



ISSN: 2036-5438

National parliaments and governmental accountability in the crisis: theory and practice

by

Diane Fromage*

Perspectives on Federalism, Vol. 6, issue 3, 2014





Abstract

This contribution studies the question of governmental accountability in the crisis. It looks at how three Member State's parliaments – French, German and Spanish – have exchanged on European Council meetings and Euro summits organized between 2010 and 2014.

It first analyzes the formal obligations these Governments have in this domain before focusing on the practice; how National parliaments have used their prerogatives and how the established customary rules have compensated for the lack of formal rights in favour of National parliaments.

Finally, some conclusions are drawn on the role of the established practice and its consequences and some potential prospects.

Key-words

Eurocrisis, national parliaments, accountability, European Council, Euro summits



The economic and financial crisis from which Europe has been suffering in the past years has required that the European Union (EU) Member States develop and create new mechanisms and constraints to prevent the Eurozone from falling apart^I.

In this context, European intergovernmental instances, and especially European Council and Eurozone summits, have gained a predominant role without National Parliaments always being able to control the position defended by the National representative in these arenas (Wessels et al 2013:14 s.), even if their (conventionally reserved) budgetary prerogatives were strongly affected. Indeed, traditionally Member States parliaments have focused their scrutiny on EU documents or on the EU Council meetings without developing a strong control – or even follow-up strategies – of the position defended by their Heads of States and Governments in the European Council (Wessels et al. 2013: 16-17) in spite of the fact that the European Council was gaining importance through formalization (art. 13 TEU) and the creation of its permanent presidency (art. 15 TEU) in the Lisbon Treaty^{II}. As for the Euro summits, they arose in 2008 and were institutionalized in 2012 becoming in this way, for National Parliaments, yet again, a new challenge or at least one more European meeting to monitor.

In parallel, the Lisbon Treaty enhanced the role of National Parliaments and it had been deemed to have, for this reason, (finally) improved the democratic deficit existing – supposedly – in the European Union^{III}. Following its entry into force, EU Member States adopted legislation for the implementation of the prerogatives newly granted to National parliaments. In some cases, such as the German or the Italian ones (respectively through the Responsibility for integration Act and Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union, and Italian Law n. 234 of 2012), the National rules went beyond the content of the Treaty in guaranteeing rights of participation and information to the Parliament.

Moreover, it has now become apparent that the economic crisis has also led to the empowerment of some National parliaments in EU affairs. This is especially true of the German *Bundestag* whose prerogatives were strongly protected and reinforced following the judgments of the Federal Constitutional Court (decisions commented by Hölscheidt 2013:114 ff.; more generally on this point: Fasone in this issue). As a consequence, the



German government's actions at European level are now better controlled and influenced by the *Bundestag*; its consent – as well as the *Bundesrat*'s in some cases – can be required too.

While this is undoubtedly the case of Germany, the formal reinforcement of Parliaments in other Member States is less evident, even where demanding Memoranda of understandings are agreed on as a consequence of financial support by the other EU Members, as is the case of Spain for instance (Fasone in this special issue; Fromage forthcoming).

Additionally, these differences are made possible by the silence of the European Treaties and measures which, by and large, leave this matter up to domestic regulations. Article 13 of the Treaty on Stability, Coordination and Governance (TSCG) is an exception to this but it only involves National Parliaments collectively as it foresees that 'As provided for in Title II of Protocol (No 1) on the role of national Parliaments in the European Union annexed to the European Union Treaties, the European Parliament and the national Parliaments of the Contracting Parties will together determine the organization and promotion of a conference of representatives of the relevant committees of the European Parliament and representatives of the relevant committees of national Parliaments in order to discuss budgetary policies and other issues covered by this Treaty.' Consequently, this Treaty, concluded outside of the EU framework, merely foresees the creation of an interparliamentary conference, whose features are, furthermore, not defined and leave important room for interpretation; it does not grant any right to National parliaments individually.

Moreover, at European level, no specific control over the Euro summits exists. As already mentioned, this institution arose in 2008 before it was formalized in article 12 TSCG in 2012 (Eurozone portal). It first held irregular meetings (one in 2008, one in 2010, three in 2011); now, they have to be organized at least twice a year. This organ also has a President, who is jointly the President of the European Council and who is not necessarily the Head of State or Government of a Eurozone country since the Pole Donald Tusk currently holds this mandate. Given this framework, it will be up to each Member State to decide – internally – to grant its Parliament the capacity to control and to influence on the position defended by the executive representative in this forum – or not –.

Parliamentary practice plays an important role here, in a two-fold manner: first, because customary developments may complement existing formal rules – or even compensate the



lack thereof –; second because having formal rights of participation is not enough for parliaments to use them effectively. Other factors, such as political dynamics or the salience of the issues treated during a specific meeting, will play a decisive role in Parliaments being ready to use the instruments of control they have, especially when there is a relationship of confidence between the Government and one of the Chambers^{IV}. In other words, as Sabine Kropp summarizes, ‘Even a strong parliament in itself can – for different reasons – abstain from using its rights of control, and it is conversely conceivable that a weak Parliament – in terms of control – develops new, effective strategies.’ (Kropp 2013: 182).

In this context, an analysis of the way in which National Parliaments hold their Government to account appears particularly necessary. The present study will regard three Member States (France, Germany and Spain) and will focus solely on how their Parliaments hold to account, via hearings, the National representatives in the European Council – and in the Euro summit to a lower extent – as the crisis has dramatically strengthened the powers of these intergovernmental institutions (Auel & Höing 2014: 1185-86).

