

**‘Servants of the People’ or ‘Masters of the Government’?  
Explaining Parliamentary Behaviour in EU Affairs**

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# ‘Servants of the People’ or ‘Masters of the Government’? Explaining Parliamentary Behaviour in EU Affairs

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## Abstract

Comparative studies using a rational choice approach have successfully explained variation in the degree of institutional parliamentary strength in EU affairs, but they perform less well with regard to explaining both actual parliamentary behaviour and variation thereof. The paper therefore develops an explanation for parliamentary behaviour based on agency theory and the model of delegation. The aim is to enrich rational choice approaches, which have so far focused mainly on the preference of re-election and have therefore - at least implicitly - conceptualised parliamentarians as agents of their voters or parties. In parliamentary systems, however, MPs are not only agents of the voters (or parties), but also principals of the government. The paper is based on Strøm’s rational choice institutionalist conception of parliamentary roles as ‘routines, driven by reasons (preferences), and constrained by rules’ (Strøm 1997: 158), but uses Merton’s concept of ‘role-sets’ (Merton 1957) to analyse parliamentary agent- and principal-relationships as different elements of the role-set ‘MP’ associated with specific routines driven by specific preferences.

## Introduction

Since the early 1990s the ‘democratic deficit’ of the European Union (EU) has developed into one of the major and most debated topics in European politics. Within this debate, the role of national parliaments has generated a considerable body of literature. Much of the early literature consisted of informative, but often descriptive, accounts of the institutional adaptation of national parliaments to the challenges of integration, detailing institutional provisions and scrutiny procedures. However, the last years have also seen a growing number of comparative studies and theoretical contributions that aim at classifying national parliaments according to their institutional position in European affairs (e.g. Bergman 2000a; Maurer 2001), and at explaining institutional variation (Raunio 2005; Saalfeld 2005). The latter have explained variation in the degree of institutional parliamentary strength in EU affairs with two main variables, the power of parliament independent of European integration and the electoral salience of / public opinion on European integration. However, while these studies convincingly assess and explain *institutional variation*, they perform less well with regard to actual *parliamentary behaviour*. First, they focus only on *formal* parliamentary rights of influence and are thus based on the debatable assumption that institutional capabilities equal parliamentary behaviour. Yet as studies have shown, national parliaments often make little use of their institutional rights (e.g. Auel 2006, Pollack and Slominski 2003),

in other words, what parliaments can do is not necessarily what they actually do in reality. Second, based on the - implicit or explicit - assumption that the reluctant use of institutional rights is a sign of 'behavioural reticence' (Saalfeld 2003) they tend to ignore the possibility that national parliaments have found other means to get involved in EU affairs. Indeed, while some parliaments focus on informally influencing the position of the government for Council negotiations, others concentrate on holding the government publicly to account for their EU policies (Auel and Benz 2005). As a result, they are also unable to explain parliamentary behaviour that seems counter-productive from a rational point of view, such as costly, because time consuming, activities in EU affairs that take place behind closed doors and will thus have few direct electoral benefits for the MPs involved. Auel and Benz (2005), in contrast, do compare parliamentary behaviour in terms of both, the use of institutional rights and the development of more informal strategies of parliamentary involvement in EU affairs across a small number of parliaments. However, while they can explain the reasons for the development of such alternative strategies they fail to provide a more general explanation for the variation in parliamentary behaviour they observe.

The paper therefore develops an explanation for parliamentary behaviour based on integrating the idea of parliamentary roles and the principal-agent model. As Wahlke and his associates (1962: 9) famously argued, 'the chief utility of the role theory model of legislative behavior is that, unlike other models, it pinpoints those aspects of legislators' behavior which make the legislature an institution'. The aim is to enrich rational choice conceptions of legislative behaviour which have so far mainly focused on the preference of re-election and thus - implicitly - on the role of legislators as the agent of their party or voters. The main argument is that MPs in parliamentary systems are not only agents, but also principals of the government and that any analysis of parliamentary behaviour needs to take their preferences as principals into account.

The paper proceeds in six sections. The first section gives a short overview over the rational choice literature in legislative behaviour with a particular focus on Strøm's (1997) rational choice neo-institutionalist conception of parliamentary roles and introduces the role of MPs as principals of the government. Section 2 uses Merton's concept of 'role-sets' (Merton 1957) to discuss the three main agent- and principal-relationships associated with the status of MP. Using agency theory, it will argue that the roles of agent of the voters, agent of the party and principal of the government are, in turn, associated with specific preferences: As agents, MPs' most important preference is to secure their re-authorisation, i.e. to be re-selected/re-nominated as the agent of their party and to be re-elected by the voters. As principals, the most important preference is to induce their agent (the government) to act in accordance with their interests, i.e. to minimise agency loss. Section 4 discusses parliamentary strategies MPs can use to pursue their preferences as both agents and principals in general. Based on the assumption that MPs preferences are hierarchically ordered, with the preference of re-authorisation as agent being more important, it will be argued that in their role as principals MPs will choose strategies of minimising agency loss that will advance, or at least not hurt, the realisation of their preferences as agents. Section 5 then turns to the field of European affairs and looks in more detail at the strategies MPs can employ to minimise agency loss. It argues that the choice of strategies depends on their payoff in terms of

reducing agency loss relative to their costs and discusses specific institutional incentives and constraints that will have an impact on both. Section six draws the arguments together, provides some empirical illustrations and concludes.

### **Explaining Legislative Behaviour: Rational Choice and Legislative Roles**

Rational choice approaches to legislative behaviour have long been reluctant to develop specific conceptions of legislative roles or to even use the term. Rather, rational choice approaches have sought to explain legislative behaviour with economic models of individual behaviour models stressing individual preferences and strategic choices (e.g., Fenno 1973; Mayhew 1974; Shepsle 1978; Smith and Deering 1984).<sup>1</sup> Rational choice neo-institutionalism has expanded the perspective and paid attention to the constraining impact of institutions and formal rules as ‘the strategic context in which optimizing behaviour takes place’ (Shepsle 1989: 35, see also for example Laver and Shepsle 1996, Huber 1996a). Theorists increasingly understood that ‘formal models can best advance our understanding of legislatures when they are enriched by with institutional detail’ (Shepsle and Weingast 1994: 145).

Much of literature on legislative behaviour has been developed through analysis based on the United States Congress (but see Doering 1995) and focuses on career goals of legislators to explain behaviour. In one of the earliest and most influential contributions, Mayhews argued that legislative behaviour could be best understood if legislators were see as ‘single-minded seekers of reelection’ (Mayhews 1974: 5), re-election being the preference that ‘underlies everything else, as indeed it should if we are to expect that the relations between politicians and public will be one of accountability’ (ibid.: 16-7). Although later works have presented a more nuanced perspective on legislators’ preferences, the re-election or career goal remained prominent in the literature (Katznelson and Weingast 2005: 8). Schlesinger, for example, defined the main preference of legislators by the broader term of ‘political ambition’ (Schlesinger 1991: 39f.) and distinguished between discrete ambition (the aim to gain a specific office for one term), static ambition (to keep the office for several terms) and progressive ambition (to gain a more powerful office). In contrast, Fenno (1973) in his seminal work on Congress Committees, broadened the narrow focus on re-election and included ‘influence within the House’ and ‘good public policy’ as two further basic preferences or goals of Members of Congress. But in his later work, he still argued that legislators ‘want to get nominated and elected, then renominated and re-elected. For most members of Congress most of the time, this electoral goal is primary (Fenno 1977: 889). Similarly, Cox and McCubbins accept ‘the usual emphasis on re-election’ as not necessarily the only, but an important component of legislators’ motivation that ‘is reasonable to consider in isolation’ (Cox and McCubbins 1993: 100).

The first explicit rational choice neo-institutionalist conception of parliamentary roles has been developed by Kaare Strøm, who defines ‘*parliamentary roles ... [as] routines, driven by*

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<sup>1</sup> As Searing criticised, ‘the informal rules, the norms and roles of homo sociologicus, have been pushed aside by the reasons of homo economicus, by a new interest in the preferences and calculations of individual politicians’ (Searing 1991: 1240-1). His famous motivational approach therefore combines sociological and rational choice institutionalist approaches, see Searing 1991, 1994.

*reasons (preferences), and constrained by rules*' (Strøm 1997: 158, italics in original). Roles are thus seen as patterns of behavioural strategies that legislators employ to pursue their exogenous goals within a given institutional context:

'Roles are routines, regular patterns of behaviour. But although such routines may be shaped by cultural expectations as well as by personal idiosyncracies, they are most likely of all to flow from reasoned and deliberate pursuits in which parliamentarians engage. Besides all their other charming idiosyncracies, legislators are goal-seeking men or women who chose their behaviour to fit the destinations they have in mind. In doing so they have to pay close attention to the institutions in which they operate. The institutional features that most matter are partly those of the legislature itself, but also those of their national and local parties, as well as the rules of the electoral process' (Strøm 1997: 158).

