Assessing Social Accountability in the EU Multi-level Governance System. The Case of EU Energy Policy-Making¹

(Preliminary draft version, please do not quote or share)


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Abstract

The transfer of power to the supranational institutional system of the EU has posed numerous challenges to national administrations. The collaboration between government, public authorities and non-state actors at domestic level in function of EU law-making deserves more attention, since significant differences between member states remain due to the characteristics of the national political and administrative opportunity structures.

Following the European Commission’s pro-active approach in liberalizing the EU internal energy market - a field traditionally under the domain of Member States and their national energy champions, this paper aims to examine the role of non-state actors at national and EU-level in the policy coordination of EU energy regulation from a multi-level governance perspective. By assessing the relationship between non-state actors and executive bodies at national and EU-level, the present study will focus on the social type of accountability as a vital component of democratic governance.

The paper develops one case-study: the third liberalisation package on energy adopted in 2009 that introduced new unbundling provisions for vertically integrated companies with the aim of reinforcing competition on the energy market and ensuring non-discriminatory access to the grid; and further set up new regulatory framework for enhanced cross-border cooperation of transmission system operators (TSOs) and national energy regulators.

The study develops analytical framework for measuring social accountability at the main stages of the EU policy-making process (policy-preparation and decision-making) in the energy policy field, followed by a comparative analysis in three Member States (Germany, UK and Italy).

The paper also reflects, in conclusion, on the challenges and opportunities that the EU multi-level system presents for the involvement of different non-state actors in the decision-making process of energy legislation and on its implications for assessing social accountability in a multilayered setting.

¹ This background paper builds on PhD research on political and social accountability in the EU energy policy area.
1 Introduction

The transfer of power to the supranational institutional system of the EU has posed numerous challenges to national administrations. The Europeanisation of national decision-making has impacted both the horizontal and vertical division of power leading to the strengthening of the executive branch and the empowerment of the central state vis-à-vis subnational levels of government (Holzhacker/Albaek 2007). As a reaction to these changes, national authorities have developed domestic co-ordination mechanisms to cope with the increasing interdependence of policy problems requiring coherent approaches and complex solutions (Kassim/Peters/Wright 2000; Sepos 2005; Dimitrova/Toshkov 2007).

The transfer of competencies to the executive branch has also raised questions about how the exercise of power by unelected officials is being controlled. The lack of appropriate control mechanisms at national and European level has provoked concerns about accountability deficits of European decision-making (Bovens 2007). At the same time, traditional accountability concepts and mechanisms, which are applicable in a national context, do not match the evolving multi-level character of EU politics.

The technocratic nature of EU decision-making has also raised concerns about the role of non-elected officials sitting in the EU committee system and preparing major Commission and Council decisions (Fouilleux/de Maillard/Smith 2005; Blom-Hansen 2008). Vibert (2007) goes further in his analysis to view the unelected bodies as a new branch of government with their own sources of legitimacy and accountability through a new separation of powers.

The coordination of EU-policy has turned into a challenging exercise for national bodies confronted with the high institutional and procedural density of the EU resulting in
fragmentation and sectoralization, the high committee volume, the limited power of individual governments over agenda setting and policy initiation at supranational level, the weak channels for national coordination, the reliance on bargaining, coalition-building and networking, the Eastern enlargement, the constant evolving agenda and the administrative mismatch between the national and the EU-level (Kassim/Peters/Wright 2000:6-10).

Although recent studies come to the results that coordination at domestic level is more successful than at the European level (Kassim/Menon/Peters/Wright 2001:338-339), the question of how both levels interact with each other for the purposes of European policy-making is not sufficiently investigated.

While the EU institutions operated under a system of strongly pronounced professional and legal accountability at the first stages of EU-integration (Wille 2010), the development of effective parliamentary and public scrutiny mechanisms has been a lengthy and fragmented process influenced very often by the mismatch between the democratic processes at national level and EU-level of coordination. This mismatch has created a gap between the EU technocratic elite and citizens undermining the very democratic foundations of the European project. As a result, scholars have underlined the importance of national parliaments as regulators of society (Duina/Oliver 2005) and the contributions that civil society associations can make to democratic accountability and legitimacy (Scholte 2004; Steffek/Nanz 2007).

The present study will focus on the social type of accountability as a vital component of democratic governance and key generators of legitimacy at EU-level. While the legal, administrative and professional accountability mechanisms had been embedded in the early institutional system of the European Community, the social ones have remained underdeveloped at EU-level (Wille 2010; Bovens/ Curtin/ t’Hart 2010). The accountability
deficits observed at the EU level have illustrated the need for stronger parliamentarian and societal chains that link citizens with national and EU decision-makers.

The study develops one case-study: the third liberalisation package on energy that introduced new unbundling provisions for vertically integrated companies with the aim of reinforcing competition on the energy market and ensuring non-discriminatory access to the grid; and further set up new regulatory framework for enhanced cross-border cooperation of transmission system operators (TSOs) and national energy regulators. The case study is illustrative of the ideological frictions between the pro-liberal approach of the Commission and a number of Member States such as UK, Netherlands and Denmark, which have been pioneers in energy market liberalisation, and the resistance of other Member States who favour more protectionist policies in this area. Furthermore, the EU internal energy market policy portrays the battle between the supranational regulatory approach of the Commission and the Parliament and the unwillingness of national parliaments and some Member State governments to cede sensitive national competencies in the energy sector to the EU-level.

