A Prerequisite for Accountability: Access to Information in the German European Affairs Council

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ABSTRACT

Negotiations in the Council of the European Union have been described as non-transparent since access to certain documents concerning the deliberations is restricted. As a result, national parliaments struggle to hold their national governments to account. Parliaments, providing a direct link between voters and the executive, play a vital role in granting legitimacy to the EU. Their incapacity weakens the democratic legitimacy of the European project. Existing literature on the topic has examined the formal powers of national parliaments and how active they are. However, it has failed to explore their access to information. This paper analyses the access to information on deliberations in the Council by the German European Affairs Committee (EAC) in the Bundestag. Interviews were conducted with members of the German EAC and their EU policy advisors. The analysis revealed that the German EAC employs an extensive network of direct oversight, manually scrutinizing a large number of documents. Certain limitations of this method were revealed, as due to capacity constraints only select decisions were examined. Individual citizens, organized interest and the media were shown to play a role in triggering the oversight at times, thus providing the impetus to start the scrutiny process.

1.   Introduction

In a Special Report the European Ombudsman, Emily O'Reilly, found that the Council of the European Union´s (hereinafter the Council) practices constitute maladministration, as it fails to systematically record positions taken by Member States and restricts access to legislative documents (2017, p. 1). According to O'Reilly, transparency is required for citizens to effectively hold those involved in the European Union´s (EU) decision-making process to account and thus, ensure the democratic legitimacy of EU legislation and the EU itself (p. 1). Meijer also links the idea of transparency to accountability, arguing that "openness will, in the end, make for stronger accountability since government flaws will be exposed and criticized" (2014, p. 12). Conceived as such, transparency is a prerequisite of accountability.

A lack of transparency and accountability can lead to democratic legitimacy deficits. Accordingly, Groen and Christiansen argue that the lack of transparency in the Council and the distance between citizens and

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the EU are indications of democratic weakness of the European project (2015, p. 44). As elected institutions, parliaments provide a direct link between the executive and the people. Therefore, they could become essential in granting legitimacy to the EU by participating in EU decision-making (Rozenberg & Hefftler, 2015, p. 1). However, it is very difficult for parliaments to scrutinise their governments in the Council due to the lack of transparency, their lack of expertise, and the convoluted structures of EU decision-making (Moravcsik, 1994, p. 9; Winzen, 2013, p. 298; Saalfeld, 2005, p. 345). In the report O'Reilly highlights that to oversee their governments, national parliaments require information on deliberations in the Council and its working groups so they can know the positions taken by their governments (2017, p. 6). This raises the question: How do national parliaments gain information on deliberations in the Council of the European Union?

To answer this question, I will rely on the principal-agent model and more specifically the perspective of police-patrol and fire-alarm mechanisms of oversight, as developed by McCubbins and Schwartz (1984). In fire-alarm oversight, civil society actors, who have no formal powers to hold the government directly to account, inform Congress when the government does not align with their interests. McCubbins and Schwartz argue that this method is used more commonly than traditional police-patrol oversight, where Congress scrutinises the government by checking government documents. The fire-alarms concept has not been applied to a national parliament´s oversight over its government in the Council. Indeed, existing literature generally fails to explore the access to information of national parliaments on Council deliberations. Therefore, interviews were conducted with members of the German parliament, the Bundestag, (MdBs) in the European Affairs Committee (EAC) and their EU policy advisors. EACs are specialised committees in national parliaments responsible for the scrutiny of European affairs (Auel, 2019, p. 3). The role of information in effective accountability holding, and thus addressing the democratic deficit, has been outlined. Should the analysis find that the access to information in the EAC is limited, this may point towards institutional remedies that supplement the ability of the parliament to hold the government to account. Moreover, the findings may contribute to enhancing currently employed mechanisms that are already deemed effective. In overseeing the government in Brussels, the parliament, as a direct elected democratic institution ensures a link between voters and decisions made on the EU level.

This paper consists of four chapters. First, it engages the literature on the role of national parliaments in EU affairs. Second, based on the lack of literature on the access to information by the national parliaments, it builds on the principal-agent-theory to introduce McCubbins and Schwartz` fire-alarms concept. Third, the methodology used is outlined. Fourth, the findings of the interviews are presented and analysed based on the theory. The paper concludes with a discussion of the findings, including their implications for the study of democratic legitimacy in the EU.

2.   Literature Review:

The criticism that EU policymaking should not lie solely in the hands of national governments and the European Commission has led to increased weight being placed on giving the EU´s only directly elected institution, the European Parliament (EP), new powers (Neuhold and Smith, 2015, p. 668). However, this shift is arguably insufficient, as it is not a substitute for the influence of national parliaments. For instance, Groen and Christiansen claim that "the EP, faced with its own complexities and declining turnouts at European elections, was not best placed to close the gap with citizens" (2015, p. 44). Others question the

capacities of the EP, such as Jensen who states that "one unambiguous observation that can be made is that the EP has limited ex-post oversight capacity over the member states" (2011, p. 499). Groen and Christiansen argue that while the discourse on how to remedy the EU´s democratic deficit in the past focussed on expanding the powers of the EP, eventually the role of national parliament was brought to the foreground (2015, p. 57).