Based on the literature on legislative behaviour outlined above, Strøm distinguishes between four types of parliamentary goals or, in other words, components of the parliamentary utility function: (1) reselection (renomination), (2) reelection, (3) party office, and (4) legislative office (Strøm 1991: 160). In addition, Strøm argues that these legislative goals are interrelated and hierarchically ordered: reselection or renomination as a candidate is the essential prerequisite for being reelected, which in turn is the fundamental precondition of parliamentary membership. Thus, the 'iron-clad necessity of election in democratic legislatures makes the "single-minded pursuit of reelection" the primary instrumental goal of legislators' (Strøm 1997: 160). The hierarchy between the latter two, party and legislative office, is less strict. They can be distinguished with regard to who controls the nomination or election process, the party or parliament as a whole (or a cross-party subset). Strøm argues, 'partisan office is probably more likely to be a precondition for advancement in legislative office, rather than *vice versa*', but suggests this necessity may be less strict outside of the Westminster model (Strøm 1997: 161).

Parliamentarians, Strøm continues, therefore have to make strategic choices how they commit their scarce resources (such as time, voting power or media access) to the pursuit of these goals. In other words, 'strategies of parliamentarians are prescriptions, or game plans, that help them align their employment of resources with their objectives' (Strøm 1997: 163). However, in the choice of their strategies they are influenced by the institutional context that provides specific constraints and incentives:

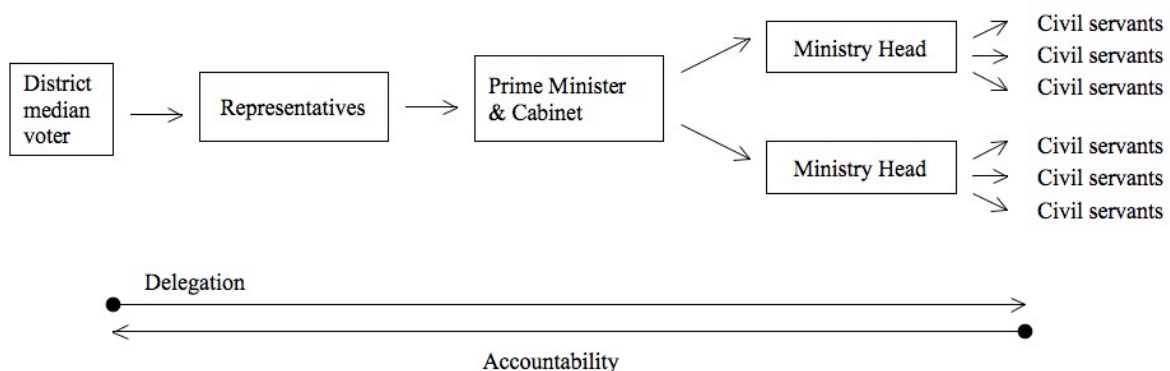
'The political institutions that most powerfully enable and constrain parliamentarians are those that regulate their attainment of ballot access, reelection, party office and legislative office. The first two of these objectives will be conditioned in large part by the electoral system (but also by party organisation). The third and fourth objectives are most directly affected by *party and legislative organisation and procedure*' (Strøm 1997: 163, italics in original).

The great advantage of Strøm's analytical framework is that it takes institutional variation systematically into account, which expands the so far dominant US Congress focus and provides a useful framework for cross-national analysis of parliamentary systems of government as well. However, the analysis suffers from one shortcoming, namely that it focuses only on specific career goals. Seen through the lens of agency theory, it can be argued that legislators are only conceptualised as *agents* of either their voters or their parties. Since the seminal work of Kiewiet and McCubbins (1991) agency theory and the principal-agent

model have been prominent approaches to the study of political representation. They defined the agency relationship as ‘established when an agent is delegated ... the authority to take action on behalf of ... the principal’ (ibid.: 239-240). The goal of re-selection and re-election thus refers to the aim of being re-authorised as an agent, while gaining legislative or party office refers to the aim of becoming – for want of a more precise term - a more important/powerful agent. This narrow focus may be partly due to the fact that Strøm’s conceptual scheme to capture the range of legislators’ objectives or goals is mainly based on the literature examining legislative behaviour in the US Congress (Strøm 1997: 157) and thus in a presidential system with a clear separation of power. And while the insights from this body of literature are indeed more broadly applicable and helpful in analysing legislative behaviour in parliamentary systems as well, as Strøm demonstrates, they cover only part of the parliamentary story. Indeed, agency theory has been fruitfully used by Strøm, Bergman and Müller (Bergman et al. 2000; Strøm et al. 2003) to model parliamentary systems, the most common form of system of government in Europe, as a single chain of delegation (Strøm 2003: 65):

- (1) From voters to elected representatives (legislators),
- (2) From legislators to the chief executive (the prime minister) and his or her cabinet,
- (3) From the cabinet and the chief executive to the “line ministers” (typically individual cabinet members) that head the different executive departments, and
- (4) From cabinet members, in their capacity as heads of different executive departments (ministries), to civil servants within their agencies.

**Figure 1** The single chain of delegation in parliamentary systems



*Source: Strøm 2003: 65*

Of particular importance in parliamentary systems (in contrast to presidential systems) is therefore the fact that upon entering office MPs not only become agents of their voters or parties, but also principals of the government. ‘Being elected by the governed, MPs are expected to control the government. ... Any analysis of the roles of MPs in parliamentary

systems must take into account these two faces of parliamentary life, and must combine “representation” and “executive-legislative relations” (Andeweg 1997: 110).

### **MPs And Their Role-Set**

Robert Merton defined a role-set as the ‘complement of role-relationships in which persons are involved by virtue of occupying a particular social status’ (Merton 1957: 110). He thus distinguishes a role-set from the concept of multiple roles, which ‘refers not to the complex of roles associated with a single social status, but with the various social statuses ... in which people find themselves’ (Merton 1957: 111). To illustrate the difference: on the one hand, a person who is teacher will occupy multiple other roles, for example the roles of father, son, husband, neighbour etc. His social status as a teacher, on the other hand, is connected to a number of roles relating him not only to students, but also to their parents, to colleagues, the school principal, etc.

Merton’s concept of role-sets is particularly helpful for the analysis of the different roles MPs occupy. There are three very basic relationships connected to the role-set of MP: that to their party, to their voters and to the government. First, MPs are typically<sup>2</sup> agents of their party, who have put them forward as candidates (Müller 2000: 309). Secondly, they are in they are agents of their voters (electorate) and, thirdly, they are principals of the government.<sup>3</sup>

As I will argue in the following, each of these components of the parliamentary role-set comes with specific preferences, which are not necessarily compatible. The argument is based on the basic assumptions of agency theory and the delegation model.

Agency theory argues that any delegation of power to an agent creates risks for the principal.<sup>4</sup> Once entrusted by the principal, the agent is expected to realise the principal’s interest. Insofar as his own interests diverge from those of the principal, however, he is inclined to realise his own interests at the cost of the principal’s. As a result, the agent fails to act in the best interest of her principal (*shirking*) or might even act against the interests of the principal (*sabotage*) (Brehm and Gates 1997). These problems are severely increased by *asymmetries of information* between the principal and the agent with regard to information on the agent’s preferences and skills as well as information on the concrete circumstances of the task to fulfil (*hidden information*) and information on the agent’s actions (*hidden action*). While the former mainly results in *adverse selection* (selection of an unsuitable agent), the latter may lead to *moral hazard* (the agent acts not in accordance with the interests of the principal; shirking and sabotage). As a result, delegation is fraught with a fundamental dilemma: ‘the principal needs the agent in order to get a task done but cannot trust the agent to act truly in [her] interest; the agent, on the other hand, wants to be assigned the task but can

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<sup>2</sup> Although rare, MPs can also be independents. In this case, a relationship to their own party is, of course, not part of the role-set.

<sup>3</sup> This is, of course, not an exhaustive list of the roles related to the status of ‘Parliamentarian’, which will typically include other relationships such as those to their assistants or secretaries, colleagues from other parties, Committee Chairs etc.

<sup>4</sup> For a detailed discussion see Akerlof 1970; Kiewiet and McCubbins 1991; Lupia 2003.

only [continue to, K.A.] obtain the task if [he] proves trustworthy to the principal' (Behnke 2008: 14, see also Fenno 1977: 898-9).

### *MPs as Agents*

The preferences of MPs as agents of their voters or parties are rather straightforward. As agents of their parties MPs will mainly seek re-selection/re-nomination as an electoral candidate, which is, of course, the fundamental prerequisite for re-election. In addition, they may have ambitions for party office, i.e. to become a more powerful agent. As agents of their voters, their main preference will be re-election. In other words, as agents MPs can be seen as driven by a specific goal, namely to be *re-authorised* as an agent. In both cases, the agents have to signal their trustworthiness to their principals to be both re-selected and re-elected. Thus, MPs have to satisfy the demands of both their party as well as the electorate. These demands, however, are not necessarily compatible. To maintain the trust of their voters, MPs need to be seen to fulfil their duties. Only public action can adequately signal trustworthiness to the principal. According to Mayhew (1974) they therefore have to focus on three basic routines or activities: *Advertising* (making yourself seen), *credit claiming* and *position taking*. As an agent of the party, however, parliamentarians need to signal their trustworthiness in terms of party loyalty. Such loyalty can be demonstrated in a number of ways, such as reliably voting for/against government bills or defending/criticising government policy in public debates etc. MPs know that loyal party members are likely to get rewarded, not only with re-selection, but possibly with an appointment to party office as well, while those who are seen to be 'defecting' are punished (Cox & McCubbins 1993: 91). And while MPs from both governing and opposition parties have to demonstrate trustworthiness to their parties, these demands are greater on former. As the stability and effectiveness of the government depends on the support of their parliamentary majority, MPs from the governing party/parties are generally expected to behave in a way that will not jeopardise either: 'support for a government *of one's own* becomes the most important task of the governing parliamentary majority. Of course, this task can be fulfilled successfully only if the members act a *reliable* group and not as a gathering of individuals that arrive at collective action generally on a case-by-case basis' (Patzelt 2000: 23-4, italics in original). Most importantly, it rules out public behaviour that may hurt the party or its interests and undermine the trust between the government and its supporting parliamentary party group(s).