The paper proceeds as follows. After developing an analytical framework for measuring social accountability based on accountability theories in the EU context, the study will apply the normative scheme by analysing stakeholder participation in the policy preparation and decision-making process of the package. Finally, it arrives at some conclusions on the challenges and opportunities that the EU multi-level system presents for the involvement of different non-state actors in the decision-making process of energy legislation and on its implications for assessing social accountability in a multilayered setting.

2 Towards an analytical framework for assessing social accountability

There is no widespread definition of accountability in political science and public administration, as the concept is highly contested and ambiguously applied. Bovens, Curtin
and ‘t Hart (2010a: 32-34) attribute this ambiguity to several factors. The first one is related to the Anglo-Saxon origin of the concept (Dubnick 2007), which has no real equivalents in continental Europe. The second factor has to do with the ever-expanding concept of accountability (Mulgan 2000), which stands for “any mechanism that makes powerful institutions responsive to their particular publics” (Mulgan 2003:8).

While some authors use the concept interchangeable with responsibility and responsiveness, other scholars associate it purely with control and correction (for an overview see Mulgan 2000). In his later work, Mulgan refers to accountability as “the obligation to be called ‘to account’, as a method of keeping the public informed and the powerful in check” (Mulgan 2003:1).

For a large group of scholars accountability refers to “institutionalised practices of account giving” (Bovens 2005:184) or more particularly to a social relationship in which an actor is obliged to explain and justify his or her conduct to a significant other (Romzek/Dubnick 1998:6; McCandless 2001:22; Politt 2003:89; Bovens 2005). A similar notion of accountability is shared by March and Olsen (1995:50) according to which public officials have to account for their action by reporting, explaining and justifying any exercise of authorities and face sanctions, if necessary. The practices of reporting, explanation and justification constitute important elements of the accountability concept. The sanction comes as an additional stage in the accountability paradigm. However, there is no consensus among scholars whether it should be treated as an essential part of the whole scheme.

Bovens goes one step further in his definition of accountability to refer to “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” (Bovens 2008: 161). Building on the existing notions of
accountability as a set of social relations, he develops one of the most systematic conceptual frameworks for analyzing and assessing accountability in a national and EU context.

**Figure 1. Bovens’ accountability definition**

**Accountability**

Based on the nature of the forum, Bovens distinguishes five different types of accountability: political, legal, administrative, professional and social.

The *social accountability* focuses on the role of NGOs, interest groups and customers as relevant stakeholders not only in the policy-making process but also in rendering account (Bovens 2008: 174). Triggered by the debate on corporate governance and social responsibility, this accountability type mirrors the urge for more direct and explicit forms of accountability between public institutions and citizens or civil society (McCandless 2001). This has led to the establishment of public reporting system and public panels, which are accessible through Internet. Civil society actors are believed to play a decisive role as accountability actors by carrying out checks and balances and scrutinizing the work and performance of public institutions (Parks 2009:135; Kohler-Koch 2010:1120).

Kohler-Koch (2010) develops a typology of accountability relations to examine the role of civil society organisations in contributing to EU accountability. She distinguishes their roles as actors and facilitators in accountability relations. In their quality as an actor they are the forum that holds the public institution accountable. Papadopoulos argues that
stakeholders are authorised to act as accountholders, “if they manage to be considered as bearers of strong, and thus legitimate, preference on policy issues” (Papadopoulus 2010: 1043).

However, Bovens question if these new social accountability forms are fully accountability mechanisms due to the lack of judgment and sanctioning (Bovens 2008). In this relation, Kohler-Koch (2008:5) highlights the soft character of such mechanisms.

Based on existing theories on accountability and the application of the concept to the EU multi-level governance, the following section develops an analytical framework for assessing social accountability in EU policy-making. The framework builds to a great extent on Boven’s definition of accountability and elaborates it for assessing accountability relations in a specific policy field.

It is based on four major indicators that constitute the different elements of the accountability relation between the forum and the actor. Each of them is evaluated separately for the two major policy-making stages – policy preparation and decision-making.

2.1 Institutional provisions

In defining and evaluating accountability a large number of scholars refer to “institutionalised practices of account giving” (Bovens 2005). Accountability has been also described as a feature of the institutional checks and balances and democratic control of the government (Mulgan 2000: 556). With regard to social accountability, the study will explore if institutional arrangements for public participation and public scrutiny at national level have been installed (such as stakeholder forums, public consultation, public reporting, etc) in order to evaluate first the institutional basis for social scrutiny.
2.2 Transparency

Freedom of information and open government are considered as important prerequisites for accountability in EU governance system, as they provide the forums with the necessary information (Bovens/’t Hart/Curtin 2010a: 38). Thus, reliable and sufficient information on the content of a policy area and the instruments of implementation is seen as a basic condition for effective accountability (Kohler-Koch 2010).

