

# **The Illusion of Accountability in the European Union**

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## **Chapter 1**

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### **Examining the illusion of accountability**

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# 1 Examining the illusion of accountability

*Sverker Gustavsson, Christer Karlsson and  
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Accountability features as an important – perhaps the most important – theme in the ongoing debate on the EU's democratic deficit (Curtin and Wille 2008). This seems only natural, since accountability is necessary if representative democracy is to work. Representatives must, if they are to fulfil their duties in an effective manner, be accorded independent powers to act. On the other hand, they must not forget those whom they represent.

With the use of open mandates, there will always be a need for institutional arrangements which force representatives to be responsive to the wishes of those they represent (Pitkin 1967: 233). Representative democracy is about the *controlled* transmission of power (Sartori 1987: 232–4). If there is to be any guarantee that representatives actually work to promote the interests of citizens, the latter must be able to hold the former accountable for their actions. Thus, representative political systems which lack mechanisms for holding decision-makers effectively accountable are seriously flawed from a democratic standpoint.

Do EU citizens have real opportunities to hold decision-makers accountable, or does the current institutional set-up in the Union merely create an *illusion* of accountability? That is the central question of this volume. There are widespread and growing concerns that the political system of the EU does not, in fact, afford citizens appropriate mechanisms of accountability (Schmitter 2000; Harlow 2002; Arnall and Wincott 2002; Fischer 2004; Bovens 2007a). The aim of the current study is to ascertain whether such concerns are warranted.

We thereby connect up with the ongoing debate on the EU's democratic deficit, which has been with us for almost two decades now. Concerns over accountability are an integral part of this overarching discussion on the Union's democratic credentials. Is a democratisation of the EU necessary? Is it desirable? Is there, in fact, any problem that really needs addressing here? And if there is, can it be remedied? As we understand it, there are three main positions in this huge debate:

According to the first, there is no democratic problem at the European level (Moravcsik 2002, 2008; Majone 2005). The EU works wonderfully, and the

only problem is the tendency of European intellectuals and even some politicians to fuel the notion that the EU is plagued by a democratic deficit.

Proponents of the second position argue that there is indeed a democratic problem, and that it can and should be addressed. The solution is to introduce more political competition at the European level, thus establishing ‘limited democratic politics’ in the European Union (Føllesdal and Hix 2006; Hix 2008).

Advocates of the third position concede there is a democratic deficit, but they believe we should proceed with extreme care when deciding how or whether to address it. They warn us that the cure may turn out to be worse than the disease (Bartolini 2006, 2008; Scharpf 2008, 2009).

Taking a step back, we might ask why questions of democracy and accountability are relevant in the context of the European Union. Is not the EU, after all, just an international organisation among others, to which member states have delegated tasks which they believe are more efficiently handled at the international level? Why is there so much fuss about the EU’s democratic deficit? True enough, scholars are now beginning to analyse and question the democratic status not only of the EU but of other international organisations as well (e.g. Zweifel 2006). However, the demands placed on the EU when it comes to meeting democratic criteria are far heavier than on any other international organisation. How come?

We believe that the EU (and its member states) has partly itself to blame that the debate over its democratic shortcomings has become so heated. While formally an international organisation, namely, the EU has gradually acquired an institutional structure and set of competencies that had previously been reserved for nation-states. In its current form, the EU is an extremely influential organisation, with the power to make collective decisions which are binding on all residents of its member states. When a decision-making body is that powerful, concerns over democracy and legitimacy are only natural and appropriate.

Furthermore, the EU has partly responded to the demands for democratisation that have been placed upon it. Through a series of treaty reforms over time, it has developed an institutional set-up bearing a reasonable resemblance to a democratic political system. At the international level, that makes the EU unique, as the only site today of governance beyond the nation-state where ‘the incipient institutions of a “democratic” transnational political community are faintly visible’ (Dahl 1994: 32). This has served to encourage the idea that a ‘third transformation’ (Dahl 1989: 309–21) in the history of democratic practice may be possible.

### **A third transformation?**

Towards the end of *Democracy and Its Critics*, Robert Dahl raises the question of whether the scale of politics can remain coterminous over the long term with the scale of economics, law, and culture. Thus far we have

witnessed two democratic transformations: The first took place in ancient Greece, and led to the establishment of the democratic city-state. Government by the few was replaced by government by the many. The second transformation involved the replacement of direct forms of democracy with representative forms. The democratic process could then be applied at the level of the nation-state, rather than being reserved for political systems the size of a city-state. The question now is whether a third transformation, establishing democratic governance beyond the nation-state, is in the cards (Dahl 1989: 312).