### *MPs as Principals*

As argued above, delegation to an agent usually comes with the danger that the agent does not faithfully act in the best interest of the principal, i.e. with *agency loss*. Agency loss is the difference between the actual consequence of delegation and what the consequence would have been had the agent perfectly realised the principal's interests (Lupia 2003: 35). The most fundamental preference of any principal in such a relationship is therefore to induce her agent to act as much in accordance with her interests as possible, in other words, to minimise agency loss.



As Bergman et al. argue, agency loss among cabinet members can come in different guises: 'It is widely known from the scandal sheets and anecdotal evidence (though not extensively documented in the academic literature) that cabinet members often gratify themselves with fancy cars and living quarters, use government airplanes for private trips, host unnecessarily lavish receptions, or make other inappropriate uses of government money' (Bergman et al. 2003: 146). Here, I am not interested in the 'bitter fruits of leisure shirking and rent-seeking' (ibid.), but in agency loss in terms of government policy. While the re-authorisation goal may be the most important preference of MPs, policy interests cannot be completely ignored. The purely vote-seeking approach has been criticised for being too parsimonious, as 'not totally persuasive as primitive assumptions. It makes little sense to assume that parties [as well as MPs, K.A.] value votes for their own sake ... votes can only plausibly be *instrumental* goals' to achieve policy influence and/or the spoils of office (Strøm and Mueller 1999: 9). As Budge and Laver (1986) argue, politicians do pursue policy goals, either intrinsically, because they genuinely/sincerely care about the policies in question, or instrumentally, as a means for some other goal, for example electoral support. De Swann puts it even more forcefully: 'considerations of policy are foremost in the mind of actors ... the parliamentary game is, in fact, about the determination of major government policy' (De Swann 1973: 88). We also cannot assume that common party membership of MPs and cabinet ministers simply rules out conflicting interests between principals and agents, thus solving the agency problem. While it will indeed reduce agency problems compared to situations where agents are randomly chosen, parties are not monolithic, but include a range of positions on most policy dimensions and issues (Müller 2000: 320-1). We can therefore expect MPs to have an interest in minimising agency loss in terms of the differences between government policy and their own policy preferences.

But agency loss not only refers to policy interests. Following March and Olsen, we can distinguish between two logics of human behaviour, a 'logic of consequentiality' and a 'logic of appropriateness'. The former 'demands that political actors be accountable for the consequences of their action', while according to the latter such action 'is assessed as proper less because of its consequences than because of its consistency with cultural and political norms and rules' (March and Olsen 1995: 154). Applying the distinction to the agency relationship we can therefore distinguish between two forms of agency loss: The logic of consequence relates to potential agency loss in terms of the agent's (the government's) policy (output and outcome), while the logic of appropriateness relates to agency loss in term of the agent's compliance with accepted norms and rules of the political process.

### **Managing the role-set**

So far I have argued that a model of legislative roles in parliamentary systems of government has to take into account the different relationships associated with the role-set of the status 'MP'. These relationships relate legislators to their voters, their party and the government. In the two former relationships the MP is an agent, in the latter the MP is the principal. All three come with different preferences. As agents, MPs' most important preference is to secure the continuation of the delegation relationship (re-authorisation), i.e. to be re-selected/re-nominated as the agent of their party and to be re-elected by the voters. In

both cases the agent has to prove or at least signal trustworthiness to his principals for the delegation to continue. As principals, the most important preference is to induce their agent (the government) to act in accordance with their interests, i.e. to minimise agency loss.

I agree with Strøm that these different preferences are hierarchically ordered with the preference of re-authorisation as agent being more important than the preference MPs have as the principal of the government. After all, becoming an agent is the precondition for becoming the principal. However, this does not necessarily imply that agents concentrate on either role in a sequential manner, i.e. try to secure re-authorisation before they engage in minimising agency loss. Hierarchy rather means that MPs will act as principals with a firm eye on their preferences as agents. As principals, MPs will therefore choose strategies of minimising agency loss that will advance, or at least not hurt, the realisation of their preferences as agents. In their roles as agents of the voters, it will therefore be rational for MPs to choose *public* strategies of minimising agency loss. This will signal to the voters that the MP is doing the job of representing his or her voters and of controlling the government effectively. However, as agent of the party, it may be far more rational – at least for MPs from the governing party/parties - to choose private strategies of minimising agency loss, in other words, to control the government behind closed doors, to avoid embarrassing the government publicly and undermining their own trustworthiness as an agent: ‘Undertaking aggressively the task of scrutiny – asking awkward questions, pressing ministers to do that which they do not wish to do, threatening to vote against the government in order to achieve an outcome not desired by party leaders – may undermine the political credibility of the governing party or parties’ (Norton 1998: 194).

Reality is, of course, slightly messy, and MPs rarely, if ever, fall into either category – purely agent of the voters or their party - as their continued position as agents usually depends on both the re-selection/re-nomination by their party and the re-election through the voters. Thus, ‘if members have some uncertainty about their prospects of reaching any one of their objectives and these are not fully hierarchically ordered, they may think of their strategic choices as trade-offs under risk’ (Strøm 1997: 161). However, MPs operate within an institutional context that provides both constraints and incentives regarding the choice of strategies. The choice of strategies regarding their re-authorisation as agents will be influenced in large part by the electoral system and the extent to which it emphasises the importance of personal votes.

The literature on personal voting agrees that the importance of both candidate considerations (from the perspective of the voter) as well as personalised electoral strategies (from the perspective of the candidate) depend on the electoral system. Cox and Rosenbluth, for example measure the electoral importance of parties in terms of their electoral cohesiveness by which they mean ‘*the extent to which the electoral fates of incumbent candidates of the same party are tied together*. Electoral cohesiveness is high when what happens to the party’s incumbents as a whole is a good predictor of what will happen to any one of them; it is low when collective and individual fates are dissociated’ (Cox and Rosenbluth 1995: 19, italics in original). Carey and Shugart (1995) rank electoral systems according to their tendencies to create personal vote incentives based on the four variables vote type (one or more votes, for party or candidate), vote pooling, ballot control and district

magnitude. Personal characteristics of a candidate are least important in systems where voters can only cast one vote for a party, when pooling is at the party level, when parties have full ballot control and the district magnitude in large. As Hallerberg (2004: 22) or Mitchell (2000) show, most West European electoral systems de-emphasise the importance of the personal vote: ‘in many European countries the electoral laws provide very little scope for voters to impose direct (and especially terminal) sanctions on MPs. Thus, in closed list systems or even in formally preferential cases in which the default rank order is very difficult to overturn, the direction of delegation is essentially from voters to parties, so that MPs are primarily agents of their respective parties’ (Mitchell 2000: 348). Bergman et al. (2003) provide a comprehensive overview over the electoral connection between voters and MPs. Although they concede that the *potential* effects of preference voting are greater, the *actual* effects they have observed lead them to similar conclusions: ‘Although PR electoral systems increasingly allow for intra-party preference voting, this trend is by no means overwhelmingly strong. Moreover, in practice, relatively few MPs owe their seats in parliament to this instrument. This is in part because intra-party preference voting allows voters only to reward, but not punish, candidates. Thus ... the effects of preference voting range from insignificant to modest’ (Bergman et al. 2003: 136).

This does not mean, of course, that the party is the only relevant principal of MPs. Even under a completely party dominated electoral system, parties still need to be voted for by the electorate to gain office. Yet for many, if not most, MPs, nomination by the party as well as the overall electoral success of the party rather than their own profile will determine whether or not they will (re-) gain office. In addition, even in more personalised systems, there may be a potential tension between the incentives of individual candidates and the collective incentives of the party as a whole (Cox and McCubbins 1993; McCubbins and Rosenbluth 1995). Thus, parties and their leadership need to ensure that individual candidate behaviour does not harm the collective electoral fate of the party, and we can expect them to constrain behaviour that poses a potential threat to the party’s interest (Swindle 2002: 282). Finally, since parliamentary systems of government are characterised by interdependence between the government and the governing parliamentary party groups, we cannot expect MPs from the governing party/parties to hurt or disregard their party’s interests.