Transparency is seen as a major prerequisite for social accountability. Accountability initiatives are seen as more effective, when they are more transparent and open to civic involvement (Malena/Forster/Singh 2004:4).

2.3 Forum involvement

As previously illustrated, Bovens’ definition of accountability entails the involvement of an active forum, which questions the actor’s conduct and the adequacy of the information provided. A further element of its role is the possibility to pass a judgment or impose a sanction, if necessary.

In social accountability relations NGOs, interest groups and clients are the main forums scrutinizing the policy-making process and rendering account (Bovens 2008:174). This study will focus on organised civil society or the so-called civil society organisations (CSOs). The term civil society organisations is based here on the broader view of this concept (Kohler-Koch 2010: 1120) including not only NGOs but also trade unions, professionals and associations of business and industry. Therefore, the concept of civil society organisations will be used interchangeably with ‘stakeholders’ as a synonym. While trade unions, professionals and associations of business and industry will fall under the
category particularistic forms of civil society, NGOs will be treated as ‘public interest
groups’ as representing citizens in their general interests.²

Civil society organisations are attributed a major role in EU social accountability due
to their role in urging EU institutions to explain and justify their conduct, questioning the
appropriateness of policy proposals, passing judgments, and/or if possible, imposing
sanctions (ibid, 1124). Kohler-Koch (2010: 1125) attributes their role in enhancing
accountability to their capacity to bring out what is at stake and face policy-makers with
alternative options. However, she notes that the Commission prefers to interact with umbrella
organisations or CSO networks due to their capacity to bring specialized knowledge and
project it into a wider context, taking into account divergent views of other member
organisations. This brings once again the question of resources.

“Privileged groups” of stakeholders that are concentrated in space, small in number
and equipped with material resources and expertise are expected to be better represented than
those who are numerous, dispersed and endowed with less assets (Schmitter 2012). These
concerns are also addressed in Bouwen’s theory on “the logic of access” (Bouwen 2006:
277:296).

In order to address these concerns, the study will look at civil society participation in
EU policy-making also in a domestic context. Due to potential resource and information
asymmetry between different interest groups and its impact on accountability, a further
criterion in the evaluation is the balanced representation of all relevant stakeholders or
citizens in the debate. Apart from the different stakeholders, the Committee of the Regions
and the European Economic and Social Committee could be seen as two additional forums
involved in the co-decision procedure at EU-level through their consultative functions.

² Kohler-Koch (2010) uses the term „public interest groups“ to differentiate NGOs that represent general
citizens’ interests or defend basic rights and values from other forms of organised interest groups.
2.4 Actor’s responsiveness

The last indicator refers to the conduct of the actor and its contribution to accountability by providing replies to the raised concerns and questions, explaining and justifying its position. Therefore, this indicator refers altogether to the responsiveness of the executive actor who could be either a national public institution or a EU executive institution like the Commission.

McCandless (2001) argues that the citizens’ lack of control that we are witnessing today is due to the lack of public answering by public authorities and lack of answering requirements incorporated in legislative provisions.

The study first evaluates the information, replies, explanation and justification by the actor. Finally, it will examine if input, concerns and recommendations of the relevant stakeholders have been taken into account in the policy output. In this case the actors remain the same - the Member State government at national level and the European Commission and/or European Parliament at EU-level.

At domestic level the study will looks at the interactions between civil society organisations and government officials for the purpose of EU policy-making. Parallel to the mechanisms of providing information, explanation and justification, the thesis analyses whether the input of the various stakeholders is reflected in the government position and whether their demands and concerns have been taken into consideration by the government officials.

The different indicators and criteria for measuring social accountability are summarized in the following table
**Table 1. Criteria for assessing social accountability**

<table>
<thead>
<tr>
<th>Institutional provisions</th>
<th>Transparency</th>
<th>Involvement of the forum</th>
<th>Actor’s responsiveness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional arrangements for public participation and public scrutiny at national level</td>
<td>- Openness of all EU-relevant and government documents to the general public</td>
<td>- Involvement of relevant stakeholders (NGOs, interest groups or citizens) in through consultations, stakeholders fora or inquiries at EU/national level.</td>
<td>- Providing information (comprehensible and timely)</td>
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<td></td>
<td>- Public reports and visibility of the policy-making process</td>
<td>- Balanced representation of all relevant stakeholders or citizens in the debate</td>
<td>- Reply, explanation and justification by the actor</td>
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<tr>
<td></td>
<td></td>
<td>- Questions, comments and critical concerns raised by stakeholders</td>
<td>- Policy output (consideration of the different stakeholder’s concerns and demands in the initial and final outcome)</td>
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<td></td>
<td></td>
<td>- Judgment is posed, if necessary</td>
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### 3 Methodology

This research study is part of a wider research project examining political and social accountability in the field of EU internal energy market policy in the framework of the GOA (*Geconcerteerde Onderzoeksacties*) project “Politics beyond the state. Representation, coordination and accountability in multi-layered settings”. All the raw data and detailed info are to be found there.