Dahl's own answer to this question is to urge his readers to be cautious. In his earlier work, Dahl seemed fairly optimistic about the possibilities for a third transformation, pointing out the EU as the most likely contender to meet the challenge of establishing democratic governance at the international level (Dahl 1989: 320). More recently, however, he seems to have become more sceptical of the possibility of democratising international organisations and achieving a third transformation (Dahl 1998: 117; Dahl 1999: 32–4).

At a more general level, furthermore, Dahl reminds us of the obstacles we always face when we try to translate visions into practice. He urges us to hold on to our sound practical judgement, and to recall the discrepancy between the ideal and the real.

Measured against its exacting ideal, the imperfections of any actual democracy are so obvious and so enormous that the palpable discrepancy between ideal and reality constantly stimulates unbounded hopes that the ideal may somehow be made real. But feasible solutions often prove elusive, and those who so easily construct an ideal democracy in their imaginations soon discover that it is far harder, or even impossible, to construct that ideal in the real world.

(Dahl 1989: 312)

In the case of the EU, the discrepancy between democratic ideals and practices has been quite apparent, and it has given rise – as Dahl predicted – to numerous proposals on how to address the democratic shortcomings of that body (e.g. Abromeit 1998; Eriksen 2000; Føllesdal and Hix 2006; Schmalz-Bruns 2007; Hix 2008). It is also possible to point to a number of reforms – the introduction and gradual extension of co-decision, the adoption of regulation 1049/2001 on public access to documents, and the increased role of the EP in the appointment of a new Commission – that have served to close, at least in some degree, the gap between the ideal and the real, moving EU governance in a more democratic direction (Karlsson 2001: 44–103).

How should these attempts at remedying the democratic deficiencies of the EU be understood? Has the EU succeeded with the third transformation, at least in part? Or have these reforms only created a false image of a democratic political system in which citizens are able to hold decision-makers to account?

We would not, of course, expect the EU to meet the criteria of an ideal democracy fully. For the story of democracy's transformations – as Norberto

Bobbio reminds us in *The Future of Democracy* – shows that there will always be a gap between the ideal and the real, ‘between what was promised and what has actually come about’ (Bobbio 1987: 27). According to Bobbio, real-world democracies have failed to keep the promises inherent in democratic ideals. But the reason, he argues, why these broken promises (Bobbio 1987: 27–39) were not kept is that ‘the project of political democracy was conceived for a society much less complex than the one that exists today’ (Bobbio 1987: 37). It is therefore impossible for real-world democracies to meet their ideals fully. The question we should rather ask ourselves, as we set out to examine existing political systems, is to what degree they manage to meet the criteria of a fully democratic process.

### **An illusion of accountability?**

We make no attempt, in the current study, to accomplish the monumental task of assessing whether the EU meets all of the criteria that constitute the democratic ideal. Instead, we focus exclusively on what opportunities citizens have for holding decision-makers accountable.

We believe the topic selected for this volume is a timely one, in view of the increased interest in questions of accountability in an EU context. Our choice is also justified by the fact that accountability, as argued above, is of vital importance for any representative political system that aspires to be even minimally democratic.

By accountability, we have in mind a relationship between two actors (X and Y) wherein X has the right to: (1) *monitor* the actions of Y, (2) *evaluate* the actions of Y, and (3) impose *sanctions* on Y (cf. Grant and Keohane 2005: 29; Bovens 2007a: 450–1).

Our concern here is with what is sometimes called ‘internal accountability’: i.e. a relationship whereby X has *delegated* authority to Y (who may in turn have delegated authority to Z). Some scholars also speak of ‘external accountability’, whereby actors are held to account by all those who are *affected* by their actions, rather than by those who have delegated power to them (cf. Keohane’s contribution in this volume). Our understanding of accountability, however, presupposes an act of delegation. An accountability relationship between two actors can therefore be described in principal-agent terms (Strøm *et al.* 2004).

In the context of the EU, it is the citizens of the Union who are the ultimate principals. It is they who have delegated power to parliaments and governments. The latter in turn have empowered EU institutions and civil servants to carry out the day-to-day business of EU affairs. A chain of delegation often has more than two links, with actors in the middle playing the role of both agent and principal. Member-state governments, for example, are the agents of EU citizens and act as their representatives in Brussels. Yet they are also principals, for they delegate their own authority to civil servants.

Principals may have a number of mechanisms at their disposal for ensuring that their agents act in accordance with the mandate given them. Such mechanisms operate in an *ex post* manner: they involve monitoring, evaluating, and

sanctioning after the fact. However, the impact of accountability may also be apparent *ex ante*, 'since the anticipation of sanctions may deter the powerful from abusing their positions in the first place' (Grant and Keohane 2005: 30).