National parliaments were long seen as the "poor losers" of European integration, as they increasingly lost decision-making power and legislative competencies to EU institutions (Auel, 2006, p. 249; Auel, 2019, p. 5; Auel et al., 2015a, p. 60; Neuhold and Smith, 2015, p. 668; Hobolt & Tilley, 2014B, pp. 3-4). German European policy had also been taken over by the executive, as according to Beichelt it is a "conventional wisdom" that the Bundestag played a secondary role in European policy (2012, p. 143). However, since the Maastricht Treaty national parliaments have gained additional rights in EU affairs, including access to information, influence over national positions in Brussels and the ability to scrutinise their governments´ actions (Auel, 2006, p. 250; Auel, 2019, p. 5; Auel et al., 2015b, p. 284). Article 8A of the Lisbon Treaty recognised the role of national parliaments, stating that "Member States are represented in the European Council by their Heads of State or Government and in the Council by their government, themselves democratically accountable to their national Parliaments, or to their citizens" (2007). After Lisbon, national parliaments were given the opportunity to "fight back" and establish themselves as players in EU governance (Rozenberg & Hefftler, 2015, p. 1). As a result, German parliamentarians became more aware of their strengthened position, which was reinforced by the German Constitutional Court (BVerfG) in several verdicts (Beichelt, 2012, p. 143).

However, scholars have asked whether parliaments can even hold their governments to account. With the delegation of competencies from to the EU level, the balance of power between parliaments and governments shifted: as governments participate in EU policymaking directly, they can act as gatekeepers between the domestic and EU level (Moravcsik, 1994, p. 9; Winzen, 2013, p. 298). Furthermore, governments are experts in EU affairs and have powerful administrations behind them allowing them to exploit information asymmetries to bring decisions closer to their position, especially in Council negotiations (Saalfeld, 2005, p. 345). Parliament´s limited financial and human resources simply cannot cope with the increasing amount of EU legislation (Saalfeld, 2005, p. 345). According to Stübgen only one in a thousand incoming EU documents in the Bundestag are relevant for further scrutiny (2013, p. 29075). Additionally, parliaments lack expert knowledge to master increasingly complex EU issues (Auel et al., 2015, p. 60; Bovens et al., 2014, p. 16; Papadopoulos, 2007, p. 474). Bovens et al. argue that traditional, national accountability mechanisms are insufficient to deal with these (2014, p. 16). If accountability mechanisms are not effective, an accountability gap exists (Bovens et al., 2008, p. 229). Due to the agreement among scholars concerning the difficulties faced by parliaments, a branch of research studying the role of national parliaments in EU affairs emerged.

Research on scrutiny of EU affairs through national parliaments has largely focussed on studies aiming to quantify the institutional strength of parliaments (Auel et al., 2015; Karlas, 2012; Saalfeld, 2005; Winzen, 2013). Recently, studies on how actively parliaments use this strength have emerged (Auel & Christiansen, 2015; Hefftler et al., 2015). Karlsson and Persson (2020) examine the role of national parliaments in EU affairs by comparing cross-national patterns of oppositional behaviour. Other studies focus on specific parliamentary tools, such as the introduction of the Early Warning Mechanism (Auel & Neuhold, 2017; Groen & Christiansen, 2015). In the German political context, Auel (2006) explores the

use of the Bundestag´s formal institutional rights in EU affairs and finds that MdBs make extensive use of informal means of influencing EU policy-making. Beichelt (2012) takes a technical look at how the role of the German EAC has changed since the 1990s based on developments in the Treaties and German law. Taking a look at the internal politics of the Bundestag, Albrecht et al. (2021) examine the role of opposition in the German EAC and Holzhacker (2002) studies party interactions in parliamentary scrutiny, focussing on legal powers and institutional structures in Germany.

Existing studies focus on describing the mechanisms available to parliament and how active parliaments are in practice. However, the debate has neglected to consider the availability of information in the scrutiny process. According to Birkinshaw, it is the access to information that enables public scrutiny, necessary to counter claims of a democratic deficit (2006, p. 189). Meijer argues that transparency facilitates accountability, not only when it ensures the availability of information, but also when the actors are capable of processing the information (2014, p. 12). They define transparency as "the availability of information about an actor allowing other actors to monitor the workings or performance of this actor" (p. 6). As a prerequisite of accountability, more research is needed to understand the access of national parliaments to information on deliberations in the Council. This paper utilises McCubbins and Schwartz´s (1984) fire-alarms concept to analyse this, which will be elaborated in section 3.2.

3.   Theoretical Framework:

3.1   Principal-Agent-Theory:

Before addressing the notion of fire-alarm oversight, it is important to first consider the relationship between parliament and government to illustrate why the parliament has the right to hold the government to account. This paper utilises the hierarchical accountability model to explain accountability in the national context. In this model, authority is delegated from the principal to the agent, while the agent is accountable to the principal (Jarvis, 2014, p. 1). There is a chain of delegation from voters as the ultimate principal to civil servants as the ultimate agent (Figure 1) (Jarvis, 2014, p. 2). It should be noted that the model is a simplification, as in reality, most actors are accountable to more than one principal. Each principal seeks to monitor the execution of the delegated tasks by setting up monitoring systems (Saalfeld, 2005, p. 350). If the chain of delegation works, it ultimately ensures the democratic control of the citizens over all actors involved in democratic governance and "guards against the abuse of power" (Jarvis, 2014, p. 2 & 4). Papadopoulos argues that effective accountability mechanisms force the agent to anticipate the ex-post scrutiny of the principal, thus producing a "deterrent" effect (2007, p. 471). This makes them more responsive to the will of their principal. According to Bovens et al. accountability is a precondition of the democratic process, as it equips voters and their representatives with the information to assess the conduct of government (2014, p. 14).