But what exactly are the strategies that MPs as principals of the government can employ to rein in their agents? The literature on delegation identifies three main measures or instruments principals can use to minimise agency loss: (1) screening and selection mechanisms, (2) contract design, and (3) oversight (monitoring and reporting requirements as well as sanctions) (Kiewiet & McCubbins 1991, Strøm 2000: 271).<sup>5</sup> Screening and selection are ex ante mechanisms that aim at reducing hidden information with regard to the agent’s preferences and skills and thus at avoiding adverse selection. Thus, the aim is to identify the good and the bad agents before delegating to them, in other words, ‘to eliminate potentially

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<sup>5</sup> Kiewiet and McCubbins also mention a fourth instrument, institutional checks, which subject particularly critical agent decisions to the veto powers of other agents or a third party. Such institutional checks are more common in presidential systems due to their separation of powers than in parliamentary systems (Strøm 2000: 271-3), but federalism or Constitutional Courts can present such checks here as well.

troublesome cabinet members before they ever get into office' (Strøm 1995: 75). Contract design is another *ex ante* mechanism. Contracts set down the rules for the delegation as a whole, such as an employment contract or, in our case, the legal framework for legislative-executive relations laid down in the constitution, secondary legislation and parliamentary Standing Orders. Principals can design the contract establishing the delegation in a way that provides the agent with incentives to act in closer accordance with her interests. Classic examples are incentives such as profit sharing, where the payoff of the agent will increase the more he manages to increase the payoff of the principal.

Monitoring and reporting requirements, in contrast, are usually seen as *ex post* measures of parliamentary oversight. Once the delegation has taken place, the principal can oblige the agent to regularly report on his actions, or the agent can try to monitor her agent's actions herself. Depending on the outcome, the principal can also use sanctions to punish or reward the agent for the outcome of his actions. In other words, the principal can hold the agent accountable.<sup>6</sup> In the following, I will focus on such measures of accountability, rather than screening or contract design. Screening/election and contract design are well-established mechanisms in parliamentary democracies (Strøm 2000). On the one hand, however, I am interested in how MPs try to control their given government with regard to very specific tasks, namely negotiations at the European level. Ministers are generally responsible for a large portfolio, which will include both domestic and EU policies within their policy fields. Thus, although Parliament may choose Ministers also with regard to their EU-competence<sup>7</sup>, once they are chosen, the contract will include EU responsibilities as well. Parliaments cannot and do not choose a new agent for every negotiation in the Council. Contract design, on the other hand, here refers to the institutional framework of parliamentary involvement in EU affairs. Yet as argued earlier, I am not interested in explaining the existence of or variation in institutional provisions but in variation in parliamentary *behaviour*. In the following, I will therefore concentrate on the use of measures of parliamentary oversight in European affairs.

## **Delegation and Accountability in European Affairs**

With the process of European integration the parliamentary chain of delegation has been extended to the European level. Yet European integration has not just added another link to the chain, but has fundamentally altered the chain of delegation in the parliamentary systems of Europe (Auel 2008). First, European integration has led to the delegation of *agenda setting power* to an external actor, namely the European Commission. As such, the delegation of policy initiation competences is nothing new in parliamentary systems where agents usually set the agenda while the principal can agree, amend or reject this proposal. What is different in EU policies, however, is the fact that policies are not initiated on the basis of a manifesto

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<sup>6</sup> Lupia (2000: 18-9) distinguishes between two interpretations of accountability, as a process and as an outcome. The former refers to the process of holding the agent accountable, the latter to the degree of control the principal can exert over her agents. Lupia uses accountability to refer to a type of outcome, rather than a process of control. As a result agency loss and accountability are basically the same. In contrast, I am using accountability to refer to the process of holding the agent accountable, and thus as only one instrument of reducing agency loss.

<sup>7</sup> This is, of course, especially the case if 'Europe/EU' is a specific portfolio.

agreed upon or policy aims shared by the Cabinet and the governing party/parties, but by an external actor who is not accountable to the national legislature. As a result, agenda setting is no longer delegated to a carefully screened and selected agent but to an actor over whom the legislature has no direct control.<sup>8</sup> Secondly, European integration entails the delegation of legislation in the sense of both, policy-making and giving final approval to bills. National parliaments are not directly involved in the policy-making at the European level and can therefore have only a mediated input. More importantly, parliaments also lose their right to make the final decision on secondary legislation. Only primary EU legislation (Treaty revisions) has to be ratified domestically either through a parliamentary decision or a referendum. Depending on the type of secondary EU legislation, national parliaments do retain a possibility to amend or delay European legislation through the transposition of European directives, but in the end member states are forced to comply with EU law. This leads to the third type of delegation, namely the delegation of supervision functions. In addition to its monopoly of legislative initiative, the Commission acts as the guardian of European law and supervises the implementation of European legislation by the member states. Thus, the direction of the chain of delegation is actually reversed, making the EU (through the European Commission) the principal who entrusts to the implementation of EU legislation to its agents, the member states. The EU as the principal can also, through the European Commission and the European Court of Justice, sanction non-compliance more or less effectively (Tallberg 2003). In all of these cases, European integration entails a process of transfer of power to actors, who are not accountable to national parliaments and who cannot be controlled by national parliaments. It is therefore more fitting to speak of an abdication of power. The European Commission cannot be held accountable or sanctioned by national parliaments (although the member states do, of course, retain some control, Franchino 2002), and the European Parliament is accountable to the European voters.

Finally, each parliament delegates decision-making powers to its representative in the Council, who in turn is accountable to parliament. This is the only intact chain of delegation including national parliaments as a link. In reaction to these challenges of European integration, all national parliaments have designed specific ‘contracts’ with their governments that detail scrutiny processes in EU affairs. These contracts include the right to receive more or less comprehensive information on European issues from their government. While this right at first applied mainly to the ‘first pillar’ of the EU, it was later expanded to the ‘second’ and ‘third pillar’ in most national parliaments. Secondly, they implemented scrutiny procedures for European documents and decisions. This usually includes the right to draft resolutions in European issues and documents *before* a final decision is made in the Council (‘scrutiny reserve’). In this respect, however, the institutional reforms vary considerably, ranging from the right to issue binding voting instructions for the government representative in the Council to mere information rights with few means of influence. Between these two extremes, quite a few parliaments have the formal right to express their views without being

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<sup>8</sup> Note, however, that 2007 Lisbon Treaty’s ‘Protocol on the Application of the Principles of Subsidiarity and Proportionality’ gives national parliaments collectively, if a certain threshold is reached, the right to demand that the European Commission re-examine a legislative draft act they deem to breach the subsidiarity principle and thus potential influence on European agenda setting. For an assessment of the provision see Raunio 2007.

able to bind their government to their resolutions. Finally, in order to make the handling of information as well as the scrutiny procedures more effective, they set up one or more special European Affairs Committees (EAC).<sup>9</sup>

### *Parliamentary Oversight in EU Affairs*

The institutional provisions outlined above were designed to enable national parliaments to exert parliamentary oversight over European affairs and to hold the government accountable for its European policies. Accountability means being answerable for one's actions to some authority and having to suffer sanctions for those actions. Thus, 'A is accountable to B when A is obliged to inform B about A's (past or future) actions and decisions, to justify them, and to suffer punishment in the case of eventual misconduct' (Schedler 1999: 17). Similarly, Bovens defines accountability as '*a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences*' (Bovens 2007: 450, italics in original). Elsewhere I have argued that accountability as a relationship between a principal and an agent therefore implies a three-step process of a) obtaining information on the agent's actions and b) an assessment of and judgement on these actions leading c) to potential sanctions. On this basis, we can draw a distinction between 'monitoring scrutiny' and 'political scrutiny' of governmental action as two elements of parliamentary accountability (Auel 2008). In a first stage, the agent is obliged to inform the principal about his (planned)<sup>10</sup> behaviour and actions, by providing information on the performance of tasks, on procedures and (intended) outcomes. Here, this 'monitoring scrutiny', refers to the context of decision-making (the European issue or legislative proposal under negotiation, its potential effects on domestic policies) as well as the specific decision (to be) taken by the government representative (the government's negotiation position and the reasons for adopting it). 'Political scrutiny', on the other hand, involves the second stage of assessment and political judgement on the government's decision and the respective outcome of European negotiations.

As argued above, we can also distinguish between two subjects of accountability that follow two logics of human behaviour, a 'logic of consequentiality' and a 'logic of appropriateness'. Applying this distinction to the scrutiny of the government's EU policy-making, we can differentiate between the outcome of the negotiations in the Council and the way the government has conducted itself before and during the negotiations. The former includes both the initial position adopted by the government as well as the result achieved in the negotiations (logic of consequentiality). The latter concerns the question in how far the government respects the rules and norms of the parliamentary game (logic of

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<sup>9</sup> For cross-national comparisons of these institutional provisions, or contracts, see Maurer and Wessels 2001 and O'Brennan and Raunio 2007.