A number of different accountability mechanisms are available in different contexts, including electoral contests, legal requirements, and fiscal instruments. These various mechanisms can be placed on a continuum from *weak* to *strong*. At the weak end, we find tools that merely allow for monitoring an agent's actions: e.g. the right to access documents. Then, moving along the continuum towards the other end, we find instruments that also permit principals to evaluate the actions of representatives: e.g. the right to call hearings. At the strong end of the spectrum, finally, we find mechanisms that make it possible to impose sanctions on the agent: e.g. the right of superiors to remove employees, of parliaments to call a vote of confidence, and of voters to change government on Election Day.

What sets the EU apart from other international organisations is that it offers an institutional setting that seems, on the surface, to allow the public actually to hold decision-makers accountable: indirectly through their national governments, and directly through the European Parliament. It is important to distinguish, however, between *formal* accountability mechanisms and any *real* opportunities principals may have to hold agents accountable. Consider direct accountability via the European Parliament. MEPs are directly elected by EU citizens, so there is a strong mechanism for accountability here: should EU citizens feel that 'their' MEPs have done a bad job, they can simply not vote for them at the next EP election. However, the real opportunities for citizens to hold MEPs accountable are sharply limited by the fact that EP elections are second-order national contests fought out on domestic rather than European issues (Reif and Schmitt 1980; Hix 2008). The absence of electoral contests fought on European issues undermines the ability of citizens to hold MEPs accountable for their actions, notwithstanding the existence of a strong accountability mechanism.

It is important to ascertain, then, whether the accountability mechanisms at the disposal of EU citizens are weak or strong. However, it is also necessary to know whether these powers are merely formal, or whether instead they provide real opportunities to hold decision-makers to account.

There are those, then, who are genuinely concerned that the political system of the EU does not afford citizens sufficient opportunities to hold decision-makers to account. But there are also those who deny there is any accountability deficit at all, or that the current system lacks adequate mechanisms for accountability (Moravcsik 2002: 611–2). In the current debate on the democratic status of the EU, we can identify five arguments supporting the conclusion that there are indeed sufficient means for holding decision-makers to account in the Union. Taken together, these arguments paint a picture of the EU as a site for governance in which the third transformation (to democracy beyond the nation-state) has partly succeeded – at least when it comes to meeting reasonable criteria for accountability.

In this volume, we shall examine these five arguments in order to determine whether the image of the EU as offering sufficient accountability is justified, or whether the current institutional set-up and practice of decision-making is one that merely creates an *illusion* of accountability. It may well be that denials of an accountability deficit in the Union are based on a misapprehension of the true state of affairs.

### **Five arguments that EU accountability is sufficient**

These five arguments, which claim there is no accountability deficit and that current arrangements are therefore satisfactory, will be examined under the following headings: ‘rethink the meaning of accountability’; ‘delegated powers and accountability’; ‘hold the legislature accountable’; ‘hold the executive accountable’; and ‘accountability through civil society’.

#### ***Rethink the meaning of accountability***

According to the first argument, we should rethink what it means to hold decision-makers to account. Where the EU is concerned, we should ‘look for new standards of legitimacy and accountability’ (Majone 1998: 18). We should not necessarily require that its political system provide citizens with strong mechanisms of accountability; rather, we ought to content ourselves with reforms designed to improve transparency, and we should require of decisions-makers that they give reasons for their actions (Majone 1998: 20–2).

In Chapter 2, ‘Accountability in world politics’, Robert Keohane notes that the lack of global democracy has become an important public issue, as interdependence and globalisation have increased the need for global governance. The problem is that the conditions for electoral democracy – much less participatory democracy – are not present on the global level. Rather than abandoning democratic principles, however, we should rethink our ambitions and look for feasible ways to strengthen mechanisms of accountability in world politics. If we are to succeed in this mission, we will need to abandon the belief that all forms of accountability require popular elections in order to be meaningful.

In Chapter 3, ‘Accountability and democracy’, Heidrun Abromeit criticises the notion that existing mechanisms of accountability can be taken – even when they seem to be working well enough – as a surrogate for democracy. She stresses that the view that accountability and democracy are identical involves a fair amount of concept-stretching. Rather than rethinking the meaning of accountability and democracy in the context of international politics, she argues, we should acknowledge that what is needed for true democratic accountability in the Union is a mixture of electoral and direct-democratic elements.