Figure 1

Chain of Delegation – Author´s design
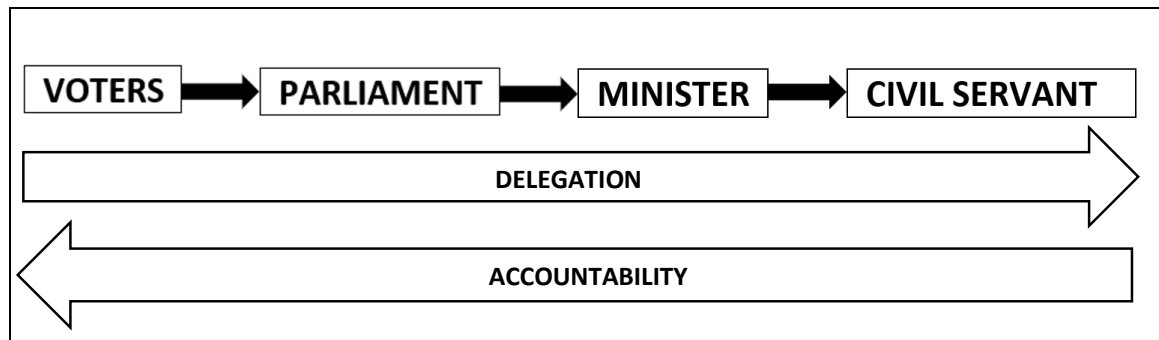
As the ultimate principal, the citizens hold the parliament to account via periodic elections that allow citizens to dismiss elected representatives when they are dissatisfied with their performance (Jarvis, 2014, p. 7). In practice, citizens´ accountability over government is limited, even in states with strong transparency arrangements, as there is too much information for individuals to process. Etzioni (2010) points out that information provided by the government requires time and expertise to examine, which cannot be expected from citizens. Meijer adds to this: "To put it somewhat crudely, citizens simply have better things to do than to process large amounts of government data" (2014, p. 7). Considering citizens´ inability to monitor their governments effectively due to information overload, parliaments act as specialist forums of accountability for the public (Meijer, 2014, p. 8). This further accentuates the importance of government scrutiny through national parliaments in EU affairs for the democratisation of EU governance (Holzhacker, 2002, p. 461).

This article specifically examines the relationship between national parliaments and their executives. Members of Parliament are considered the principal and governments the agent. Thus, parliamentarians delegate authority in EU affairs to the government and must control their government to prevent "agency loss" (Auel et al., 2015, p. 288). Jarvis argues that hierarchical accountability allows for the identification of accountability gaps by determining where authority is delegated and whether corresponding accountability mechanisms exist (2014, p. 12). If the parliamentarians are unable to effectively hold their government to account, the whole chain of delegation, the basis for democratic legitimacy, can be questioned.

3.2   Fire-Alarms and Police-Patrol:

Studying the US Congress McCubbins and Schwartz argue that, due to its limited resources, Congress chooses the most effective form of oversight available to it (1984, p. 165). According to them, Congress could choose between police-patrol and fire-alarm oversight or a combination of both (p. 167).

On the one hand, McCubbins and Schwartz define police-patrol oversight as Congress examining government activities at its own initiative to detect and correct violations to legislative goals and deter violations through its surveillance (1984, p. 166). They argue Congress does this through instruments of direct oversight, such as reading documents, commissioning scientific studies, conducting field observations, and holding hearings (p. 166). On the other hand, they define fire-alarm oversight as

Congress creating "a system of rules, procedures, and informal practices" that enable civil society actors to monitor government and bring any legislative violations to Congress (p. 166). They emphasise that police-patrol oversight takes a lot of time and the majority of scrutinised issues will not violate legislative goals (p. 168). However, under a fire-alarms system, Congress only addresses issues that citizens have complained about and where they receive credit for intervening, thus lowering the opportunity cost. A unit of time spent on fire-alarms is likely to generate more benefit for Congress than one unit of time spent on police-patrol (p. 168). Due to time and other constraints, they insist that under police-patrol Congress only looks at a limited number of government actions, and are therefore likely to miss violations (p. 169). McCubbins and Schwartz assume that Congress will extensively rely on fire-alarm techniques and largely neglect police-patrol (p. 169).

The literature review showed that parliaments have given away legislative and decision-making authority to the EU and their governments in EU affairs. Following the above reasoning, national parliaments in the EU would be expected to adopt a system relying on third parties to act as fire-alarms. This assessment is shared by Saalfeld who suggests that national parliaments often set up fire-alarm systems in EU affairs (2005, p. 350). According to Neuhold and Smith, parliamentarians may also be unwilling to devote time and resources to EU affairs that seem abstract and distant compared to constituency work (2015, p. 684). Therefore, fire-alarms do not only provide informational capacities but also generate political will through pressure from civil society.

Application of the theory in the EU context has been limited to national government´s control over the Commission (Pollack, 1997), the institutions´ and citizens´ means of making Member States comply on the EU level (Tallberg, 2002), and the effect of the different methods on implementation rather than scrutiny (Blom-Hansen, 2005; Jensen, 2007). The theory has not yet been applied to the oversight of national parliaments over their governments in the Council.

