KM (forthcoming) Legislative scrutiny? The political economy and practice of legislative vetoes in the European Union. *JCMS: Journal of Common Market Studies*.
- Kelemen D (2002) The politics of ‘Eurocratic’ structure and the new European agencies. *West European Politics* 25: 93–118.
- Kiiver P (2012) *The Early Warning System for the Principle of Subsidiarity: Constitutional Theory and Empirical Reality*. Milton Park: Routledge.
- Kohler-Koch B and Quittkat C (eds) (2013) *De-Mystification of Participatory Democracy: EU-Governance and Civil Society*. Oxford: Oxford University Press.
- Larsson T (2003) *Precooking in the European Union – The World of Expert Groups*. Stockholm: ESO.
- Lord C (2013) The democratic legitimacy of codecision. *Journal of European Public Policy* 20(7): 1056–1073.

- Mastenbroek E, Zwaan P, Groen A et al. (2014) Engaging with Europe: Evaluating national parliamentary control of EU decision making after the Lisbon Treaty: Management Report. Institute for Management Research, Radboud University, Nijmegen. Available at: http://www.tweedekamer.nl/sites/default/files/atoms/files/engaging_with_europe_management_report_2nd_edition.pdf.
- Mulgan R (2003) *Holding Power to Account: Accountability in Modern Democracies*. London: Palgrave Macmillan.
- Neuhold C (2008) Taming the 'Trojan Horse' of comitology? Accountability issues of comitology and the role of the European Parliament. European Integration Online Papers 12.
- Oliver D (2009) Executive accountability: A key concept. In: Verhey L, Kiiver P and Loeffen S (eds) *Political Accountability and European Integration*. Groningen: Europa Law Publishing.
- Palumbo A (2010) Introduction – political accountability reconsidered: Debates institutions rationale. In: Bellamy R and Palumbo A (eds) *Political Accountability*. Farnham: Ashgate.
- Papadopoulos Y (2010) Accountability and multi-level governance: More accountability less democracy? *West European Politics* 33: 1030–1049.
- Quittkat C and Kohler-Koch B (2013) Involving civil society in EU governance: The consultation regime of the European Commission. In: Kohler-Koch B and Quittkat C (eds) *De-Mystification of Participatory Democracy*. Oxford: Oxford University Press, pp. 41–61.
- Raube K (2015) Democratic accountability and EU diplomacy: The EEAS and the role of the European Parliament. In: Spence D and Batora J (eds) *The European External Action Service: European Diplomacy Post-Westphalia*. Houndmills: Palgrave MacMillan.
- Rena A (2015) Too good to be true? A quick assessment of the European Commission's new Better Regulation package. *CEPS Special Report* 108: 1–11.
- Roederer-Rynning C and Greenwood J (2015) The culture of trilogues. *Journal of European Public Policy* 22(8): 1148–1165.
- Scott C (2000) Accountability in the regulatory state. *Journal of Law and Society* 27: 38–60.
- Shapiro M (1997) The problems of independent agencies in the United States and the European Union. *Journal of European Public Policy* 4(2): 276–291.
- Stie AE (2010) Co-decision: The panacea for EU democracy? PhD thesis, ARENA, Norway.
- Strøm K, Müller W and Bergman T (2003) Challenges to parliamentary democracy. In: Strøm K, Müller W and Bergman T (eds) *Delegation and Accountability in Parliamentary Democracies*. Oxford: Oxford University Press.
- Thompson D (1980) Moral responsibility of public officials: The problem of many hands. *American Political Science Review* 74: 905–916.
- Vaubel R (2006) Principal-agent problems in international organizations. *The Review of International Organizations* 2006: 125–138.
- Wille A (2013) *The Normalization of the European Commission: Politics and Bureaucracy in the EU Executive*. Oxford: Oxford University Press.
- Wonka A and Rittberger B (2010) Credibility, complexity and uncertainty: Explaining the institutional independence of 29 EU-level agencies. *West European Politics* 33(4): 730–752.

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