In Chapter 4, ‘Putting limits on accountability avoidance’, Sverker Gustavsson asks whether light can be shed on the basic problem if we approach

the issue from the other end: i.e. if we explore different strategies for *avoiding* rather than promoting accountability. The question put in his chapter is: what are the limits of accountability avoidance? We are impelled to put a limit on the evasion of responsibility, he argues, by the need to maintain a role for legitimate opposition. For not even the most ardent believers in consensus and expert rule are completely insensitive to the risk of a constitutional breakdown. In societies with universal suffrage and political freedom, it is very risky to allow opposition to wane, or to let it take the form of principled and fundamental negativism.

### ***Delegated power and accountability***

According to the second argument, the accountability deficit is a matter of limited concern, because the member states have the power to retrieve all delegated competencies. This argument rests on the premise that authority has only been delegated – not alienated – to the Union. It is national politicians who have the final say over what competencies are to be delegated to the EU, or retrieved from it – and these decision-makers are indeed subject to strong accountability mechanisms in the member states. Since member states can retrieve delegated competencies by reforming the treaties, it is no more difficult to justify delegation to the EU than to justify delegation to domestic regulatory agencies (Kahler 2004: 135; Moravscik 2004: 356).

In Chapter 5, ‘Irretrievable powers and democratic accountability’, Hans Agné examines the widely held view that democratic states are able to retrieve powers they have delegated to international organisations like the EU. This capacity is cited in justification of the limited nature of present opportunities to hold international decision-makers accountable. Agné challenges this argument, by showing that the authority exercised by organisations like the EU is virtually impossible to restore to member states. He then explores the implications of the irrevocability of international powers for the meaning and normative standing of accountability. He argues that the trend whereby more and more competencies are delegated to the European level has resulted in a weaker kind of accountability. Rather than trying to obfuscate this reality by conflating what are fundamentally different concepts of delegation, scholars should help to raise awareness of what is at stake here: namely, how our ability to hold decision-makers accountable is affected when we delegate powers to international organisations like the EU.

In Chapter 6, ‘EU treaty reform and accountability’, Christer Karlsson asks whether EU citizens have any meaningful influence over the most fundamental decisions taken in the Union: namely, those that lay down the rules of the game. He shows that the opportunities enjoyed by EU citizens to hold treaty reformers accountable are in fact limited. Moreover, the convention method introduced by the Laeken European Council improves the situation only marginally. The fundamental problem is that neither national nor EP elections are contests over issues relating to the future design of European



integration; nor are voters ever presented with alternative views on the issues decided at Intergovernmental Conferences (IGCs). In practice, therefore, EU citizens have no effective means of sanctioning those responsible for deciding on new treaties.

### ***Hold the legislature accountable***

According to proponents of the third argument, the EU has developed an institutional structure that furnishes EU citizens with two effective mechanisms for holding those responsible for legislative decision-making in the Union to account: namely, ‘direct accountability via the EP and indirect accountability via elected national officials’ (Moravcsik 2002: 611).

As we saw above, however, the strong mechanism for accountability via directly elected MEPs is problematic in practice, due to the fact that EP elections are not fought on European issues. Extensive research has been devoted in recent years to the role of the EP in EU legislation, and to the ability of EU citizens to hold MEPs accountable through elections to that body (e.g. Hix and Marsh 2007). We prefer, therefore, to focus our attentions in this study on two areas relating to legislative accountability that have been researched far less.

First, in Chapter 7, ‘Delegation to the permanent representation and mechanisms of accountability’, Thomas Larue analyses and compares the delegation and accountability designs established by national governments in Sweden and France vis-à-vis their respective permanent representations in Brussels. This link is crucial for understanding and evaluating the opportunities open to national citizens to hold the Council of Ministers indirectly accountable for EU legislation. Larue argues that national bureaucrats stationed in Brussels are indeed cornerstones of our democracies, yet there are no effective mechanisms at present for holding them accountable. Back-peddalling along the chain of delegation is extremely costly, if not downright impossible – because revoking a national standpoint entails a severe loss of credibility. Thus we have a situation where accountability is a *de jure* possibility, but a *de facto* chimera.

In Chapter 8, ‘European intelligence cooperation and accountability’, Thorsten Wetzling seeks to shed light on accountability in relation to intelligence activities, an area increasingly characterised by European cooperation. Intelligence still figures as one of the least transparent fields; it therefore serves as a critical case for accountability in the EU. Wetzling asks what the effect is on accountability when intelligence moves to the European level. He shows that the accountability mechanisms established for intelligence under the EU umbrella suffer from major structural flaws. The European Parliament lacks an independent oversight body, and the Council has no obligation to inform the EP on intelligence matters. Wetzling therefore concludes that structures for intelligence accountability are virtually absent at the European level.