The oversight methods are defined by the means and mechanisms used by parliamentarians in accessing information, and the two opposing approaches are differentiated along a set of clearly identifiable characterises. Thus, the framework provided by the concept provides an excellent basis on which to conduct the analysis. The concept has been operationalised below in Table 2. It has been slightly adapted by using Tallberg´s interpretation of societal watchdog, which allows for a broader definition of social interests to include think tanks and the media (2002, p. 610). Additionally, fire-alarms can be considered from the perspective of civil society, considering the information accessible to them and the obligations of the government to answer to them (Damonte et al., 2014, p. 1333). However, in this analysis we consider fire-alarms from the perspective of parliament and whether it is a viable source of information.

Table 1

Operationalisation of Police-Patrol and Fire-Alarms

	Oversight Method	Characteristics
Impetus	Police-Patrol	Proactive: At parliament's own initiative
	Fire-Alarm	Reactive: Parliament intervening in response to outside alarms
Institutional Framework	Police-Patrol	Strong information rights of parliament vis-à-vis the government
	Fire-Alarm	System of rules, procedures, and informal practices that enable civil society to alert parliament; central role of courts
Approach	Police-Patrol	Direct surveillance e.g. reading documents, commissioning scientific studies, conducting field observations, holding hearings to question officials
	Fire-Alarm	Indirect oversight; contacts with civil society
Scope	Police-Patrol	Attempt to examine all government actions – violations missed
	Fire-Alarm	Only select decisions examined – all significant violations scrutinised

4.   Methodology:

4.1   Case Selection:

The German Bundestag was chosen as a single case study, as it is an environment conducive to the fire-alarm theory. It thus offers a most-likely case selection or "proof of concept". Most-likely cases are cases in which the theory is likely to present an explanation if it applies to any cases at all, and therefore, "a theory that fails to fit a most-likely case is strongly impugned" (Bennett and Elman, 2010, p. 505). If the theory holds true in the Bundestag, this is an incentive for further research on a more difficult case.

Auel et al. (2015a) ranked the 40 chambers of EU national parliaments according to institutional strength and activity in the OPAL project. In it, the Bundestag ranks the second-highest in institutional strength and fifth-highest in activity. According to Auel et al., this makes Germany a good case study to investigate parliamentary scrutiny (2015b, p. 286). They find that "parliaments dominated by the executive that lack strong information and oversight rights or an effective infrastructure to deal with EU affairs are less likely to become involved in EU politics" (p. 291). Furthermore, Leech et al. (2005) find that greater government activity and broader competencies positively correlate with the frequency of interest group contacts. However, it has to be noted that ranking parliaments is very subjective, as scholars have to decide on the indicators they select, but also how to operationalise and measure these indicators (Auel et al., 2015a, p. 87). Auel et al. based the OPAL ranking on commonalities they found regarding the indicators and underlying theoretical approaches used (p. 88).

Several additional features make the Bundestag a good case for analysis. Germany is a core Member State and therefore an important case study (Albrecht et al., 2019, p. 231). Further, Germany is a consensus system. Lijphart states that consensus systems aim to "share, disperse and limit power in a variety of ways (2012, p. 2). Auel et al. argue that in consensus systems parliamentarians are better able to control their government in EU affairs, as governments are more likely to form coalitions where ministers are subject to scrutiny from coalition partners (2015b, p. 289). Finally, according to Auel et al. countries that are more integrated into the Economic and Monetary Union, especially donor countries, will have more active parliaments in EU affairs (2015b, p. 291).

In the analysis, individual parliamentarians and their staff are the subject of research. Parliament could also be considered as a unitary actor by assuming that there is a median, or average, parliamentarian (Saalfeld, 2005, p. 350). However, it is important to open the "black box" of parliament and consider its internal lines of conflict to better understand the principal-agent model (Sprungk, 2010). Divisions between political lines in parliament are likely to contribute to different access to information, as Auel argues that "the main cleavage runs between government and opposition parties within parliament – not between the executive and the legislature" (2007, p. 491). As only governments are represented in the Council, opposition parties must make their voices heard at the national level (Holzhacker, 2002, p. 461). This is why the involvement of the opposition is especially important in terms of legitimacy.

According to Saalfeld "the most important institutionalised monitoring systems in national parliaments are committee systems" (2005, p. 350). Auel et al. found that all national parliaments have established European Affairs Committees (EACs) and given them extensive rights to be informed in EU affairs and contribute to EU affairs (2015b, p. 282). They must scrutinise decisions on the EU level in relation to parliament´s interests (Auel, 2019, p.2). According to Karlsson and Persson, the EAC is the one arena for regular interaction between the government and parliament in EU affairs (2020, p. 2). They further argue that there is very little research on EACs (p. 2). As the EAC deals exclusively with EU affairs it was chosen as the basis for this analysis.