Regarding data collection, a large corpus of the empirical data is composed of EU documents, national reports, briefings, position papers, official statements, agendas, minutes and conclusions from meetings of different stakeholder forums. The study applies documents analysis and expert interviews to gain the necessary data for the empirical investigation. In particular, I have interviewed EU and national policy-makers, parliamentary correspondents, different stakeholders (national and EU-based energy companies and associations, environmental non-governmental organisations (NGOs) as well as consumer organisations) and energy attachés from the permanent representations of the three selected Member States. For this purpose, I have developed semi-structured questionnaires, incorporating questions...
that are related to the different accountability criteria from the analytical framework and the different policy stages.

4 Stakeholder participation at the policy preparation stage – major findings

Despite their primarily soft und unbinding character, institutional provisions for the exercise of social scrutiny have been gradually evolving at the EU-level. The new internal rules and external procedures that have been adopted over the past decade provided a wide range of *ex ante* control mechanisms and *ex post* incentives, which strengthened both inward administrative accountability (within the Commission) and external scrutiny capacity of stakeholders to monitor the pre-legislative work of the Commission (Wille 2010). Social accountability arrangements have been strengthened in particular through the European Transparency Initiative and new procedures for consultation and public participation (ibid).

Although the Commission has regularly involved stakeholders in the EU policy-making process through public consultations, stakeholder fora, specialized ad-hoc committees, expert groups as well as informal meetings, it was not before 1990s that the Commission started to interact with interest groups in a more consolidated and structured way (Tanasescu 2009: 79).

Despite their legal nature, the existing provisions are seen as vague and non-binding to safeguard the participation of NGOs, interest groups or other social partners in the policy preparation of legislative proposals (Nickel 2005/Tanasescu 2009). Therefore, the last element of social accountability - sanction or facing the consequences from an action could not be met under the current legal framework, since no legal action could be brought to the Commission for failing to fulfill its obligation to consult.
In the framework of the Better Regulation strategy, the Commission presented a major package of measures aiming at improving and enhancing the European regulatory framework and ensuring the EU’s “Regulatory Fitness” (European Commission 2012). Its main goal is to reduce the overall regulatory burden at EU and national level and strengthen its regulatory tools, in particular through continuous improvement of impact assessments, more comprehensive, transparent and critical evaluations, better anchored in the policy process, developing strategies for better involvement of stakeholders in consultations and providing more support to implementation.

Stakeholder interaction with European institution and its involvement in the EU energy policy-making process has played a significant role in internal energy market development, mainly due to the ‘consensus procedure’ applied in the 1990s for the development of the first gas and electricity directives (Eikeland 2008:20). Due to complex bargaining in the Council and national resistance from Member States during the deliberation process of the first liberalisation directives, the Commission changed its strategy to a more bottom-up approach, which consisted of extensive negotiations with national representatives and experts in working groups (Eikeland 2004:4-6). During the complex negotiations the European Parliament (EP) – mainly through the mediation of its Energy Committee – took an active role in finding a compromise between the Commission and the Council (Andersen 2000). As a result, the Commission set up stakeholder forums – the Electricity Regulatory Forum of Florence and the Gas Regulatory Forum of Madrid, which included Member State governments, the European Commission, national regulatory authorities, transmission system operators (TSOs), electricity and gas traders, consumers, network users and power exchanges.

The policy preparation of the third liberalisation package was marked by extensive public consultations with stakeholders and national institutions. Stakeholder consultation
started very early with the Green Paper on Energy in 2006, which laid the milestones of a comprehensive energy policy at EU level (European Commission 2006). The main goal of this broad consultation was to gather input from the different stakeholders and Member States and use it into the drafting process of the legislative package. In terms of national representation, it should be noted that many countries were underrepresented, especially the new Member States. Therefore, the inclusion of citizens from the perspective of national representation was not satisfactory.

Taking a closer look at the 164 additional written contributions, one can distinguish the predominance of the industry/private sector in the consultation, which delivered altogether 91 written comments on the Green Paper. There is also a high presence of national institutions in the written consultation process. On the other hand, non-governmental organisations are somehow less present when it comes to delivering written statements to the consultation.

The low participation of citizens in the consultation could also be attributed to the complex and technical nature of EU energy legislation requiring in many cases expert knowledge to be able to express an informed opinion on some of the specific issues. The lack of information on energy matters, often stated in the Eurobarometer studies, suggests that this could be a further reason for the low participation levels of citizens.

Yet, another reason for the low participation of non-governmental organizations could be the perception of low credibility of the consultation procedures by civil society organisations that may prefer other channels or forums for participation.

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3 Apart from citizens and civil society organisations, replies came from 18 member states, Romania (which at that time was not officially an EU member state), national institutions, but also the European Parliament, the European Economic and Social Committee and the Committee of the Regions (European Commission 2006a).