The study of these three States is justified by their role in the management of the crisis (creditor vs. debtor) as well as by their tradition of parliamentary involvement in EU affairs (strong but with scarce use of the specifically designed prerogatives for Germany and weaker in France and Spain where more traditional means of parliamentary influence – hearings, resolution – are used).

This article will argue first that these National parliaments have not adapted to these changes equally, especially with the lack of provision for the monitoring of Eurozone summits. Second, it will highlight that it is often misleading to focus solely on the prerogatives formally guaranteed to Parliaments to assess their (real) capacities to hold their Governments to account. Finally, it will also draw some conclusions on potential future developments.

The first Part will be devoted to the formal rights these National Parliaments possess to hold to account their governmental representatives in the European Council and in the



Eurozone summits (Part 1), before analyzing which use they have made of them in practice since the beginning of the crisis management under the rules defined by the Lisbon Treaty in 2010 (Part 2). This part will be dedicated to the development – or lack thereof – of customary procedures complementing or replacing the ones formally guaranteed by the law. Some concluding remarks regarding the efficiency of the systems in place, the consequences of the practice developed and the role the formalization of the rules may play will close up this piece (Part 3).

1. Tighter (but still insufficient?) parliamentary control over European Council meetings since Lisbon and the crisis

The Lisbon Treaty has, in itself, strongly empowered National parliaments. These – national – institutions are, for the first time, included in the text of the Treaty itself and, more importantly, they are now called on to ‘participate actively to the good functioning of the Union’ (art. 12 TEU). To this end, a series of new powers – contained in the same article of the Treaty – , among which the most visible and frequently used one is the subsidiarity check performed in the framework of the Early Warning Mechanism, are granted to them. National Parliaments are also, together with the European Parliament, given a special role in the democratic legitimacy of the Union which, according to article 10 TEU, rests on two pillars: ‘Citizens are directly represented at Union level in the European Parliament. [whereas] Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.’

This attribution of new prerogatives by the Treaty has required some adaptation at Member States level and, as has already been highlighted, this requirement has encouraged some States to extend the parliamentary prerogatives beyond what was strictly necessary to enable their Chambers to make effective use of their new powers. Furthermore, in some cases, these rights were further enlarged to compensate for the attribution of new competences to the EU level in the economic domain in response to the current crisis.

Germany is surely one of the States in which the Parliament, and in its case especially its directly elected Chamber, the *Bundestag*, have benefitted from these evolutions and have gained better access to information and stronger possibilities to hold governmental



representatives to account when they take part in Council and European Council meetings^v; as declared by the Federal constitutional court, the German parliament has a ‘responsibility for integration’ (BVerfG, 2 BvE 2/08 of 30 June 2009). Until 2009, the German representative in the European Council was not bound by the will of Parliaments in its negotiations. In contrast, since the reform of the Act on Cooperation between the Federal Government and the German Bundestag in matters concerning the European Union following the entry into force of the Lisbon Treaty, the ‘Federal Government is to reach agreement with the *Bundestag*’ before any final decision in the Council or in the European Council on the opening of negotiations on accession or on Treaty amendments, among others.

As regards the duty of information on the European Council meetings themselves, the Basic Law provides a general information duty in EU matters since its Article 23-2 provides, since the constitutional reform performed at the moment of the adoption of the Treaty of Maastricht, that ‘the Federal Government shall keep the Bundestag and the Bundesrat informed, comprehensively and at the earliest possible time.’ Additionally, specific obligations are anchored, together with other numerous reporting obligations, in the Act on Cooperation between the Federal Government and the German Bundestag in matters concerning the European Union. The Act on Cooperation approved in 1993 as a consequence of the approval of the Maastricht Treaty had already been reformed following the entry into force of the Lisbon Treaty in 2009. However it was modified again in July 2013 in order to ensure that the *Bundestag* would be informed in all circumstances, including the new ones reinforced as a consequence of the economic crisis (Eurogroup, Euro summits among others), after the Federal Constitutional Court confirmed this right to the *Bundestag* in its judgment on the European Stability Mechanism and on the Euro Plus Pact (see below).

Section 4, par. 2 of the 1993 Act as amended provides to this end, in general terms, that ‘The Bundestag must be informed in advance and in sufficiently good time to form an opinion on the subject of the meetings and on the position of the Federal Government and to be able to influence the negotiating line and voting decisions of the Federal Government. Reports of meetings must present at least the positions adopted by the Federal Government and other states, the course of negotiations, intermediate findings and final outcomes as well as any decisions for which parliamentary approval is required.’



Furthermore, paragraph 4 of this section is especially devoted to specific arenas, among which the European Council meetings, and to Euro summits; it states that ‘Before meetings of the European Council and of the Council, informal ministerial meetings, euro summits and meetings of the Eurogroup and comparable institutions that meet on the basis of international agreements and other arrangements which complement or are otherwise particularly closely related to the law of the European Union, the Federal Government shall notify the Bundestag of each subject of discussion in writing and orally. This notification shall encompass the main features of the subject matter and of the state of negotiations as well as the negotiating line of the Federal Government and its initiatives. After these meetings, the Federal Government shall provide written and oral information on their outcome.’ This obligation pre-existed the reform of 2013 – it was introduced in 2009 – and, hence, this later reform simply extended its content^{VI}. Before 2013, the governmental obligations did not encompass the Eurozone summits which the Government considered as not being EU law but ‘of a purely intergovernmental nature’ (Heffler & Höing 2013: 53). It was only after the Federal Constitutional Court’s judgment delivered in June 2012 on the ESM and the Euro plus pact that the *Bundestag*’s right to information was further guaranteed^{VII}. Since 2013, though, the obligation of the Government towards the *Bundestag* is particularly detailed and comprehensive with both oral statements and written reports having to be provided.