4.2   Data Collection:

Interviews were determined to be the most effective way to gather information on the inner workings of the EAC, as publicly available sources on the topic were found to be very limited and often incomplete. According to Rubin and Rubin, interviews capture nuances, highlight shades of meaning and allow for the exploration of different possible explanations of an issue (Rubin & Rubin, 2012, pp. 50-51). Thus interviews are optimal to capture informal interactions and processes normally not found in official or public sources. Previous research has found that parliamentarians employ informal strategies to get involved in EU affairs (Auel & Benz, 2005). The literature review has shown that parliaments do not necessarily use the institutional rights given to them, thus interviews are ideal as they can reveal the actual practices of the EAC concerning information and not only the informational rights given to it. The interviews can be considered "elite interviews" as the respondents are experts on the topic at hand (Leech, 2002, p. 663).

Semi-structured interviews were conducted with representatives of political parties in the EAC to collect detail-rich data. There was a sample pool of 40 MdBs in the EAC. Each party has one MdB who is their Obperson, or representative in the EAC and who usually acts as spokesperson on EU matters for the party. They play a decisive role in determining the direction of the party, formulating its interests and agree on the agenda of the EAC. As they tend to have a good overview of the work in the EAC, they were identified

as ideal interviewees. The first round of interview requests was sent to the Obpeople, as well as the chairman and deputy chairman, who were also believed to have a good overview of the EAC.

Initially, 40 interview requests were sent out to MdBs and two interviews were arranged (SPD and FDP). After 15 follow-up requests were sent, another two interviews were arranged (CDU and LINKE). Only two parties were not represented at this point, the AfD and the Greens. Therefore, additional requests were sent out to the MdBs who had responded negatively, asking if a staff member was available for an interview, resulting in one more interview (GREENS). The AfD did not respond to the interview requests. The Bundestag administration was also contacted and did not respond. Two interviews were conducted with the EU policy advisors of the LINKE and GREENS. The other parties did not respond to interview requests with the policy advisors. One SPD official requested their position remain confidential. Overall the sample was balanced as five out of six parties were represented, with three interviews being conducted with government representatives and five with opposition representatives for a total of eight interviews.

Most interviews took approximately 30-45 minutes, however, some exceeded this timeframe. The interviews were conducted in German and translated into English using DeepL and the author´s translation. The transcribed interviews were coded using ATLAS.ti. The analysis of the findings began with the process of open coding, as defined by Boeije (2006, p. 96). Abductive coding, a combination of deductive codes based on theory and inductive codes based on the data was used (Linneberg & Korsgaard, 2019, p. 14). The codes used are presented in a table, based on Hennik et al. (2011, p. 226), and can be found in the annex.

5.   Analysis

The Bundestag as a constitutional body consists of the MdBs, elected officials, who are supported by the Bundestag administration, which supplies scientific research, especially concerning EU issues. There is also party staff that have an interface function between the EAC and the internal procedures of the parties. The German EAC is especially powerful, as it is anchored in Art. 23 of the German constitution and its rights are guaranteed by the "Law on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union" (EUZBBG). The information obligations of the government vis-à-vis the parliament are defined in the EUZBBG. It ensures the Bundestag is extensively notified as early as possible. Documents are provided via the EuDoX database. It contains diplomatic correspondence and instructions to and from German representatives in the respective Council formations. EuDoX also includes internal Council documents.

At the time of the research, the SPD runs the Foreign Ministry, with which the EAC has most contact. It forms the government together with the "Union" of the CDU and CSU. The opposition parties are the AfD, FDP, LINKE and GREENS.

The interviews showed that McCubbins and Schwartz´ fire-alarms theory does not work as predicted in the context of the German EAC, as police-patrol is primarily used. The interviewees generally trust that the information provided in the EuDoX database is extensive and of high quality. However, there are caveats as there are several limitations to police-patrol methods. Thus police-patrol is supplemented by fire-alarm methods. This chapter first outlines the use of police-patrol methods and its shortcoming, then how the use of fire-alarm methods supplements them.

6.1   Police-Patrol:

The interviews showed that police-patrol oversight dominates the information gathering of the EAC. There was consensus among the interviewees that the primary source of information is documents accessed via EuDoX. Interviewee 6 described EuDoX as "worth its weight in gold." Confirming the importance of the database, interviewee 5 notes, "when it comes to the question: Are we being cheated or deceived? Or are they doing something other than what they tell us? For me, that is always the first point where I would start to check." Additionally, some Interviewees remarked on the high quality of the documents (Interviews 5, 6 & 7). In particular, trust in the authenticity of the documents was high "the effort to manipulate them and to make a second world via Potemkin villages, beyond the fact that this would not be legally permissible, they can't do that" (Interview 5). Many interviewees further praised the thematic organisation of the database, making it easy to navigate, as documents are filed by keywords (Interviews 4, 5, 6 & 7). This makes it easy to understand dossiers and that "you can also relatively quickly see whether there are any discrepancies between what you are told and what is written in the instructions." This document scrutiny falls perfectly into the classical police-patrol methods (Interview 5).

The interviews also revealed several informal information-gathering methods. There are contacts with colleagues from other parties that provide rudimentary, but not in-depth, understanding of problems (Interview 7). Moreover, there are also personal contacts with the ministries (Interviews 5 & 7). One interviewee adds:

> What often happens is that, on the fringes of some committee meeting, you hear from a minister or some other actor that something exciting is happening during the negotiation. And that's always an opportunity to take a look at what's happening. (Interview 8).