4 For more information on stakeholder involvement in the public consultation on the Green Paper on Energy launched in 2006 as well as on the positions, concerns and demands expressed by the different civil society groups see Primova 2011.
Noteworthy, no environmental umbrella organisation except for some national ones provided a written contribution to the debate on a European Energy Policy, although they participated in the online questionnaire, which is a surprising finding since non-business CSOs usually seek to increase their visibility by engaging themselves actively in debates (Friedrich 2006:27). Thus, although the Commission adopted an inclusive approach to this consultation, not all civil society actors, in particular environmental non-governmental organisations (ENGOs), utilized this participation opportunity to promote certain interests and goals. Some of them preferred other informal ways to influence the agenda and the policy-making – for example through joint statements, official letters or press releases. One of the reasons for this may be due to the resource and information asymmetry between different stakeholders or civil society groups.

In addition to the broader public consultation, the two targeted consultations conducted by ECORYS and Moffatt Associates, the in-depth country reviews of the national energy markets and the sector inquiry reinforced the findings of the broad public consultation (European Commission 2007). Further, the stakeholder forums ensured continuous coordination between the Commission and the stakeholders, thus, keeping the latter informed during the policy preparation process.

Parallel to the Commission’s external consultations, stakeholders took part in the policy preparation of the package also through a public hearing on the EU’s Energy Green Paper convened by the European Parliament. The input by stakeholders was taken on board in the EP’s report on the Green Paper.

Throughout the legislative process of the energy market liberalization the Commission relied on its interaction with interest groups for pushing the development of the internal energy market legislation. However, not all civil society groups had equal influence on energy legislation and were given equal weight (Primova 2011).
Despite the controversial nature of the unbundling issue and supranational regulatory power, which became clear during the consultation, the Commission services stated their clear support for the full ownership unbundling of vertically integrated companies and the transfer of regulatory competencies at EU level.

During the consultation period stakeholders acted as main forums questioning the Commission’s proposals and trying to influence policy outputs. Moreover, some national governments were also active during this period by submitting their written comments to the consultations or by expressing their reservations, resistance or support in Council meetings.

Further, the Commission used benchmarking reports, in-depth country reviews, the sector inquiry initiated by DG Competition and legal investigations against some energy monopolies to provide justifications and arguments for many of its policy proposals in the third legislative package on energy.

The policy preparation of the legislative package demonstrates that social accountability mechanisms were set in place at this stage. Both transparency and actor’s responsiveness were high during this period. On the other hand, forum involvement in the social accountability relation was negatively affected by the underrepresentation of some stakeholders in the debate, in particular civil society actors, the resource and power asymmetry between different stakeholder groups and the overload of the EU legislative agenda with a lot of legislative acts in the climate and energy sector, which did not allow some NGOs to engage efficiently in the preparation of the new electricity and gas directives.

Despite these structural difficulties and impediments, one can observe a higher involvement of consumer bodies in energy legislation, both through new institutional channels and informal means. On the other hand, the Commission itself also demonstrated more active approach to include a broader group of stakeholders in the dialogue beyond the traditional players, which had previously dominated the energy policy discussions in
Brussels. Although this trend shows improvement in forum involvement in the energy policy sector, it also illustrates the need for more balanced representation and better communication strategies to reach more grassroots organisations and marginalized civil society actors.

5 Stakeholder involvement at the decision-making stage – major findings

The social accountability arrangements in the co-decision procedure have remained weak to ensure effective public scrutiny of the decision-making process. The institutional arrangements provided a weak and limited role of the European Economic and Social Committee and the Committee of the Regions as a forum representing different social and economic stakeholders as well as regional and local authorities that otherwise could have the potential to exercise scrutiny of the Commission’s and Council’s work. The symbolic role of the two consultative committees as well as their weak policy impact can be explained with the absence of accountability arrangements between these bodies and the other three main institutions, as their right to consult and provide expert opinion does not require the Commission, the Parliament or the Council to give feedback to their statements and take into account their opinions. Instead, informal channels for policy influence are preferred, which in its turn strengthens the agenda-setting and bargaining power of influential lobbies that have a better access to the Commission, Parliament and the national governments and are better equipped with financial, human and informational resources to push their interests and advance their positions in the negotiation process. Further, lobbying through national channels has played an important role in the negotiating positions of Member States and the shaping of the final outcome. In addition, coalition building was observed at stakeholder level leading to alliances between the Commission and energy consumers as well as environmental NGOs on the one hand and between the energy producers and national governments on the other hand, which are going to be examined in a separate chapter. The incentives to use more
informal channels for policy influence puts limits to the social accountability due to the lack of transparency and resource asymmetry between the stakeholders.

Social accountability was very low as a result of insufficient transparency requirements, limited openness of the Council proceedings, low visibility of the decision-making process and the strong lobbying power of some stakeholders (the energy incumbents and the industry consumers) that dominated the policy-making at this stage.

Noteworthy, all four dimensions of social accountability are evaluated as low at the decision-making stage, which reflects rather a general pattern caused by the structural difficulties for stakeholders to monitor the co-decision procedure and participate effectively in the decision-making process. The unclear composition of the negotiating team, the restriction of trialogues and their varying membership, which Obholzer and Reh (2012) consider problematic, the small circle of policy-makers taking the major decisions put serious limits on both transparency and responsiveness, which is manifested also in the present case study.