### ***Hold the executive accountable***

A defining characteristic of the EU is the delegation of powerful executive competencies to the European Commission, the European Central Bank (ECB), and independent agencies. According to the fourth argument, the arrangements that obtain at present are – even in the absence of strong mechanisms for accountability – generally acceptable. The institutions that exercise executive powers in the EU have been established through democratic procedures; their decision-making methods are reasonably transparent; they are subject to oversight by the European Parliament and the member states; and the authority delegated to them can be revoked by amending the treaties (Majone 1996b, 1998; Issing 1999).

In Chapter 9, ‘Executive power and accountability in the European Union’, Jonas Tallberg examines these claims. He asks what powers have been delegated and why, and to what extent the resulting pattern of delegation and control presents a problem for accountability. He concludes that executive power in the EU is subject to a variegated pattern of control and accountability. While the Commission and the European regulatory agencies operate within relatively tight constraints, the ECB enjoys far-reaching discretion in the exercise of its powers. The current state of affairs, Tallberg points out, is one which proponents of strong accountability mechanisms find most unsatisfactory. The EP’s oversight of the Commission, the transparency policy of the ECB, the statutes governing the European agencies, and the general threat of treaty revision all serve to create an illusion of accountability; whereas, in practice, these institutions only can be held accountable for their actions and decisions with great difficulty, if at all.

In Chapter 10, ‘The European Central Bank – independent and accountable?’, Daniel Naurin puts his full focus on the ECB. He wonders whether it can reconcile the independence it requires to act credibly with the accountability it needs to be legitimate. He examines the claim that independence and accountability are ‘two sides of the same coin’, as well as the argument that the ECB is indeed subject to a sufficient level of democratic accountability. Naurin finds that the latter claim is founded on the unsustainable assumption that transparency – and in particular the ECB’s version of it – is a sufficient condition for accountability. However, holding press conferences can never be an adequate substitute for ensuring that the people are able to sanction decision-makers.

### ***Accountability through civil society***

The fifth argument directs our interest towards civil society and organised interests, which are increasingly regarded as alternative channels for citizen participation and accountability at the EU level (Greenwood 2007; Steffek *et al.* 2008). Letting civil society and organised interests take an active part in policy-making is considered by both academic scholars and practitioners to

offer a promising complement to representative democracy. According to this argument, the involvement of organised civil society can increase transparency in the EU and put policy-making under public scrutiny and control, thus facilitating accountability.

In Chapter 11, 'Civil society participation and accountability', Thomas Persson notes that participatory and deliberative arrangements are increasingly seen as having the potential to improve accountability in the EU. He sets out to assess this potential on the basis of empirical findings from a policy-making process in which new measures for societal involvement have been tested: the overhaul of European chemicals policy. The results show that this process was indeed, at least to some extent, more transparent, inclusive, and responsive than EU-level decision-making in general. And transparency, inclusiveness, and responsiveness are all prerequisites for accountability. Accountability itself, however, must be furnished primarily by the traditional representative bodies of the Union. While weak mechanisms of accountability were improved in this case, stronger mechanisms were not changed in any way. Persson therefore concludes that, despite great expectations that participatory and deliberative measures would improve EU accountability, the evidence from the chemicals-policy overhaul gives reason for caution.

In Chapter 12, 'Improving accountability in the European Union: the potential role of NGOs', Louisa Parks considers the role that non-governmental organisations can play in securing effective accountability in the Union. Her point of departure is that NGOs can contribute to weak forms of accountability, by monitoring the behaviour of EU institutions and calling attention to any wrongdoing. However, these forms of accountability presume that the quality of information-provision among the involved parties is high. Evidence from interviews with representatives of NGOs involved in four EU-level campaigns reveals that, in the eyes of these actors, the main problems have to do with transparency and access in the case of the Commission, with secretiveness in the case of the Council, and with lack of power in the case of an otherwise exemplary European Parliament. Parks accordingly concludes that, if we wish to see NGOs make their contribution to solving the EU's accountability problem, we will need to introduce greater transparency and openness – particularly in the Council and the Commission.

In Chapter 13, finally, the editors make a plea for 'Taking accountability seriously', stressing the importance of 'telling it like it is', acknowledging that the current institutional set-up in the Union merely portrays an illusion of accountability. Breaking up this illusion will allow us to see the more deep-seated underlying problem, namely the absence of opposition in the EU. Only by restoring opposition can we hope to establish real opportunities for EU citizens to hold their representatives to account.