<sup>10</sup> According to some definitions, both elements of accountability are necessarily reactive: one is called to account after the fact (e.g. Bovens 1998: 27). Ex post it fulfils the function of finding out what went wrong and dealing with it accordingly. Yet ex ante accountability is important as well, because 'receiving someone's account on his or her acts while being in office and [evaluating] those acts presupposes at least some knowledge about what he or she had promised to do' (Puntscher Riekmann 2007: 126).

appropriateness). In this case, the assessment of the government's behaviour refers to the respect for specific rules regarding parliamentary involvement. In other words, under evaluation is whether the government has complied with the parliamentary rules, for example with regard to the provision of information (comprehensive and in time) and the scrutiny reserve and whether it has taken due notice of parliamentary opinion (depending on the binding character of such opinions).

Finally, to quote Behn (2001: 3), agents 'recognize that if someone is holding them accountable, two things can happen: When they do something good, nothing happens. But when they screw up, all hell can break loose. ... Accountability means punishment.' Holding an agent accountable without any means of sanctioning potential wrongdoing could be argued to be rather ineffective as the agent does not have to fear any negative consequences. As Yannis Papadopoulos argues, 'the more decision-makers feel that they act in the shadow of possible sanctions, the more it will be rational for them to endogenise the preferences of their "principal"' (Papadopoulos 2007: 472). Generally, principals dispose of three potential types of sanctions (Strøm 2003: 62). First, they can sack the agent. This is the most powerful sanction national parliaments have at their disposal, namely the ultimate de-authorisation of their agent through a vote of no confidence, but it is a blunt and very costly instrument and therefore not likely to be used except in exceptional circumstances (for a discussion see Huber 1996b; Laver and Shepsle 1998; Lupia and Strøm 1995). More effective is therefore the second option of vetoing or amending decisions or actions of the agent (e.g. non-ratification or amendment of government bills). Finally, MPs have other potential instruments at their disposal, which they can use as – albeit much weaker - sanctions. Meny and Knapp therefore referred to these instruments as 'unsanctioned' control mechanisms (Meny and Knapp 1998: 208-11). Yet although they are far less spectacular than the de-authorisation of an agent or a parliamentary veto, they can be important mechanisms to reduce agency loss. It has been argued, for example, that the very fact of having to render account can serve as a sanction (Bovens 2007: 452). Obliging Ministers to defend their policy decisions in parliamentary hearings and debates or to answer critical parliamentary questions can put them in a very uncomfortable situation since they can be forced to admit inconvenient or embarrassing facts. And if Ministers are caught trying to hide such facts and lying to parliament, MPs may be able to use more forceful sanctions, for example by convicting them: 'At least in some countries it is a long-standing convention that ministers who have been proven guilty in this respect have to resign or be dismissed by the head of government (Bergman et al. 2003: 168 with further references). We can therefore expect the threat of such sanctions to have some impact in terms of reducing agency loss as well.

In the following I will focus on the latter two options and argue that MPs will choose strategies that yield maximum reduction of agency loss relative to its cost. This is based on the argument that the sanctions MPs have at their disposal not only differ with regard to their impact in terms of reducing agency loss, but also with regard to the costs involved. Both are influenced by the institutional context. First, the institutional provisions for scrutiny in EU affairs have an impact on the type of sanctions national parliaments have at their disposal. Second, the broader institutional context influences how credibly they can threaten to use them and how powerful these sanctions are. Third, institutional provisions also have an

impact on the costs associated with the use of different sanction. The institutional context thus provides MPs with different opportunities of minimising agency loss that will have different payoffs.

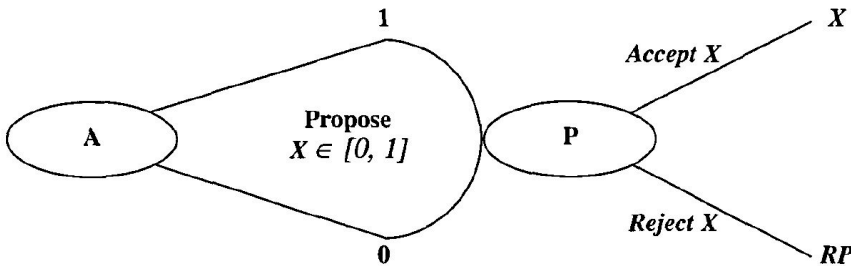
*The impact of Sanctions*

The argument starts with the most basic model of delegation developed by Romer and Rosenthal (1978). The discussion draws heavily on Lupia (2000), but uses the model in a slightly different way. In the model, delegation is a game between two players, the principal and the agent. The principal (Parliament, MPs) has delegated the general task of conducting EU politics to her agent (the government, or, more precisely, government minister). The specific game discussed here refers to the situation where a European legislative proposal is under discussion in the Council. For the sake of simplicity, we will for now assume the following three conditions:

- 1) Information in complete.
- 2) Principal and agent behave rationally. They will have given preferences about what the outcome of their interaction should be. Both seeks to maximise a single-peaked utility function, i.e. their ideal policy.
- 3) The decision taken by the agent is the final decision at the EU level. This assumption grossly simplifies reality, of course, as the decision at the European level will depend on the original proposal of the Commission, the preferences of the other Council members and the decision making procedure (unanimity or QMV) as well as the preference and type of involvement of the European Parliament. However, the simple model will be sufficient for the moment.

The sequence of events in the Romer-Rosenthal model is depicted in Figure 2. The agent moves first by using his delegated authority to make a decision. In our case, this can be thought of as the proposal for a specific decision in the Council. Formally, the agent's action can be portrayed as proposing a new EU policy,  $X \in [0, 1]$ . This policy is an alternative to the reversion point,  $RP \in [0, 1]$  (that is, the pre-existing domestic policy status quo). The principal then either accepts the agent's proposal or rejects it in favour of maintaining the reversion point (that is, she chooses  $X$  or  $RP$ ). (Lupia 2000: 19).

**Figure 2** A Simple Model of Delegation

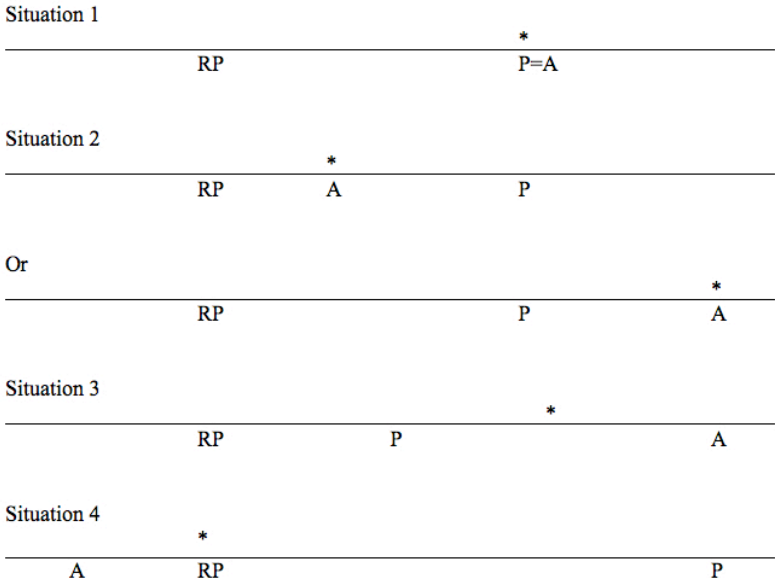


Source: Lupia 2000: 20



The principal's ideal policy in this model is  $P \in [0, 1]$ , and the agent's ideal policy is  $A \in [0, 1]$ . Principal and agent each prefer the outcome of the interaction or game to be as close as possible to their own ideal policy outcome. As Lupia demonstrates, the model reveals four mutually exclusive and collectively exhaustive situations (Figure 3). In each situation, the relationship between the principal's ideal policy, the agent's ideal policy and the reversion point differs. In Situation 1, the principal and agent have identical ideal policies. The agent proposes the principal's (and the agent's) ideal policy and the principal accepts the agent's proposal. As a result, there is no agency loss. In Situations 2 and 3, the principal and the agent agree on the desired direction of policy change but not on the magnitude of such change. They differ, however, in the distance between the principal's ideal policy point to the reversion point relative to the distance between the principals ideal policy and the agent's ideal policy. In both versions of Situation 2, the agent can safely propose his own ideal policy point as this is still closer to the principal's ideal policy point than the reversion point.

**Figure 3** Possible Situations in the Simple Model of Delegation



Source: Lupia 2000: 21

In Situation 3 however, the principal's ideal policy is closer to the reversion point than it is to the agent's ideal policy. This means that the principal would rather maintain the reversion point than accept the agent's ideal policy. Since the agent knows this, he will not propose his ideal policy but choose the policy closest to his own ideal policy that the principal will accept. In Situation 4, the principal's and the agent's ideal policies are on opposite sides of the reversion point. In this situation there is no alternative to the reversion point that is mutually agreeable to the principal and the agent.

As the model demonstrates, a veto right is an effective instrument of minimising agency loss, although it cannot reduce agency loss to zero and the reduction depends on the ideal policies of both players. Yet, the model is only partly helpful for our purposes. To make it applicable to the case of national parliaments in EU affairs, a number of alterations have to be

made to the model. These alterations refer to 1) the assumption that the proposal of the agent is equal to the final decision at the European level, and 2) the assumption that principals have nothing more and nothing less than veto power. Although also wildly unrealistic, we will keep the assumption of complete information for the moment.