Furthermore, the increasing salience of informal bargaining and lobbying could have potential negative repercussions for both social and political accountability at EU level, in particular in terms of transparency and forum involvement. As the empirical analysis of Marshall (2012) shows, indirect lobbying through the EP’s committee secretariat creates possibilities for organised interests to bias the rapporteur’s source of advice and information, which the latter deem independent. This tendency, in its turn, might affect the capacity of the rapporteurs to exercise efficient and independent scrutiny of the EU legislative proposals. Since rapporteurs are seen as the main engines behind the EP involvement (Benedetto 2005; Judge/Earnshaw 2011; Farrell/ Heritier 2004), in particular in first-reading agreements or package deals (Kardasheva 2008), where the ordinary Members of the European Parliament (MEPs) have limited influence in the decision-making process, the use of a biased source of
policy advice could weaken the capacity of the forum at EU level (the EP) to hold the actor (the Commission) accountable. As Marshall (2012) correctly notes, future regulations of lobbying within the EP should address the consequences and effects of indirect lobbying.

Enhancing social accountability arrangements and transparency to enable more civil society actors to monitor and participate in the decision-making process and to ultimately achieve more balanced representation of interests could serve as efficient checks and balances to countervail the negative effects of indirect lobbying.

The study endorses the claim of some scholars (Dahl 1994; Schmitter 2012; Obholzer/Reh 2012) about the lack of adequate trade-off between institutional efficiency and democratic legitimacy in supranational decision-making, which has not been sufficiently addressed in the latest institutional provisions.

6 Assessing social accountability in a cross-country perspective – major findings

The multi-level character of EU politics has created different routes of influence through which actors participate in the policy-making process. While the national route involves using national contacts and national governments to influence EU decision-making process, the “Brussels route” is linked to influence by a representation in Brussels or directly through contacts in European institutions (Greenwood 2007: 25). Lindberg’s (1963) pattern illustrate that those stakeholders in favour of European integration would prefer the collective channels to Brussels, while those interests with a more defensive stand would take the national route. The empirical findings on stakeholder participation in the policy-making of the third liberalisation package support this thesis.
6.1 Institutional provisions

The results from the evaluation of social accountability at domestic level show that institutional provisions for public participation and public scrutiny of EU legislative initiatives at domestic level have been underdeveloped so far. The use of national public consultations and deliberative fora to scrutinize Commission’s proposals and other legislative acts have not been sufficiently developed as an administrative model in most Member States.

In all three cases, national institutional provisions do not entail an obligation for the government to consult, while at the administrative level some authorities have already incorporated this model of consultation with third parties in their regulatory practice, which allows more participative decision-making procedures. Public consultations on EU draft measures are rarely launched by the national governments. Instead, stakeholder interaction with the relevant ministry takes place predominantly at informal level and therefore evades visibility and democratic control.

The UK case study provides an exception to this pattern. Stakeholder participation on EU policy matters in the UK has been partly institutionalized in the last years. Formal public consultations are considered to be an effective tool for scrutinizing government’s preliminary policy analysis and the implementation of certain policies. However, there is no legal commitment for the government to conduct formal consultations, since there could be more effective ways to seek input from stakeholders early in the policy preparation process or when the scope of the policy measures and the interest is very narrow and specialized.

In the German and Italian case studies, stakeholder participation takes place mostly at informal level or through expert oral hearings in the national parliamentary chambers, which are limited to a certain number of representatives and experts. The self-departmentalization principle of the German administration leads in many cases to fragmentation of stakeholder consultation and sorting out of policy differences on a very technical level. The fragmented
stakeholder participation could be seen as a result of the weak channels of inclusion and participation of citizens, civil society and certain interest groups in the German decision-making process of EU affairs (Beichelt 2007). The technocratic coordination of EU legislative proposals creates often difficulties for the effective communication and public deliberation of EU policies, as it leads to less politicization of EU-related issues (Wulf-Mathies/Bernd 2005; Tings 2006; Beichelt 2007).

In the Italian case study, it is usually the major public authorities that apply the model of consultation with interested parties. Before the adoption and implementation of certain regulative or administrative measures covering EU legal provisions in the energy sector, the Italian Authority for Electricity and Gas usually consults informally the interested parties.

In all three Member States, stakeholder inquiries in the parliament, whether formal or informal, constitute another important channel for civil society participation and scrutiny, reinforcing the link between social and political link and reiterating the parliaments’ function of connecting to citizens.

### 6.2 Transparency

The level of transparency in the accountability relation between the government and stakeholders varies not only across policy stages but also across the different national case studies. The UK case study is an example of the highest transparency at all policy-making stages, mainly due to the explicit transparency requirements and government obligation to provide an explanatory memorandum on each legislative proposal, which is publicly available.

The open and transparent consultation with civil society and interest groups through inquiries initiated by the House of Lords and through the increased use of the formal
consultation procedure by the relevant government departments for some policy stages have contributed to the high level of transparency in the UK case study.