As in the German case, the Spanish parliament is formally guaranteed information regarding European Council meetings. In fact, this obligation of the Government towards Parliament has long existed; it was introduced in 1994 when law 8/1994 was approved following the entry into force of the Maastricht Treaty^{VIII}. As provided for in article 4 of this law, the government has to appear before the Congress of Deputies after each ordinary and extraordinary European Council meeting. As a consequence, the information flow guaranteed exists only *ex post* at a time when the Congress of Deputies can no longer influence the Government in any way. This is especially problematic as the rules regarding the transmission of the agenda of future meetings, and those regarding the Government’s position on these items, are unclear. The rules regarding the EU Council meetings are very protective of the Parliament as article 8 (since its introduction in law 8/1994 by law 38/2010) foresees that the Joint Committee for EU affairs^{IX} will decide on which members



of Government will be heard on the basis of the EU Council meeting's agenda. However, in contrast, the only potential basis for the transmission of the agenda of an upcoming European Council meeting is article 3 d) of the same law which opens the possibility for the Joint Committee to 'receive from the Government the information it has on the activities of the EU institutions'. Furthermore, the opportunity open to the Joint Committee to organize a debate with the Government on an EU subject – within this Committee or in plenary – (art. 3 c)) is strictly restricted since these debates have to be on an EU legislative proposal and hence, at least formally, this possibility cannot be used to discuss on the European Council meetings. One means for providing parliamentary information could be the obligation made to the Government to inform the Joint Committee of the 'inspiring lines of its policy within the EU' (art. 3 e)), but this provision is vague.

It should be noted too that the Government is compelled to provide the Joint Committee with a report on all the developments that occurred during the last European presidency before the European Council meeting concluding this presidency takes place (art. 3 e)). However, in practice, the Government has never complied with this obligation introduced in 1994 (Sánchez de Dios 2013: 134). The Secretary of State for the European Union does make an oral report at the end of the Presidency before the Joint Committee though^x.

Additionally, the formal obligation imposed on the Government by law 8/1994 to appear before the Congress of deputies after each European Council meeting leaves the Senate aside, although it is represented in the Joint Committee on EU affairs. Such an exclusion can be justified by several factors: first and foremost, the Government is only democratically accountable to the Congress of deputies which political majority it represents. Second, even if the Senate is involved in the legislative process, its opinion can be overridden by the Congress which, de facto, can act as if it were the only parliamentary Chamber. The Senate could still use its right to question the Government in plenary session guaranteed by article 170 of its standing order to compensate its exclusion and this means of control was used indeed once during the period of this study when senator Joan Lerma Blasco questioned the positive consequences for the economy expected after the European Council meeting of June 2012^{XI}.



In France, the situation is contrary to that in Germany and more like that in Spain, in that the (formal) dispositions defining the rights of Parliament in EU affairs have not been modified as a consequence of the economic crisis, nor have the reforms performed following the entry into force of the Lisbon Treaty contributed to parliamentary control procedures over the European Council meetings being introduced. Furthermore, the French system is peculiar in one aspect: given the existence of a split executive in the persons of the directly elected President and the appointed Prime Minister, where only the latter is democratically accountable to the National assembly whereas the former is not formally subject to any form of parliamentary control. In fact, the President's communication with the assemblies is permitted only in writing unless both Chambers are gathered in Congress as defined in article 18 of the French Constitution: 'The President of the Republic shall communicate with the two Houses of Parliament by messages which he shall cause to be read aloud and which shall not give rise to any debate. He may take the floor before Parliament convened in Congress for this purpose. His statement may give rise, in his absence, to a debate without vote.' The lack of provisions concerning the European Council or the Euro summits could be explained by the absence of any link of trust between the French Chambers and the President of the Republic, who represents the French Republic in these intergovernmental arenas. However, when the President belongs to the same political party as the parliamentary majority (as has been the case since the last *cohabitation* period ended in 1995)^{XII}, in practice he or she is the Chief of the Executive too and hence Government members may be, as we shall see, called to report before the Chambers on European Council meetings too on behalf of the President who cannot appear before the Chambers for constitutional reasons^{XIII}.

Thus, the only possibility to organize debates at the occasion of European Council meetings exists relying on the Chambers' rules of procedures. Part of the constitutional reform introduced in July 2008 aimed at reducing the predominance of the executive and its political majority in the Chambers' work which had been the rule since the Constitution of the V Republic was approved in 1958; therefore a new paragraph 4 was introduced in article 48. It provides for the possibility of more parliamentary control since 'One day of sitting per month shall be given to an agenda determined by each House upon the initiative of the opposition groups in the relevant House, as well as upon that of the minority groups.' This change has allowed the Senate to follow up on its European positions



whereas this had proved impossible until then (Haenel 2009: 15). In the Assembly, according to Article 48-7 Rules of procedures, ‘Each president of a group of the opposition or a minoritarian group obtains as of right the inscription of one subject of evaluation or control to the agenda of the week foreseen in article 48, par. 4 of the Constitution. In the framework of that week, one session is dedicated firstly to European questions.’ These recent developments may give some leeway to the parliamentary opposition for more control of the Government over European Council decisions.