First, even if we ignore the role of the European Commission and the European Parliament in the decision-making process, decisions at the EU level are made by a collective body, the Council. If the agent's ideal policy point differs from those of the other members, the intervention of the agent in this collective body will therefore have an impact on the decision in the Council, but will not determine it.<sup>11</sup> This has important implications for the veto power of the principal. On the one hand, this situation differs from classic two-level-games insofar as *the principal cannot veto a decision in the Council ex post*. Once a final decision has been taken at the European level member states become effectively agents of the EU and are in turn accountable for the implementation of European decisions.<sup>12</sup> On the other hand, since national parliaments are not themselves involved in decision-making at the European level, they can only *veto the proposal or negotiation position of their agent ex ante*, and thus the position of only one single actor within this collective body, but not the decision of the Council itself. To veto a decision in the Council, parliament has *to instruct the agent to veto a Council decision*.<sup>13</sup> This distinction is important because it has implications for the definition of the reversion point. Above we assumed that the proposal of the agent is equal to the final decision of the Council. The reversion point was therefore the domestic status quo. If the final decision is, however, made by a collective body, and the principal can only become involved ex ante (but not ex post), vetoing the agent's proposal will not automatically result in a return to the domestic status quo. Rather the reversion point is the decision that will be made in the Council without any intervention by the agent. This only equals the status quo if negotiations in the Council fail, for example due to a veto under unanimity.

This brings us to the second alteration to the model: As Lupia emphasises elsewhere, the Romer-Rosenthal model's predictions depend heavily on the assumption 'that the principal can only accept or reject the agent's action. If the principal is given greater powers relative to the agent (i.e. she can force the agent to take actions closer to P), then agency loss will

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<sup>11</sup> The only case where the agent's position can *determine* the Council's decision is if he vetoes a decision under unanimity. Under unanimity, an agent will not be able to enforce a specific decision against the will of the other Council members, and under QMV agent's can – at least in theory - be outvoted.

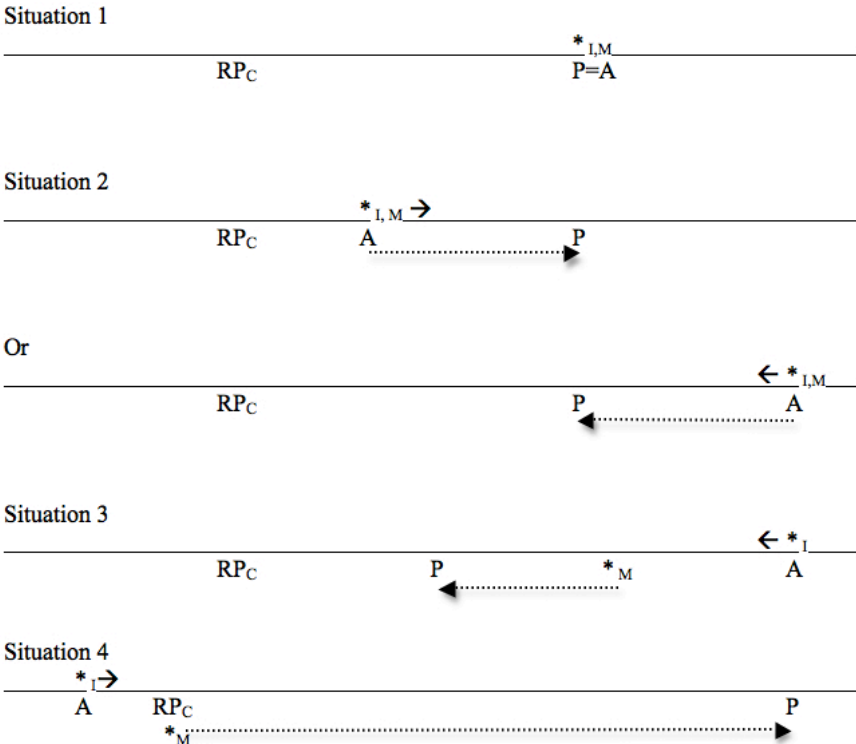
<sup>12</sup> Where EU legislation has to be transposed by national parliaments into domestic law, they have at least some leeway to amend legislation to domestic needs. But where national parliaments are not involved in the transposition of EU law at all, because it is directly applicable or domestic rules provide for a transposition through executive decree, they lose this instrument completely.

<sup>13</sup> In the first case, the principal vetoes the agent's proposal for the negotiation position in the Council. As a result, the agent will not be able to negotiate on this or indeed any basis. In the second case, the principal prefers the domestic status quo to the decision that will be made in the Council. She will therefore have to instruct her agent to veto this decision. Vetoing the negotiation position therefore is equal to the de-authorisation for a specific negotiation. Instructing the agent to veto a council decision, in contrast, is an authorisation or mandate to act in a specific way. The example of the Danish parliament is instructive to demonstrate the difference. The Danish European Affairs Committee has the right to mandate the government's negotiation position. Usually it uses its right to instruct the government on what to achieve in the Council negotiations. However, very rarely the Committee also refuses to give the Minister any kind of mandate. As a result, the Danish representative in the Council cannot agree to any decision made in the Council, but has to abstain (Auel and Benz 2005: 384).

decrease. Similarly, if the principal is given lesser power relative to the agent (i.e. she cannot reject agent actions), agency loss will increase' (Lupia 2003: 40). And indeed, only a very small minority of national parliaments have a formal right to veto or amend (mandate) their government's position in EU affairs. For most parliaments, the distinction between *veto as de-authorization* and *authorization to veto* is therefore of little importance, since they only have a formal right to express their views on a European decision under negotiation without being able to bind their government legally to their resolutions. The extent to which their opinions are *politically* binding for the agent, however, varies considerably. Taking Philip Norton's distinction, some parliaments can be characterised as strong or moderate policy influencers, some are legislatures with little or no policy affect (Norton 1994).

Figure 4 outlines the same four situations as above, but introduces the two alterations discussed above (reversion point is decision made in Council without agent intervention [ $RP_C$ ], principal has greater/lesser power than veto). As the figure demonstrates, if the principal has the additional power to amend the agent's proposal, the agent will propose a policy closer to her ideal policy than under the pure veto [ $*_M$ ]. This is illustrated in Figure 4 as the game below the lines. In situations 2 to 4 this will lead to less or even zero agency loss (indicated by the broken arrows).

**Figure 4** Possible Situations in the Adapted Model of Delegation



$RP_C$  denotes the decision that will be made in the council without intervention by the agent,  $*_I$  denotes the agent's negotiation position if the principal does not have a veto,  $*_M$  the agent's negotiation position if the principal does have a veto.

However, if the principal has no veto right, the agent has no incentive to propose anything other than his original ideal policy point [ $*_1$ ], since the principal cannot sanction him by rejecting any proposal. It is thus rational for the agent to completely ignore the ideal policy point of his principal, and agency loss increases. This is illustrated in the situation above the lines. In reality, and in deviation from the pure rationality assumption, however, we can assume that it will be difficult for governments to ignore their parliaments completely, especially if parliamentary opinions are voiced publicly or they have to fear being subjected to uncomfortable parliamentary questioning. We can therefore assume that such weaker sanctions will induce the agent to move his proposal at least somewhat towards the ideal policy of the principal (illustrated by the shorter continuous arrows).

### *The Costs of Parliamentary Sanctions*

As the discussion above demonstrates, parliamentary sanctions differ decisively with regard to their impact in terms of reducing agency loss. However, so far, the discussion has been based on the wholly unrealistic assumption of complete information. A problem inherent in delegation in general, and in the empirical circumstances of EU politics, in particular, is information asymmetry. As argued above, principals often lack information on the concrete circumstances of the task to fulfil (*hidden information*) and information on the agent's actions (*hidden action*). This is certainly the case in EU affairs. Since negotiations in the Council are not really transparent<sup>14</sup>, national parliaments lack both, information on the negotiation positions of the other member states' representatives (and thus on the reversion point) and on the actions of their agent. While they may have information on decision under negotiation as well as the negotiation position their agent proposes, they don't know whether the agent will really pursue this position in the Council or amend it, and they don't know how this negotiation position will affect the final decision in the Council. As Lupia demonstrates, under incomplete information principals therefore run the risk of making decisions that will hurt their interests: 'In the worst case, the principal's uncertainty leads her to make mistakes - to reject agent actions that would benefit her and accept agent actions that hurt her' (Lupia 2000: 24). Consider, for example, a situation in which parliament as the principal has the power to bind the agent to a specific negotiation position. If the Council decides under unanimity, binding the agent to a specific negotiation position may lead to the failure of the negotiations and thus to the failure of a decision that may have been closer to the principal's ideal policy than the status quo. Under QMV, an agent whose negotiation position is not within the win-set in the Council can simply be outvoted without being able to influence the final outcome and thus achieving a result closer to the principal's ideal policy (on QMV

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<sup>14</sup> Despite a number of reforms regarding the access to Council documents (Héritier 2003: 823) decision-making in the Council (and especially in the Council's working groups and COREPER) still takes place mainly behind closed doors. In addition, it is being argued that a degree of secrecy is vital to ensure effective Council negotiations. Only if negotiating partners are no longer subject to the pressures of public deliberation can the advantages of direct communication materialise and prior positions be overcome. Thus, if the Council were to deliberate in public, decisions would either be blocked 'because delegations would be forced to take an immovable position, or the public proceedings would be theatre, with the real business being done by officials behind closed doors' (Curtin 1996). Opening 'the final legislative stages to public purview will only force the real political bargaining behind the next set of closed doors' (Lord 1998: 88).

voting in the Council see Mattila 2004 with further references). Without going into further detail, we can conclude that under incomplete information mandating the agent's proposal may be risky. To reduce this risk, principals therefore need information not only on the actions of their agent, but also on the negotiation situation, i.e. the positions of the other member states' representatives: '*What matters is whether or not the principal knows enough to wield whatever power she may have over the agent effectively*' (Lupia 2000: 24, italics in original). Yet even if national parliaments do not have a veto right, but can only draft a resolution on a European document, they need such information to be able to give an informed opinion if they want to have any influence. Acquiring such information is not impossible, but may be extremely costly. MPs will only invest scarce resources to acquire the information necessary to make an effective decision if they have a reasonable expectation that their intervention will be successful in altering their agents proposal, in other words, that their use will actually result in a (substantial) reduction of agency loss.