The government-stakeholders relations in the other two case studies feature lower transparency at the policy preparation stage compared to the government-national parliament relations, mainly as a result of the informal character of consultations and the lack of publicity on the policy relevant issues from the third liberalisation package on energy at this stage. The level of transparency remains constant at the decision-making stage.

According to social accountability theories the institutionalization of public monitoring or public participation increases the effectiveness of the scrutiny process (Malena/Forster/Singh 2004; Ahmad 2008). In the German and Italian case studies the increased use of informal scrutiny procedures and the informal character of policy coordination in general prevent the visibility of the policy-making process, which is problematic for the exercise of social scrutiny. The coordination of the legislative process in these two cases lacked openness, which had an impact also on the incentives of certain civil society actors and interest groups to get involved as well as on the government responsiveness. Thus, the results from the national case studies suggest that the indicator ‘transparency’ could influence also the other two indicators ‘forum involvement’ and ‘government responsiveness’.

6.3 Forum involvement

In all three national case studies the forum involvement in the policy coordination process took place in an informal way and through intermediary actors such as national regulatory authorities or through inquiries in the national parliaments. While the government used to be the predominant interlocutor for the stakeholders in EU policy matters in the past, interest groups and civil society representatives are starting to address in recent years more
often their demands, opinions and concerns also to the national parliament as a result of its growing role in EU law-making. In many cases these inquiries are seen as a substitute to the formal scrutiny procedures applied by the parliament. Therefore, their importance for channeling the voice and concerns of stakeholders should not be underestimated. In this sense, they provide a further arena for raising critical concerns or questioning government’s position and mediate the dialogue between the interested parties and the government or the respective ministries. In the Italian case, public authorities and both parliamentary chambers acted as important mediators in the social accountability relation between governmental actors and stakeholders. The criteria “forum involvement” varies from low to medium across the three main policy stages, which is illustrated by the limited or lacking participation of some stakeholder groups, mainly the environmental civil society actors, in the domestic policy-making of the third energy package.

The empirical results show that most national stakeholders delegate the coordination of EU legislative proposal to their Brussels colleagues, unless an important domestic issue is at stake, and rarely get involved into deliberation fora or public debates in domestic context to discuss the impact of EU legislative provisions.\(^5\) As far as domestic environmental NGOs are concerned, most EU-matters are dealt by their umbrella associations in Brussels due to lack of sufficient staff and resources.

In all three national case studies the domestic debate was dominated by the energy industry and business associations. Consumers, trade unions and environmental NGOs were less present in the UK and Italian case studies but active in the German case study. The relevance of the issue in a domestic context played a very important role for the involvement of different stakeholders.

\(^5\) The observation is based on the data from the expert interviews with national and EU-based interest groups and civil society actors.
In the German case, the monopoly of the four biggest energy companies (RWE, E.ON, Vattenfall and EnBW) and the use of market power to reinforce structures leading to an ecologically harmful and unsustainable production of electricity was the main trigger for the involvement of the environmental organizations in the domestic debate and exercise of social scrutiny. The environmental NGOs in Germany relied mostly on raising awareness through public debates, press statements and different actions to gain visibility and demand social accountability instead of looking for direct interaction with the relevant government departments. The low relevance of the unbundling issue for environmental stakeholders in the UK and Italian cases as a result of the liberalized structure of their national electricity markets accounts for the absence of environmental NGOs in the domestic public debate due to the lack of enough incentives to mobilize resources in order to scrutinize the domestic coordination of these legislative provisions. Furthermore, the indirect link between the unbundling issue and the non-discriminatory access to the grid for independent producers of renewable energy was not fully acknowledged by government officials and environmental civil society actors in these two Member States.

The empirical findings draw attention to the increasing importance of parliamentary inquiries, public and informal hearings as an additional channel for the involvement of stakeholders in a domestic context and bringing important issues to the attention of the parliaments. Since national parliaments are not equipped with the resources and have limited time to scrutinize all legislative proposals, public and informal hearings could be used as a pivotal strategic tool to receive input and specific knowledge from stakeholders and public authorities, which monitor the legislative process of certain provisions. In this way, strengthening social accountability measures could improve also political accountability through higher politicization of issues.
6.4 Government responsiveness

As already outlined in the previous section, the level of government responsiveness in the particular case study is proportional to the level of transparency in the social accountability relations, which suggests the inextricable link between transparency and the degree of government responsiveness. The cases of high or medium transparency feature also high or medium government responsiveness. The degree of forum involvement is also medium in cases with high or medium transparency, which suggests that a high visibility of the domestic policy-making process reinforces also higher forum involvement at national level.

In the German and Italian case studies, the low public visibility of the opinion formation process in the government influenced also the government responsiveness. Government officials rarely provided replies to the expressed concerns by civil society actors and interest groups. It was only in informal deliberation and consultation with the relevant ministries, where an exchange of opinions and arguments took place and government officials could respond to some of the comments and concerns received by the domestic stakeholders. The governments in these two Member States did not organise broader consultations or stakeholder fora to receive feedback from a wider spectrum of interest and societal groups.