Additionally, Article 6 bis par. 2 of Decree 58-1100, which provides that ‘The Commissions in charge of European affairs follow the works conducted by the institutions of the European Union. To this end, the Government forwards them the projects or proposals of acts of the European Communities and of the European Union as soon as they are transmitted to the EU Council. **The Government may as well forward, on its own initiative or upon a request of their presidents, any required document.**’ (emphasis added). This could serve as basis for the Government to forward the agenda of future European Council meetings to the Chambers, but neither this Decree nor the Circular of 21 June 2010 on the participation of the National Parliament to the European decision-making process, which contributes to its implementation, contain any specific reference to European Council documents.

Of these three States, only the German Chambers are guaranteed information regarding European Council meetings and Euro summit *ex ante* and *ex post*. The Spanish law regulating the functioning of the Joint Committee for the EU seems to invite a more top-down information flow – limited to European Council meetings – rather than to the establishment of a real exchange between Parliament and Government. In France, there exists no formal obligations from the Government towards Parliament regarding either European Council meetings or Euro summits.

Putting these three Member States in a global EU perspective shows that the French case is rather the exception than the rule since 17 of the then 27 Member States Parliaments had formal rules allowing for parliamentary control over European Council meetings in 2012 (Hefftlar & Wessels 2013: 6).



2. The development of practices to compensate for the lack of formal dispositions and the use Parliaments effectively make of their prerogatives^{XIV}

As discussed in the introduction, parliamentary practice needs to be analyzed too since extensive interpretations of existing provisions have often been crucial in allowing for parliamentary participation in EU affairs^{XV}. Paradoxically, even parliaments that have a strong tradition of control – or at least monitoring – of the Government’s actions may have been reluctant to using the instruments available to them, favouring informal – and, hence, invisible – means of influence (Auel 2006: 259 f.; Obrecht 2009: 156-157).

An analysis of German practice reveals that it is usually the Chancellor herself who reports on European Council meetings *ex ante*. *Ex post* the Government is usually represented by the Minister of State to the Federal Chancellor (Hefffler & Höing 2013: 55). *Ex ante* control is more frequent than *ex post* control since the former took place in more than two thirds of the cases whereas the latter did in only 40% of them. Moreover, the arena of these debates was different although, in contrast to the French National Assembly and to the Spanish Congress, there is no exclusivity of the plenary or the European Affairs Committee; rather, both can be involved. Despite this lack of functional divide, there is, however, a tendency to organize *ex ante* debates in plenary (14 out of 21) whereas *ex post* debates tend to take place rather in Committee (9 out of 12). This could be explained by the additional publicity across political groups and among deputies that only the plenary provides. This may be especially the case at times when controversial decisions were taken by the Heads of States and Governments of the EU Member States, and it may have been necessary for the Chancellor to make sure that she would be supported upon her return from Brussels and to be informed of the different positions represented within the lower Chamber. After her return, once political decisions have been made, a more technical exchange in Committee seems to be preferred. Additionally, when a debate is organized in plenary, political groups can present a resolution to vote; typically, the debate will then start with a statement by the Chancellor, followed by parliamentarians’ statement and conclude with the discussion and vote on a resolution if such initiative has been presented (for example: plenary debate on 16 October 2014).



It should also be noted that at the peak of the crisis in 2011 and 2012, the budget committee was very often involved *ex ante* and/or *ex post*, and it was the Finance Minister that would appear before it and not the Chancellor. This practice is currently no longer in use, though.

As is shown by the practice, there are no rules as to which organ should conduct *ex ante* or *ex post* control; this is explained by the absence of rules regarding the involvement of the plenary in the Rules of procedures (Hefftlar & Höing 2013:53). For *ex post* debates, in practice, parliamentary party groups of the *Bundestag* first decide whether or not they want to organize a debate on the outcomes of the European Council, and then where it should take place (Hefftlar & Höing 2013: 54). Indeed, the selection operated by party groups – according to the salience of the European Council’s agenda and the need for posterior parliamentary approval? – is reflected in the frequency of the debates; whereas at the peak of the crisis in 2011 and 2012, all meetings were subject to debate *a priori*, in 2013 and especially in 2014 this frequency diminished strongly. The elections organized in September 2013 might, however, explain why the meeting organized in October in Brussels was not scrutinized with a hearing. In any case, it should be born in mind that in the German case especially an absence of hearing does not mean that the *Bundestag* was not informed; written reports are otherwise submitted.

In spite of only an *ex post* control procedure being provided by law 8/1994, practice as developed in Spain has permitted the involvement of Parliament before the European Council meetings too. First of all, the Prime minister – who sits in representation of Spain in these meetings – usually meets with the leader of the opposition (Sánchez de Dios 2013: 135). The prior involvement of the Joint Committee on EU affairs is also – often – provided through the organization of governmental hearings. In this case, it is usually the Secretary of State for the EU who informs the Joint Committee; only in one occasion did the Minister for foreign affairs himself appear before the Joint Committee in June 2012^{XVI}. This means of information dissemination is fairly efficient – especially given the fact that it is informal – as hearings sessions could be organized on the basis of article 44 of the Congress rules of procedures for more than half of the European Council meetings that took place between 2010 and 2014. The frequency of these debates varied widely over the five years studied here, though: in 2013 all meetings were first discussed in the Joint



Committee, whereas in 2011 and in 2012, when the most important and controversial decisions were made by the Heads of States and Governments, less than half of them were. In 2014 also only 2 of the 7 meetings were subject to debate which might indicate that the closer scrutiny observed in 2013 was exceptional and linked to the subjects on the European Council's agenda, and to the fact that Spain was directly affected.