The respondents also confirmed that they have communication channels to the EU level, especially the EP and their liaison offices in Brussels, that bring their attention to specific topics (Interviews 1, 3, 4, 5, 6, 7 & 8). However, interviewee 6 states that these channels are more for contextualising as they occur on an informal basis and can thus not be used in political work for which concrete evidence from EuDoX is necessary. Though not directly considered by McCubbins and Schwartz, these informal information sources appear to fall under traditional police-patrol parliamentary work. McCubbins and Schwartz note that the distinction between fire-alarms and police-patrol is not a distinction between informal and formal methods (1984, p. 166).

The use of parliamentary tools associated with police patrol was also confirmed. Some interviewees note that if a topic is interesting to them, they organise debates or rapporteur discussions and confront the government (Interviews 1, 3 & 6). Another tool is the classical parliamentary instrument of asking written or oral questions which the government is obliged to answer (Interviews 1, 2, 4, 5, 6 & 7). Interviewee six underscored that the aim is to force the government to declare its position or to explain it. More bluntly, one interviewee described it as "to put a finger in the wound" (Interview 1). However, there was disagreement between the government and opposition on how well this measure works. Accordingly, one government interviewee comments that "the Bundestag is actually very comprehensively informed about what happens in the Council of Ministers. So the Chancellor has, not always but often, made government statements before the Council meetings" (Interview 2). On the other hand, one opposition interviewee states: "we tried to do more of this during the German Council Presidency. However, the Chancellor did not appear in parliament as often as we would have liked" (Interview 6). The interviews show that the

EAC employs police-patrol tools of asking questions and holding hearings to monitor the positions of the government.

Rather than focussing on building a better fire-alarms environment (as argued by McCubbins and Schwartz, 1984; Tallberg, 2002), the parties have been using the BVerfG to strengthen their rights under police-patrol methods. Regarding the government denying access to certain documents, interviewee 8 states: "Then you can sue and eventually you´ll win, but that won´t help you in that particular case." Another highlights that "there are a number of BVerfG rulings based on this, stating that the Bundestag, represented by the EAC, is not properly involved" (Interview 3). In one case the government denied access to a non-paper, which the BVerfG determined was a violation of the government´s constitutional obligations (Interview 7). The court´s decision means that the government had behaved unconstitutionally and strengthened the parliament´s information rights, especially that the government cannot bypass EuDoX by working with non-papers (Interview 7). Thus, contrary to expectations, the parties are strengthening their police-patrol rights through the courts.

6.2   Limitations of Police-Patrol:

Despite the extensive use of police-patrol methods revealed by the foregoing analysis, there are four major limitations to police-patrol in the German EAC. These are concerns about understanding the government's position on certain EU issues, the difference in access to information between the government and the opposition, crucial documents being withheld, and the number of documents being unmanageable.

One critique concerned the EACs understanding of the government's position on certain EU issues. Interviewee 7 highlights that, as guaranteed by the EUZBBG, classical parliamentary control starts "at the earliest possible point in time when the federal government is forming its opinion." However, this is often inhibited by the government refusing to provide information on this process. One interviewee adds: "you often have to ask the federal government four or five times to comment on something related to European policy before it finally does so" (Interview 6). Another respondent elaborates:

> Then you get the answer: 'Yes, we can't say that. The negotiations are still ongoing' and you say: 'Yes, I know. That's exactly why I want to know.' Because we as a parliament must have the possibility to take a position in such negotiations and to give the federal government a mandate. And sometimes that is blocked in a very brazen way. (Interview 8).

In an attempt to counteract this, one majority interviewee comments that they have suggested to "hold a hearing before the Council of Ministers sits, which would actually be better from a structural point of view so that we know exactly what the ministers will be negotiating in the end" (Interview 4).

The interviewees further criticised that government parties, especially the party holding the ministry, have closer access to information through their ministers (Interviews 2, 3, 7 & 8). There is, moreover, a difference between getting information and knowing what the current internal discussions within the ministry are (Interview 8). This is exemplified through interviewees commenting on the time delay before certain documents are uploaded and linking this disadvantage to not being the party that heads the ministry (Interviews 1, 4 & 6). Interviewee 4 comments on the availability of information: "It's not always easy, but sometimes we have it, sometimes we have to claim it and sometimes we find out too late." Timing is one of the most important factors when assessing parliamentary scrutiny of government (Rozenberg and Hefftler, 2015, p. 28). All interviewees agreed that in most cases it is best to act as early

as possible in the decision-making process. However, there was disagreement on whether the information to act early was available at the stages it was required at. Especially one majority interviewee insists that, as a rule, they had the information and if not could get it (Interview 5). As police-patrol relies on the government for information and not third parties, this time delay can be seen as a characteristic of police-patrol and one of its major limitations.

To get a complete picture of the government´s actions it is important to have access to all relevant documents. Representatives from the Greens and the Left criticised that there have repeatedly been problems with relevant documents being withheld from EuDoX (Interviews 2, 6, 7 & 8). Especially, there are situations where the government refuses to provide access to documents, citing reasons such as the economic interests of companies (Interview 6). Lack of clear responses generally occur in the more politically salient cases (interview 7). As another respondent indicates; "we usually get everything except what we really want to know" and that "it doesn´t happen often, but at critical and decisive moments the government blocks information, even illegally" (Interview 8). They state that "it is about the willingness of the government to give out information, even when they don´t want to be controlled. It's principal-agent-like. Of course, you don´t want to be controlled and that´s exactly the case when we want it to work" (Interview 8). As with the time delay, the withholding of information by the government is a limitation of police-patrol and a feature of its proactive surveillance approach.