In the German case study, the concerns, demands and interests of the German consumers, renewable energy suppliers and environmental organisations with regard to the ownership unbundling issue, which constitute a broad group of stakeholders in the energy sector, were not taken into consideration in the official government position during the negotiations. The economic ministry did not succeed in establishing a proper balance between the divergent views and policy recommendations by stakeholders. However, it provided general explanation and justification for its position through informal deliberations.
In the Italian case study government responsiveness was absent at the policy preparation stage due to the lack of a dialogue between the relevant stakeholders and the government and the missing communication from the government. The government did not manage to provide a space for discussion on essential aspects of the legislative package with the interested parties during this period. One of the reasons for this outcome is that the relevant ministry started the opinion-formation process after the European Commission had published the proposal for the third legislative package on energy. The lack of public visibility during the decision-making process impaired government responsiveness at this policy-making stage. The dialogue with the forum was fragmented and consisted of some informal talks with separate sub-forums. The government provided rarely reply to the questions and concerns raised by the sub-forums.

In terms of policy output, the position of the Italian government reflected to a great extent the general consensus among the involved societal and industry actors. However, the demands articulated by some interested parties such as the renewable energy associations were taken on board only to a limited extent.

7 Concluding remarks

The multi-level system of governance has challenged the use of accountability tools by stakeholders to scrutinize the EU policy-making process. Despite the gradual institutionalisation of provisions for stakeholder participation, informal deliberation and coordination has become more important for shaping policy outcomes in a national context. On the other hand, one observes uneven institutionalisation of scrutiny provisions in the social accountability relations, with institutional provisions for social accountability underdeveloped.
The empirical findings show that the incorporation of institutional provisions in the domestic system is the first condition in the accountability relation. However, their mere availability in the domestic system is not a sufficient guarantee for their proper and effective application. Their effectiveness depends to a great extent on the active forum involvement, including national parliaments and an informed civil society that is represented in a balanced way. Civil society participation at national level, however, could be hindered by the lack of enough resources to monitor the policy-making process at EU level and carry out efficient checks and balances at domestic level.

Social accountability relations feature certain similarities across countries due to the lack of institutional base for stakeholder participation and scrutiny at domestic level, the limited resources of domestic civil society actors, the low visibility of the EU decision-making process and the predominantly informal character of interactions between stakeholders and executive actors. Furthermore, the lack of acknowledgement of certain social and climate policy aspects of the legislation during the intra- and inter-ministerial domestic coordination resonated with the non-involvement of environmental organisations in the Italian and UK case studies and the marginal involvement of trade unions in all three national case studies. Finally, the public debate and stakeholder deliberations in all three case studies are seen to have been largely disconnected from the high-level political arena of governmental coordination. The study also draws attention to the role of intermediary actors in the social accountability relations such as national regulatory authorities and parliamentary chambers in bringing the stakeholders’ concerns in the EU decision-making process.

Social accountability provisions were found to be underdeveloped at both EU and national level. The social accountability relations between the Commission and the stakeholders at supranational level make the only exception, where most indicators are evaluated as high due to the institutionised mechanisms for civil society participation and
scrutiny. Noteworthy, the low institutionalisation of social accountability mechanisms at the decision-making stage is in stark contrast with the embedded provisions for stakeholder involvement at the policy preparation stage at EU-level. This assessment resonates with Schmitter’s claim (2012: 37) that the institutionalisation of many internal checks and balances into the EU multi-level system of governance is not matched by responsiveness to external representatives.

In line with Schmitter’s (2012) observation about the “privileged groups of stakeholders” and Bouwen’s (2006) “logic of access”, the study shows that the energy incumbents that were small in number but better organised and with better access to the national government were better represented in the domestic realm. This had important implications for the forum involvement at national level, in particular with regard to the balanced representation of stakeholders.

It could be detected that the balanced representation of stakeholders at national and EU-level could be hindered by the lack of enough resources to monitor the supranational policy-making process and carry out efficient checks and balances at domestic level. This challenge is particularly pronounced in social accountability relations and needs to be addressed in future measurement scales.

The empirical findings highlight the increasing importance of parliamentary inquiries, public and informal hearings as well as consultations through national regulatory authorities as additional channels for the involvement of stakeholders in a domestic context and bringing important issues to the attention of the parliaments. Since national parliamentary chambers are not equipped with the resources to scrutinize all legislative proposals, public and informal hearings could be used as a pivotal strategic tool to receive input and specific knowledge from various stakeholders and public authorities. However, national parliaments shall aim at encouraging a broader range of civil society actors and interest groups to participate in those
expert hearings in order to give a voice to the less advantaged and marginalized civil society groups.

Given the increasing role of national energy regulators, which powers and competencies have been significantly strengthened with the third energy package, and their influence in the energy regulatory process at EU level (through their participation in comitology proceedings and their representation in the Council of European Energy Regulators (CEER) that supports the work of ACER and cooperates with the Commission on internal energy market matters), the consultation of domestic stakeholders by energy regulatory authorities may bring more civil society’s concerns to the EU arena of policy-making.

Bibliography