In contrast, in spite of the formal obligation granted to the Government by law 8/1994 to appear after European Council meetings, in practice, these hearings often do not take place, only occurring in approximately half of the occasions over the same period. This was the case even – and perhaps especially – when important decisions were taken in economic and financial matters that directly affected Spain as a debtor Member State in 2011, but this low parliamentary involvement might be related to the elections organized at the time. A similar decrease in frequency of *ex post* meetings can be observed in 2014 as was the case of *ex ante* meetings.

In France, as highlighted above, the Constitution, rules of procedures, and Decree 58-1100 on the functioning of the parliamentary assemblies – which long compensated the lack of constitutional provision in terms of parliamentary information in EU affairs – contain no formal obligations for the Government to inform the Parliament in the framework of European Council meetings or Euro summits. Practice developed in both Chambers has been instrumental in compensating such lack of formal provisions and has permitted the establishment of a dialogue before and/or after European Council meetings between Parliament and Government.

In the Senate, a practice has been established in the past years according to which a debate is organized in plenary before each meeting of the European Council (Haenel 2009: 11). During the period from 2010 to 2014, when the Heads of States and Governments were called to take the most important decisions to save the Euro, more than two thirds of the meetings were accompanied by a previous debate in plenary with the Secretary of State or the Minister for EU affairs^{XVII}, although a couple of them were organized in the framework of the Commission on EU affairs due to elections. In plenary, the Secretary of State makes a statement before the senators can intervene and ask questions which are then answered by the Secretary of State (Kreilinger et al. 2013a: 47). In some occasions, debates were also organized *ex post* but these were much less numerous. While one of them took



place in plenary with the then newly appointed Prime minister, Jean-Marc Ayrault, in June 2012, in general these hearings *ex post* are organized in the Committee on EU affairs, sometimes in a joint initiative with the Committee of the National Assembly, as was the case in December 2012 when the German minister for EU affairs also participated. Furthermore, European Council meetings are sometimes discussed during hearings of the General Secretary for EU Affairs; this happened in June 2013 for instance^{xviii}. Also, especially since François Hollande was elected in 2012, many of the meetings organized after European Council has met include both the Committee on EU affairs and the Committee on foreign affairs.

Given these developments, it is indeed undoubtable that the development of practice, and the extensive use of the instruments the Senate possesses to control the Government, have dramatically improved its position. However, the lack of an extensive *ex post* follow-up hinders the Senate from having an effective control or influence since once its members have expressed their opinions, the Executive is free to follow them – or not –. Only in a few cases has it been held accountable for the position it eventually defended in Brussels. However, both Chambers and the Government have, generally, similar views on EU affairs – or can reach such a common view through organized debates – so that this is not problematic and, in any event, only the National Assembly bears a relationship of trust with the Government.

The relationship between Executive and Legislative might be the reason why the National Assembly's control over the European Council meetings is, compared to that of the Senate, tighter *ex post* whereas it is looser *ex ante* (8 hearings *ex ante* vs. 21 and 15 *ex post* vs. 7). The deputies may benefit from informal means of information and influence though, and those of the majority may prefer these invisible channels. In any event, since the failure to adopt the Constitutional Treaty in 2005, a customary rule has been established according to which a hearing is organized in the plenary before each ordinary meeting, though extraordinary and informal meetings are excluded due to the short notice typically available (Kreilinger et al. 2013a: 47). As in the Senate, the *ex post* debate takes place in Commission. The exchange of opinions organized before each meeting is therefore more public whereas the one taking place afterwards is more specialized; "This also reflects the idea that the control exercised by Parliament is more like a "shadow control" where the parliamentary majority tries to avoid to weaken the government."



(Kreilinger et al. 2013a: 49).

Evidently, the fact that it is a Minister who debates on the European Council meetings with the Houses of Parliaments *ex ante* makes any parliamentary influence more difficult since the Minister cannot commit to defending any position in the name of the President. As Kreilinger et al. summarize ‘the physical absence of the President is detrimental to the performative aspect of the debates’ (Kreilinger et al. 2013b: 22).

The three examples analyzed here seem to indicate different uses of the exchanges between Parliament and Government which, additionally, do not necessarily match with the formal provisions for these debates.

As it turns out, the Spanish parliament is the only one of the three which almost equally interacts with the Government before and after the meeting. The French National Assembly focuses on the information on the results of the meetings whereas the French Senate and the *Bundestag* are involved most frequently *ex ante* which grants them higher chances of influence.

In terms of where the debates should be organized, there is no consensus among the three States analyzed here: the French Chambers favour the plenary for *ex ante* involvement, and so does the *Bundestag* whereas Spain prefers the more technical meetings of the Joint Committee. The exact opposite tendency can be observed as regards the *ex post* control.

Of course, the content of these debates should also be analyzed as for instance, in the past, parliamentary questions on EU affairs were used in Spain by the majority to present its position rather than to oblige the Government to behave in a particular manner (Cienfuegos 1996: 59 s.). However, for a parliament which is particularly weak in EU affairs (Pérez Tremps 2002: 410) and generally not very active in this matter either – this is illustrated for example by its low participation in the Early Warning System and in the Political Dialogue with the EU Commission (Commission Annual Reports) –, the debates on the European Council regarding 60% of its meetings in Spain show a strong involvement.

In any event, recent developments seem to show that Tapio Raunio’s predictions were right in his declaration that ‘there are strong reasons to argue that political parties will revert back to their ‘old ways’ and avoid public debates on Europe’ (Raunio 2015: 115).