Unsurprisingly, if parliaments have formal amending (mandating) power, the decrease in agency loss is greatest. Where they can only state their opinion, the success of their intervention will depend in their power to influence. For stronger policy influencers, the decision will depend on the cost of acquiring the necessary information in relation to the expected benefit. Finally, where this influence is weak or zero, the reduction of agency loss will be very low or zero as well. In this case, the cost of acquiring information clearly outweighs the benefits. It is therefore irrational for MPs to use influence as a sanction, and they will turn to the less costly sanctions mentioned above such as obliging Ministers to defend their policy decisions in parliamentary hearings and debates or compelling them to answer critical parliamentary questions.

In addition, the costs of sanctions in terms of time invested or information needed to make them effective will be influenced by the institutional context, as institutional provisions can reduce the cost of parliamentary oversight. I am not able to discuss all provisions in detail due to space limitations, but a few examples should suffice to illustrate the point. One aspect is, for example, to which extent the institutional rules provide national parliaments to the right to receive information on EU affairs from their governments. The greater the information provided by the government, the less time and effort MPs have to invest to obtain sufficient information themselves. Domestic legal provisions differ not only with regard to the type of documents (only legal or other, only first pillar or other pillars as well) governments have to forward to their parliaments, but also whether parliaments have the right to receive additional information from the government in form of explanatory memoranda analysing the legal and political significance of EU proposals and presenting the governmental position on them.

In addition, costs can be reduced through institutionalised access to other sources of information than the government, for example through institutionalised contacts with MPs from other national Parliaments (for example through COSAC) or Members of the European Parliament (e.g. through their membership or regular presence in the European Affairs Committee) as well as the ability to organise hearings with experts or interest groups or the establishment of a parliamentary representation in Brussels. Similarly, informal but routine contacts to members of other parliaments or European actors can reduce information costs.

Such contacts can not only provide additional information, but also reduce the cost by acting as 'fire alarms' (McCubbins and Schwartz 1986).

Finally, the costs will also depend on MPs ability to process received information. Here, the number of the number of committees involved in European Affairs as well as their 'jurisdictions' and the availability of support staff are of importance. While some Parliaments have set up only one European Affairs Committee, others have created more committees that have different tasks or deal with different European policy areas. The latter does, of course, allow for some specialisation within the area of European politics. A similar aspect is the involvement of specialised standing committees. In some parliaments, the EAC is the main forum for dealing with European issues, with more or less intensive cooperation with or consultation of the specialised standing committees. In other parliaments, the specialised standing committees are responsible for the scrutiny of European issues in their specific policy areas. The trade-off between the two options is quite straightforward. European Affairs Committees can develop the necessary expertise with regard to the functioning of the European political system and decision-making the specialised standing committees might lack. In addition, EACs may develop a more integrated view on European issues. On the other hand, they have to deal with all European issues that cover a range of policy areas that is almost as wide as in domestic politics where a large number of committees and consequently a high degree of specialisation is regarded as one of the preconditions for effective parliamentary work (Mattson and Strøm 1995).

### *Going public?*

A final question regarding the choice of strategies is whether to use them in public or behind closed doors. On the one hand, the impact of the sanctions discussed above clearly increases if these sanctions are used in public. Non-binding parliamentary resolutions, in particular, will have a much greater impact on the government's negotiation position if made publicly, because this will make it more difficult for the government to completely ignore them. The same is true for a parliamentary veto or amendment, which, if made publicly, is far more difficult for the government to circumvent in the Council negotiations. But publicity is probably most important for all weaker sanctions connected to the process of holding the government to account, such as parliamentary debates, hearings or questions. While critical questioning behind closed doors may be uncomfortable for Ministers, having to defend their European policies in public will be much more uncomfortable due to the potential negative publicity and public embarrassment.

On the other hand, using sanctions in public comes at a cost as well. As argued at the beginning, MPs are first and foremost agents, of the voters and, more importantly, of their party. And while publicly sanctioning the government may serve their interest as agents of the voters, it may seriously hurt their more important interests as agents of their party (Auel 2008). Parliamentary vetoes or public resolutions are sanctions that can only be used by MPs from the governing parties, unless, of course, the government is a minority government facing an opposition majority in parliament. Using the institutional right of drafting a more or less binding resolution therefore means that MPs have to state publicly that they do not share their own government's negotiation position, but instead demand that the government change their

position according to parliamentary wishes.<sup>15</sup> The result would be similar to a defeat of a governmental bill, namely a public and therefore humiliating opposition to the government by its own parliamentary majority. MPs usually have no incentive to risk this, since it may seriously undermine their own trustworthiness in the eyes of the party leaders. Public resolutions make divisions and conflict within the governing party or parties public and, thus, vulnerable to exploitation by the opposition, which could easily criticise the government for not even winning the support of its own parliamentary majority for its position. Finally, an openly opposing parliamentary resolution might severely weaken the government's negotiation position in Brussels as other negotiation partners could also easily point out that the government's position is not even supported at home. As a consequence, the parliamentary majority might be accused of supporting the interests of other Member States' governments.

Similarly, subjecting the government to uncomfortable and potentially embarrassing public questioning can undermine the trust between the government and its supporting MPs and, as a result, undermine the MPs trustworthiness in the eyes of their party leaders. We can therefore hardly expect MPs supporting the government to engage *publicly* in assessing and criticising their agent's actions regularly. Due to the expectation of loyalty, governing MPs will normally resort to criticising the government in private forums instead. In parliamentary systems of government public critique is mainly the task of the opposition: 'By question and debate, [the government] is kept under a constant and ceaseless review, where the most trivial detail may be fraught with enormous consequences, where the Opposition spends the whole time seeking the Executive's weak point, and having once found it, has boundless opportunities to hammer and hammer away, constantly keeping it before the public eye' (Finer 1957: 143). However, even MPs from the governing party/parties may be more prepared to punish the government for improper conduct ('logic of appropriateness') and thus in cases where the government has breached parliamentary scrutiny rights, with regard to incomplete or late information, the failure to take parliamentary opinions into account, or for the failure to involve parliament at all before making a decision in the Council. In such cases, where the prestige or dignity of parliament is at stake ('institutional patriotism', Matthews 1960) executive-legislative relations may indeed follow a 'non-party mode' (King 1976), 'where a unified parliamentary principal holds the agent to account for his behaviour' (Damgaard 2000: 15).

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<sup>15</sup> A public parliamentary resolution can, of course, also be drafted in accordance with the government's position. The aim, then, is not so much to influence the government's negotiation position, but rather to support that position in order to strengthen the government's bargaining power in the Brussels negotiations. In turn, the government can, of course, use a public parliamentary resolution or mandate to bind its hands strategically in the Council negotiations. This situation, however, again presupposes an agreement between government and its parliamentary majority in which the government uses parliament to strengthen its own position (Auel 2008).

## Conclusion

‘Rational-choice theory can help to generate general, parsimonious models on the mechanisms of parliamentary politics which can be tested against a wide array of evidence from various parliamentary systems. Without an understanding of such fundamental mechanisms, any attempt of drawing lessons from one parliament and applying them to another must remain a futile exercise’ (Saalfeld 1995: 33).

Although often criticised for its lack of ‘discernible relation to the actual or possible behavior of flesh-and-blood human beings’ (Simon 1976: xxvii), the important advantage of rational choice approaches is that by attempting to establish causal relationships on the basis of theoretical assumptions that are defined beforehand they generate general theories that focus on fundamental mechanisms and can be used to explain phenomena across different times and places (Saalfeld 1995: 42). So far, however, this advantage has been somewhat underused in legislative studies, especially with regard to legislative behaviour, since ‘most of the legislative literature is firmly rooted in time and place, and for much of the subfield the place is Washington D.C.’ (Mezey 1993: 357). Although rational choice approaches have been used very fruitfully to explain the impact of institutions on government formation and termination (Strøm 1990, Laver and Shepsle 1996), on legislative output (Doering 1995) or the passage of legislation through parliaments across Western Europe (Doering and Hallerberg 2004) to name just a few (for a recent overview see Gamm and Huber 2002), the study of individual legislative behaviour is still very much the domain of the US Congress literature. Gamm and Huber explain this with the fact that comparativists ‘can more easily study aggregate outcomes across legislatures than individual behaviour within legislatures’ (Gamm and Huber 2002: 325). And studies that do explain individual legislative behaviour in parliamentary systems, such as Strøm’s (1997) concept of parliamentary roles discussed above, still often draw exclusively on assumptions about legislative preferences derived from the Congressional literature.