Accountability depends not only on receiving information but also on being able to process it (Meijer, 2014, p. 12). The strong information rights of the Bundestag also pose a problem, as all interviewees confirmed that dealing with the amount of information is challenging. One interviewee described it as "a quality of being overwhelmed with information" (Interview 8). Another comments that the information provided by EuDoX is "so extensive and good that it is not really manageable" (8). Particularly the smaller parties lack the resources to scan all documents (Interviews 3, 6). However, also interviewees from the larger parties struggle with information load. One SPD interviewee stated: "It would be presumptuous to say that we have the resources to process all the information" (Interview 5). They lamented the difference in manpower to the government and the parliament, stressing: "I am not a one-man government. A European department in the Federal Ministry of Finance, the Federal Foreign Office or the Federal Ministry of the Interior has 20 times more people than all the parliamentary groups put together". An opposition interviewee agreed: "a very large parliamentary group, even if it wanted to, would not be able to do that" (Interview 8). The interviewees are clearly limited by their resources for political evaluation.

6.3 Selective Examination:

The analysis has shown that both governing and opposition parties struggle to process information. McCubbins and Schwartz predict that police-patrol oversight will result in a process of selective examination (1984, p. 168). All interviewees agree that due to capacity constraints only select decisions are considered. Interviewee 8 states: "If you approach it with the idea that we have to control all processes, I think you have an unrealistic idea and actually no real political idea of what happens" and "If one were to take this seriously, i.e. the ideal-typical understanding that parliament effectively controls the government, it is completely insufficient in terms of resources." Another agreed that some things will be missed, but was more optimistic overall:

> "The question is: what is the probability that we will miss something? If the probability is fifty per cent, then that would be bad. If there is only a five per cent chance that we will miss something, I don't think that is quite so dramatic. It is important that we are informed about the essential

things that directly affect our democracy or the citizens and that we can do something beforehand." (Interview 1).

The interviews have shown that the work in the German EAC is in line with McCubbins and Schwartz´ prediction that only selective decisions are examined.

Some interviewees indicated that they use EuDoX only once their interest in a topic has been sparked by another reason (Interviews 3, 5, 6, 8). One interviewee comments that you need to know where to start looking, as they often pick up on exciting current debates without knowing the concrete details, which can only be found by looking at the individual documents on a text level (Interview 8). Another interviewee comments that scanning documents is manageable if they have keywords to search for (Interview 6): "We often receive information from outside about what is happening on a certain issue. We pay attention to this and only then, in response to this, we go through all the relevant wire reports or directives in EuDoX." The interviews indicate that there can be outside impetus to initiate or supplement police-patrol scrutiny. Up to this point, the analysis has shown that traditional police-patrol methods are prominently used by the EAC. However, also that there are several limitations to this method and that there is a fear that information is missed as only select decisions are considered. The interviewees illustrate they often need an impetus to start looking into the database, which then allows them to ask questions to the government and thus force it to take a position. Where does this impetus come from? Could fire-alarms trigger the police-patrol in certain situations?

6.4   Fire-Alarms:

Overall, the interviews showed that the use of fire-alarm methods was limited. None of the interviewees mentioned organised interest when initially asked about information access in general. When probed all interviewees include organised interest, however, some were hesitant (Interviews 1, 2, 3 & 8). One interviewee said they have very little contact with interest groups (Interview 3). Another underscores that interest groups making them aware of something is very rare and "it sometimes happens that a citizen approaches us with a very specific question, but it never actually happens that we say: 'Uh, I totally missed something'" (Interview 8). Some say they are sometimes informed by interest groups, but that this is the exception rather than the rule (Interviews 4 & 5). The less-proactive information access and waiting for alarms to signal potential violations are indications of fire-alarms. However, these interviews suggest that fire-alarm contacts a rare, even if they sometimes provide limited information.

Others placed a greater value on these contacts (Interviews 5, 6, 7 & 8). One respondent highlighted that they are in contact with organised interest as much as possible and that "it is often absolutely necessary that we receive certain information, certain expertise on content from civil society organisations." (Interview 6). Adding a different dimension, interviewee 8 explains that think tanks don´t necessarily provide guidance on specific legal texts, but help uncover long-term trends. Another source of information is the media. The interviewees highlighted the importance of the media, especially Politico in addition to the traditional German quality press (Interviews 5, 6, 7 & 8).

Parliament being less proactive and intervening in response to claims from third parties are indications of fire-alarm oversight. However, the interviews showed that the use of fire-alarm methods is limited compared to police-patrol methods. The findings do indicate that they can play a role in triggering police-patrol oversight in certain cases and providing guidance through the documents available. However, it is not possible to say how often this occurs, as the interviewees could not quantify this relationship. It should

also be noted what was not found. The interviews did not provide evidence of a "system of rules, procedures, and informal practices that enable individual citizens and organized interest groups to examine administrative decision", as predicted by McCubbins and Schwartz (1984, p. 166).