And indeed, at least in France and in Spain, such tendency has begun to make itself visible in the past year.

3. Concluding Remarks

Having observed the formal rules in place and the practice in these three Member States, some concluding remarks should be made.

The present analysis has shown that, as it is especially common for Parliaments in EU affairs^{XIX}, practice plays a crucial role in the field of governmental scrutiny. Although this is surely positive in States such as France and Spain where parliamentary rights to information and influence is neither protected by the law nor by a constitutional court, this development presents the risk that Parliament – and especially the political minority – remains *in fine* strongly dependent on the Government's will. These two Governments, whose only fear in the process is that of political blame, might be tempted to use this instrument of dialogue to their advantage and, indeed, this very reason motivated the institutionalization of the *ex post* control of the European Council meetings in the Spanish Congress of Deputies as early as 1994. This formal inclusion in the law 8/1994 prevented the organization of these debates from depending on the Government's will or on an agreement being reached among the members of the Board (Cienfuegos 1996: 90).

In addition to the existence – or absence – of formal obligations and to the organization in practice of these debates – or lack thereof –, the question of transparency needs to be addressed. One of the functions Parliaments have to fulfill is that of information towards the citizenry. At a time when important decisions are made by EU heads of States and Government within the – secret – meetings of the European Council, the additional lack of transparency at the National level appears to be especially problematic. Given the fact that the European Parliament was long absent in this field, it appears particularly important that the second pillar for the guarantee of democracy in the EU – National parliaments – assume their role and hold their Executives accountable. It is with this aim that some control procedures should be designed at National level.

Prior to the Executive representative's encounters in Brussels, it is highly desirable that both the representative and parliamentarians have had the opportunity to discuss and agree on a common – National – position. This might prove difficult if *ex ante* debates take



place in plenary sessions which, by definition, are public whereas committee meetings may be entirely transcribed (France and Spain) or not (Germany). Hence, a balance needs to be struck between on the one hand, the need to inform both the public in general and all deputies, and to raise their awareness on important issues, and on the other hand the privacy required to be able to have a real debate. This being said, it is worth considering the fact that in these three Member States no mandating system exists and that the Government – or the President – remains responsible for making political choices at European level (although it may have to justify its choice to deviate from the political directions indicated previously). Thus, it might be wiser to raise political awareness of all deputies in plenary and reserve debates in smaller arenas – Committees – to the most politically sensitive questions.

Indeed, if plenary debates are ‘key elements of political competition, allowing the electorate to follow (directly or through media coverage) issues on the political agenda and to identify the political parties in these matters, and thereby contribute to both citizens’ (Raunio 2015: 106) awareness of politics and to accountability of the government and MPs’, before negotiations take place in Brussels, too much transparency may be harmful to the National interest. This judgment might call for reassessments over time though.

Admittedly, European politics had remained, up until the entry into force of the Lisbon Treaty, a subject of little parliamentary interest. Following the economic crisis and the new rights granted to the members of the *Bundestag*, however, it seems that they have become consequently more active in EU affairs in general, moving from ‘control actors’ to ‘participatory actors’ (Calliess & Beichelt 2013: 32). Should this tendency be confirmed and subsequently extend to other Member States, then perhaps the Government-Parliament relationship in the framework of European Council meetings could be more targeted to the development of a consensual definition of a position in committee without this position necessarily being extended up to the definition of a mandate. This holds if, as has been the case since the beginning of the European integration process in the three Member States studied, deputies continue to be, in their majority, pro-European; this article has mostly focused on Eurozone summits and European Council meetings and even between 2010 and 2012 when the most controversial decisions were made to save the Euro, the parliamentary resolutions and mandates addressed to the Government represented only a limited part of the total numbers resolutions approved, which shows consensus (15% in



the French National Assembly, less than 10% in Germany and 25% in Spain; Auel & Höing 2014: 1189).



Hearings organized in the French, German and Spanish parliaments before and after European Council meetings (2010-2014)

SOURCE: Own analysis of the parliamentary protocols and agendas.

This analysis is limited to the plenaries and the EU affairs committees since they are most commonly involved. However, other committees (especially: budget committee in Germany and foreign affairs committee in the NA) have been involved.

		2010		2011		2012		2013		2014		TOTAL EX ANTE & EX POST	TOTAL (out of 31 EC meetings)
		HEARING S	EC MEETIN GS										
NA	ex ante	0	6	0	6	0	6	1	6	0	7	1	8
	Plenary	1	6	4	6	2	6	0	6	0	7	7	
	EAC	0	6	2	6	4	6	5	6	3	7	14	
F	ex post	0	6	0	6	1	6	0	6	0	7	1	15
	Plenary	0	6	0	6	1	6	0	6	0	7	7	
	EAC	1	6	2	6	0	6	0	6	1	7	4	
S	ex ante	4	6	3	6	2	6	5	6	3	7	17	21
	Plenary	1	6	2	6	2	6	1	6	0	7	6	
	EAC	0	6	0	6	1	6	0	6	0	7	7	
G	ex post	0	6	0	6	1	6	0	6	0	7	1	7
	Plenary	0	6	0	6	1	6	0	6	0	7	7	
	EAC	0	6	4	6	1	6	2	6	0	7	7	
BT	ex ante	3	6	2	6	4	6	2	6	3	7	14	21
	Plenary	0	6	2	6	2	6	2	6	3	7	14	
	EAC	0	6	4	6	2	6	1	6	1	7	9	
S	ex post	0	6	1	6	0	6	1	6	1	7	3	12
	Plenary	0	6	1	6	0	6	1	6	1	7	3	
	JC	4	6	2	6	3	6	6	6	2	7	18	
C	ex ante	0	6	0	6	0	6	0	6	0	7	0	18
	Plenary	0	6	0	6	0	6	0	6	0	7	0	
	JC	0	6	0	6	0	6	0	6	0	7	0	
S	ex post	4	6	1	6	5	6	6	6	3	7	19	19
	Plenary	4	6	1	6	5	6	6	6	3	7	19	
	JC	0	6	0	6	0	6	0	6	0	7	0	



* Max Weber postdoctoral fellow in Law, European University Institute. diane.fromage@eui.eu.