In the subfield of legislative studies in EU affairs, the largest part of the literature consists of informative but rather descriptive (collections of) single case studies detailing institutional provisions for parliamentary scrutiny. Truly comparative studies are still relatively rare, and comparative studies of legislative behaviour are almost completely absent. The paper has therefore attempted to develop an explanation of parliamentary behaviour that takes both, the specific characteristics of parliamentary systems of government as well as the institutional context in EU affairs, into account. The explanation is based on theories of legislative behaviour and agency theory, but expands the dominant focus on the role of MPs as agents by systematically integrating the role of MPs as principals of the government. The main argument is that MPs not only pursue the goal of re-authorisation as agent, but also the aim of reducing agency loss in terms of government policy and behaviour.

In EU affairs, we can expect the divergence of interests in terms of government policy to be greater than in domestic politics since the agenda to be decided upon does not originate from a program or manifesto the government and the governing party/parties agreed upon. In contrast to domestic politics, EU policies are initiated by an external institution, namely the European Commission. In addition, policies are also decided by external institutions, the



Council and, where applicable, the European Parliament. In European affairs, national parliaments can thus be expected to have an even higher incentive to control their government.

The instruments national parliaments have at their disposal to control the government, in contrast, are more restricted in EU than in domestic politics. As mentioned, within secondary legislation they cannot veto decisions made at the European level. MPs can only try more or less successfully to influence their government's negotiation position. Yet most parliaments also lack the right to veto or amend (mandate) their government's position for the negotiations in the Council. Since they can only voice their opinion without legally binding the government, their governments usually have a large 'zone of discretion' in EU affairs. 'This zone is constituted by (a) the sum of delegated powers (policy discretion) granted by the principal to the agent, minus (b) the sum of control instruments, available for use by the principals to shape (constrain) or annul (reverse) policy outcomes that emerge as a result of the agent's performance of set tasks' (Thatcher and Stone Sweet 2002: 5).

Finally, influencing the government, whether through the threat of using veto power or through parliamentary resolutions is extremely costly, although institutional provisions can help reduce these costs. As has been shown above, in order to make effective decisions parliaments need to overcome the dramatic information asymmetries in EU affairs. It is therefore only rational for MPs to invest scarce resources such as time in the acquisition of the necessary information, if they can reasonably expect that their intervention will indeed reduce agency loss, i.e. have a considerable impact on their government's negotiation position, and that that negotiation position will also have a desirable impact on the final outcome of Council negotiations. Where this is not the case, it would be irrational for MPs to invest scarce resources into trying to shape the government's position. However, the fact that one specific strategy does not promise attractive payoffs does not mean that MPs no longer aim at reducing agency loss and therefore completely refrain from controlling their government. The preference of reducing agency loss remains, but it will be more rational for MPs to turn to less costly sanctions such as subjecting Ministers to parliamentary hearings and critical questioning.

The European Affairs Committee of the Danish Folketing, for example, is the most powerful in EU affairs due to its formal right to mandate the government's negotiation position but also due to the fact that Danish governments are very frequently minority governments. The Committee is thus well equipped to reduce agency loss, since 'a government wanting to survive politically knows it will have to listen to the Committee' (Laursen 2001: 105). For the government it is also vital to inform the Committee fully on the negotiation situation on Brussels and the government's strategic options, because the committee has the possibility to deny the mandate as long as it is not satisfied with the information and explanations offered by the government. The British House of Commons, in contrast, is a good example for the use of alternative strategies. The institutional provisions for parliamentary scrutiny in the Commons provide MPs with virtually no possibility of binding the government even politically to a specific negotiation position: 'At present, [a] motion passed by the Committee has no practical effect' (ESC 2002: para.70). As a result, MPs put little effort in trying to influence the government's negotiation position (Auel and

Benz 2005). But MPs are by no means inactive in EU affairs: As Carter notes, parliamentary accountability of the government is achieved ‘through the expression of a strong public and embarrassing voice; someone constantly breathing down their necks, prepared to ask vociferously for information and to humiliate if frequently ignored’ (Carter 2001: 413).<sup>16</sup>

Secondly, it has been argued that the choice of strategies MPs employ to control their government will also depend on their, more important, preferences as agents, i.e. that MPs will choose strategies of minimising agency loss that will advance, or at least not hurt, the realisation of their preferences as agents. Since most European electoral systems de-emphasise the importance of personal votes, re-nomination by the party as well as the overall electoral success of the party rather than their own profile will determine whether or not MPs will (re-) gain office. It is therefore more rational – at least for MPs from the governing party/parties - to control the government behind closed doors to avoid embarrassing the government publicly and undermining their own trustworthiness as an agent. The powerful Danish European Affairs Committee, for example, meets and issues its mandates only behind firmly closed doors to avoid making potential conflicts between the government and its supporting parties (but also equally damaging agreements between the government and the opposition parties) public.

The focus on their preference as agents also explains why MPs in moderately powerful parliaments are often so reluctant to use parliamentary resolutions to influence the government. Parliamentary resolutions are necessarily public and therefore come with all the problems described above. It is therefore more rational to use them behind closed doors even if this means reverting to more informal instruments. Conducting EU affairs behind closed doors is therefore not irrational behaviour that cannot be explained with a rational choice approach (e.g. Rozenberg 2006), but a very rational strategy to pursue the goal as principal and agent of the party simultaneously. The German Bundestag, for example, has no formal veto right, but Article 23 of the German Basic Law (Grundgesetz, GG) clearly demands that ‘the Government takes the Bundestag’s resolution into account in the negotiations’. The Bundestag’s resolution can therefore be expected to have at least some influence on the government’s negotiation position. In addition, institutional provisions such as the direct responsibility of the specialised Standing Committees for EU policies as well as MPs formal and informal contacts to EU actors and MPs from other member states help reduce the cost. However, since MPs from the governing parties are perfectly aware of the disadvantages of public resolutions, they make very rare use of it, but resort to informally influencing the government in the private working groups of the parliamentary party groups. Public resolutions are only occasionally used to support the government’s negotiation position, or, in exceptional situations, to force a reluctant government to adopt the parliamentary position if informal negotiations have failed (Auel 2006).

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<sup>16</sup> That the government does indeed take the parliamentary scrutiny powers seriously, is illustrated by the ‘Guide to Better European Regulation’, where the Cabinet office reminded government officials that the information given to parliament ‘should explain fully the policy and legal implications of a proposal for the UK and the reasons for supporting or opposing its provisions ... You should bear in mind that scrutiny committees that are not satisfied that they have been properly informed about any proposal have the option of inviting Ministers to give evidence on it’ (Cabinet Office 1999: 20).

In the House of Commons, in contrast, MPs do not shy away from the strategy of ‘public embarrassment’ to sanction the government for the failure to adhere to parliamentary information rights or parliamentary rules, such as the scrutiny reserve. While the majority usually supports its government loyally in public debates in the European Standing Committees or on the Floor of the House against criticism expressed by the opposition, ministers are, for example regularly cited before the European Scrutiny Committee to question them publicly on such procedural wrongdoings. As a former Chair of the European Scrutiny committee put it in a personal interview: ‘Our job is to hunt them’. Such public ‘evidence sessions’ can be very uncomfortable for ministers, as they generally have to face the committee alone, without a large staff, to answer questions unknown beforehand. Nevertheless, even their own party members quite often fiercely attack ministers. Even the opposition admits that the Labour members in the committee ‘act as a group of parliamentarians, not as party members’ (personal interview).

To sum up, as a result of the challenges of European integration national parliaments have set up specific institutions and scrutiny procedures, in other words designed specific contracts with their governments that detail their formal involvement in EU affairs. However, while important, focussing on these institutional provisions alone paints a very incomplete picture of parliamentary behaviour in EU affairs. We therefore need to study actual parliamentary behaviour in more detail to assess the role national parliaments play in EU politics. Yet the existing literature on legislative behaviour is still too much focused on one particular institution, the US Congress. And while the insights from this body of literature are very helpful in analysing legislative behaviour in parliamentary systems as well, they cover only part of the parliamentary story. The paper has therefore attempted to develop an explanation for parliamentary behaviour that takes both, the specific characteristics of parliamentary systems of government as well as the institutional context in EU affairs, into account. It provides an analytical framework that views parliamentary behaviour as strategies used by MPs to pursue their preferences as both agents and principals in the context of specific institutional opportunities and constraints. And while the paper focused on legislative behaviour in EU affairs, the framework can also, admittedly with amendments, be further developed to explain legislative behaviour in parliamentary systems in more general.

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