7. Conclusion:

This paper examined the access of the national parliaments to information on its government in the Council. Interviews were conducted to examine the access of the German EAC to information based on the operationalisation of McCubbins and Schwartz´s mechanisms of oversight. On the one hand, the analysis showed that, contrary to what the theory would suggest, the EAC primarily utilises police-patrol methods to gain access to information. The interviewees are confident in the information provided in the EUDoX database and many commented on how fortunate the Bundestag is to have it. On the other hand, the analysis has also shown that there are limitations to police-patrol and has suggested that fire-alarm methods supplement police-patrol, at times initiating it. Thus, fire-alarms may compensate for some of police-patrol´s shortcomings in certain situations and contribute to overcoming the capacity constraints on the EAC. However, the interviews showed that the use of fire-alarm oversight is very limited and reduced to exceptional cases, meanwhile, limitations persist.

According to the literature, information is needed to hold an actor to account, implying that accountability is limited when access to information is compromised (Birkinshaw, 2006; Meijer, 2014). The analysis did not set out to judge how effective the EAC is in overseeing its government. However, access to information and the ability to process it are preconditions of effective accountability holding. The legitimising nature of national parliaments in EU affairs can play a role in reducing the democratic deficit in the EU, highlighting the practical significance of the analysis. The analysis identified mechanisms available to the parliament which function effectively, but also where there is room for improvement. Furthermore, the dynamics and mechanisms national parliaments employ to access information on deliberations in the Council were studied, which has been neglected in previous research. Specifically, this process was analysed from the perspective of the fire-alarms concept, thus adding to the theoretical debate on the issue.

A limitation of this paper is that interviewees can (intentionally or unintentionally) misrepresent information (Berry, 2002, p. 680). This is especially relevant when looking at organised interest´s contacts with politics, particularly in Germany where interest groups have a negative connotation, which interviewees confirmed (Interviews 1 & 6). What enhances these circumstances is that German politics was plagued by several corruption scandals in early 2021 in connection to the Covid-19 pandemic. When asked about how the decision was made to scrutinise certain documents, most interviewees answered that the decision was made based on party and political interests. However, the interviewees also showed that often a certain impetus is needed. It is possible that interest group contacts were downplayed, as contacts with organised interest were only shown to play a role after probing. This shows the difficulties in disentangling controversial issues. To try and mitigate the risk of bias, questions were asked about general relationships first and then followed by probes concerning contacts with organised interest. Additionally, bias was reduced by allowing all interviewees to remain anonymous if they so wished.

It is difficult to generalise these findings to other parliaments, as Neuhold and Smith highlight that parliaments cannot be seen as unitary actors and parliaments in the EU are quite heterogeneous (2015, p. 684). The same goes for the different specialist committees in the Bundestag. One interviewee comments that specialist committees may have more organised interest contacts (Interview 3), while another contends that MdBs in specialist committees often have very little knowledge of the EU, indicating

that scrutiny of EU affairs in these could be limited (Interview 8). Thus a broader study, considering different committees in the Bundestag or a greater number of parliaments would increase the validity of the research and could help uncover patterns. This is the weigh-off between small-N and large-N studies (Auel et al., 2015, p, 73). The use of the Bundestag as a most likely case helps counteract this effect. Despite these limitations, this research made a significant contribution to the theoretical and practical debate on the democratic deficit in the EU. The implications of this analysis on the ability of national parliaments to hold their governments to account and thus their role in providing legitimacy to EU politics are vital. The access to information and the possibility to process it are prerequisites to effective scrutiny.

A Prerequisite for Accountability: Access to
Information in the German European
Affairs Council

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Annex:

Table 2

Interviews in chronological order

	Name	Party		Function	Medium
Interview 1	Ullrich, Gerald	FDP	Opposition	Obperson (MdB)	Tel.
Interview 2	Töns, Markus	SPD	Government	Deputy Chairman (MdB)	Tel.
Interview 3	Hunko, Andrej	LINKE	Opposition	Obperson (MdB)	Zoom
Interview 4	Groden-Kranich, Ursula	CDU	Government	MdB	Tel.
Interview 5	Anonymous	SPD	Government	/	Zoom
Interview 6	Kommer, Florian	GRÜNE	Opposition	Head of Office	Zoom
Interview 7	Wadle, Sebastian	GRÜNE	Opposition	EU policy advisor	Zoom
Interview 8	Jokisch, René	LINKE	Opposition	EU policy advisor	Zoom

Table 3

List of codes

Category	Code	Type	Description	Example from data
Fire-alarms	Civil Society	Deductive	Contacts with civil society	"We try to be in exchange with civil society organisations"
	Media	Deductive	Contacts with media	"The press plays an important role"
Police-patrol	Document scrutiny	Deductive	Examples of document scrutiny	"I think EuDoX is definitely worth a lot"
	Informal	Inductive	Examples of informal contacts	"very informally, I am in such close contact with my colleagues from the other parties"
	Scrutiny methods	Deductive	Police patrol scrutiny methods	"we can even put the questions that are burning on our minds directly to the ministers"
Limitations of police-patrol	Government position	Inductive	Understanding government positions	" you get the answer: 'Yes, we can't say that. The negotiations are still ongoing'"
	Timing	Deductive	Timely access to information	"I think there is a difference in time"
	Amount	Deductive	Amount of information to process	"it is a quality of being overwhelmed with information"
	Missing Documents	Inductive	Access to documents blocked	"we usually get everything except what we really want to know"
The Future	BVerfG	Deductive	Role of the BVerfG	"There are a number of BVerfG rulings based on this"