^I The principle instruments being the Two pack, the Six pack and the Treaty on Stability, Coordination and Governance (TSCG). See K. Tuori & K. Tuori 2014.

^{II} In addition to this lack of procedural means of control, further elements make any kind of parliamentary control especially difficult; European Council meetings are not public and little information is available beforehand, not all Heads of States and Governments have a relationship of confidence with the Parliament (the Cypriot and the French ones do not for instance) Wessels et al. 2013: 16.

Some argue that the European Council's empowerment dates back to the middle of the 1990s and was simply amplified by the crisis. Puetter 2014: Chap. 3.

^{III} The link between the improvement of the democratic deficit and the involvement of National Parliaments in the EU had clearly been mentioned in the Declaration on the future of Europe (Laeken Declaration) of 2001 (par. 2).

^{IV} This is, however, true of the *Bundesrat* during the studied period (2010-2014).

^V This influence goes beyond Germany as a European Council meeting had to be rescheduled in order to allow the *Bundestag* to gain a comprehensive understanding of the situation and to mandate its Government. Buzogány & Kropp 2013: 6.

The involvement of the *Bundesrat* is limited in this framework: according to the Act on Cooperation between the Federation and the Länder in European Union Affairs no transmission of *ex ante* and *ex post* information in relation to EU Council and European Council meetings is specifically foreseen. An attempt was made to reform this Act in 2013 in order to include the transmission of information related to international Treaties linked to the EU but this initiative did not prosper due to the federal elections organized the same year. In any case, European Council documents, which are then made available to regional Governments on an internal platform, are transmitted by the Federal Government on the basis of article 23 Basic Law, and also article 2 of the Act on Cooperation provides for the information of the Länder 'comprehensively and at the earliest possible time' on all EU projects that 'can be of interest for the Länder'. Previously, a practice existed according to which the Federal Government would inform the EU Committee orally before European Council meetings but this customary procedure was discontinued.

^{VI} Indeed, until 2013, the obligation of information was limited to EU Council and European Council meetings.

^{VII} 2 BvE 4/11 of 19 June 2012.

^{VIII} De facto, these meetings had already existed since 1989. On the institutionalization of this practice: Cienfuegos Mateo 1996: 90.

^{IX} In Spain, since the country's accession to the European Communities there has always been only one Joint Commission on EU affairs common to both parliamentary Chambers.

^X For example, at the end of the Hungarian presidency on 13 September 2011. Joint Committee's Sessions Diary.

^{XI} Initiative 670/ 000051/ 0001 of 10 December 2012.

^{XII} The Constitutional reform of 2 October 2000 reduced the presidential mandate from seven to five years so that the presidential elections now take place the same year as the elections of the deputies sitting in the National assembly. Furthermore, the order of these elections was modified by Organic Law 2001-419 so that since then, the presidential elections take place first and are followed by the parliamentary elections with the aim that the electors will be willing to provide their favorite candidate with a majority to govern in the Assembly.

^{XIII} There may however be differences between the position defended by the member of the Government in the Chamber and the one the President has himself held publicly. The former are usually more technical and cautious. Krelinger et al. 2009b: 16 s.

^{XIV} This second part will focus on the control on European Council meetings since the hearings organized usually formally focus on them. Therefore, if subjects specific to the Euro summits are treated, they are most often introduced in the general debate on the European Council meeting. Some exceptions exist, though, for instance in the German *Bundestag* where meetings in plenary and in the EU affairs Committee were organized around the Euro summit of October 2011.

^{XV} The Annex includes a summary of all hearings organized in the Parliamentary Chambers considered here between 2010 and 2014. For this purpose, only the hearings addressing solely the European Council meetings have been taken into account, independently of the fact that these questions may have arisen in the framework of other governmental hearings. Additionally, only the meetings organized with a Government



representative either in plenary or in the European Affairs Committee have been analyzed. This notwithstanding, other specialized committees may have been either involved (for instance, committee on foreign affairs or committee on economy in the French National Assembly) or may have conducted a hearing independently (German budget committee for example).

^{XVI} Another initiative was presented by the Government in February 2013 but it was later withdrawn and finally the Secretary of State represented the Executive.

^{XVII} In France, this function is characterized by a lack of stability both in terms of its status – which varies between Minister delegate to the Minister for Foreign Affairs with responsibility for European affairs and Secretary of State for European Affairs – and of its holder – nothing less than 12 in 12 years! –. The main difference between a secretary of state and a minister delegate lies in their access to the weekly meeting of the Council of ministers; while the former assists only if he is invited for reasons of the agenda, the latter participates as of right. In practice, the President of the Republic, who represents the French Republic in the European Council, likes to keep his hand on EU affairs directly and this member of the Government has only limited powers.

^{XVIII} The French executive has been characterized by its very strong organization in EU affairs since the beginning of the integration process. The organ which has now become the General secretariat on EU affairs (*Secrétariat général des affaires européennes – SGAE*) is a powerful tool in charge of uniting the positions of the different ministers involved in a negotiation so that there is only one French position in Brussels.

^{XIX} Among many examples, in France, a report is prepared by the Government to prepare the future transposition of EU norms. These *Fiches d'impact stratégiques* (strategical impact reports) exist but are not formalized in any decree (*ordonnance*) of any kind.

References

- Auel, Katrin, 2006, 'The europeanisation of the German Bundestag: Institutional change and informal adaptation', *German Politics*, XV(3): 249-268.
- Auel, Katrin & Höing, Oliver, 2014, 'Parliaments in the Euro Crisis: Can the losers of integration still fight back?', *Journal of Common Market Studies*, LII(6): 1184-1193
- Buzogány, Aron & Kropp, Sabine, 2013, 'Sisyphos und der Marmorblock: Parlament und Expertise in Zeiten der Euro-Krise', *Zeitschrift für Politikberatung*, III(1): 1-48.
- Calliess, Christian & Beichelt, Tim, 2013, *Auf dem Weg zum Europäisierten Bundestag: Vom Zuschauer zum Akteur?*, Bertelsmann Stiftung, Gütersloh.
- Cienfuegos Mateo, Manuel, 1996, 'El control de las Cortes Generales sobre el Gobierno en asuntos relativos a las Comunidades europeas durante la década 1986-1995', *Revista de las Cortes Generales*, no. 38: 47-99.
- European Commission Annual reports on relations between the European Commission and National parliaments, available at http://ec.europa.eu/dgs/secretariat_general/relation/relation_other/np/index_en.htm.
- Eurozone portal available at <http://www.eurozone.europa.eu/>.
- Fromage Diane, forthcoming, 'Parlement et Gouvernement espagnols: quelles relations après le Traité de Lisbonne?'.
- Haenel Hubert, 2009, 'Rapport d'information fait au nom de la commission des affaires européennes sur le développement du rôle européen du Sénat'.
- Heffler Claudia & Höing Oliver, 2013, 'Report on Germany' in Wessels, Wolfgang et al., 'Democratic Control in the Member States of the European Council and the Euro zone summits – Annex 1', European Parliament study available at [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474392/IPOL-AFCO_ET\(2013\)474392\(ANN01\)_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474392/IPOL-AFCO_ET(2013)474392(ANN01)_EN.pdf).
- Heffler Claudia & Wessels Wolfgang, 2013, 'The Democratic Legitimacy of the EU's Economic Governance and National Parliaments', IAI Working Papers 13.
- Hölscheidt Sven, 2013, 'Parlamentarische Kontrolle in der Eurokrise' in Eberbach-Born Birgid et al (eds), *Parlamentarische Kontrolle und Europäische Union*, Nomos, Baden-Baden, 105-129.
- Kreiling Valentin et al., 2013a, 'Report on France' in Wessels Wolfgang et al., 'Democratic Control



in the Member States of the European Council and the Euro zone summits – Annex 1', European Parliament study available at [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474392/IPOL-AFCO_ET\(2013\)474392\(ANN01\)_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474392/IPOL-AFCO_ET(2013)474392(ANN01)_EN.pdf).

- Kreilinger Valentin et al., 2013b, 'Report on France' in Wessels Wolfgang et al., 'Democratic Control in the Member States of the European Council and the Euro zone summits – Annex 2', European Parliament study available at [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474392/IPOL-AFCO_ET\(2013\)474392\(ANN02\)_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474392/IPOL-AFCO_ET(2013)474392(ANN02)_EN.pdf).
- Kropp Sabine, 2013, 'Information und Kontrolle im deutschen Bundestag. Exekutive und Regierungstragende Fraktionen in europäisierten Fachpolitiken', in Eberbach-Born Birgid et al. (eds), *Parlamentarische Kontrolle und Europäische Union*, Nomos, Baden-Baden, 181-201.
- Obrecht Marcus, 2009, *Niedergang der Parlamente? Transnationale Politik im Deutschen Bundestag und der Assemblée Nationale*, available at HAL.
- Pérez Tremps Pablo, 2002, 'La débil "parlamentarización" de la integración en España', in García de Enterría, Eduardo & Alonso García, Ricardo, *La encrucijada constitucional de la Unión Europea*, Civitas, Madrid, 401-415.
- Puetter Uwe, 2014, *The European Council and the Council. New intergovernmentalism and institutional change*, Oxford University Press, Oxford.
- Raunio Tapio, 2015, 'The role of National legislatures in EU policies', in Cramme Olaf et al. (eds), *Democratic politics in a European Union under stress*, Oxford University Press, Oxford, 103-119.
- Sánchez de Dios, Manuel, 2013, 'Report on Spain' in Wessels Wolfgang et al., 'Democratic Control in the Member States of the European Council and the Euro zone summits – Annex 1', European Parliament study available at [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474392/IPOL-AFCO_ET\(2013\)474392\(ANN01\)_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474392/IPOL-AFCO_ET(2013)474392(ANN01)_EN.pdf).
- Tuori Kaarlo & Tuori Klaus, 2014, *The Eurozone crisis. A constitutional analysis*, Cambridge University Press, Cambridge.
- Wessels Wolfgang et al., 2013, 'Democratic Control in the Member States of the European Council and the Euro zone summits', European Parliament study available at [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474392/IPOL-AFCO_ET\(2013\)474392_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474392/IPOL-AFCO_ET(2013)474392_EN.pdf).