

Domestic Scrutiny of European Union Politics: Between Whistle Blowing and Opposition Control.

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Abstract

This paper sets out to explain why some European law proposals are subject to scrutiny by national parliaments while others go unchecked. On the theoretical side the paper adapts arguments which have been developed for domestic level scrutiny to the two-level nature of lawmaking in the European Union (EU). For the empirical analysis we select two coalitions: The German grand coalition (Merkel I) and the Czech minority government (Topolánek II) face similar parliamentary scrutiny procedures, but differ significantly with respect to size and partisan composition. We conduct a quantitative test of our hypothesis using a dataset comprising all EU proposals adopted in the time period from 2006 to 2009 for these two cases.

Our findings indicate that the opposition scrutinizes EU law to gather information on the proceedings inside the Council and the EP. But whereas strong opposition parties get active on highly politicized law proposals, weak oppositions tend to scrutinize those proposals which are negotiated under the non-transparent fast-track procedures. In addition we find ample evidence that the leading minister initiates scrutiny in order to strengthen his intergovernmental bargaining position. Yet, this Schelling Conjecture presumes that the party of the minister is located between the expected bargaining position in the Council and the coalition partner. Any other domestic interest constellation can cause scrutiny as whistle blowing. Finally, we find that an issue's salience can separate the Whistle-Blowing from the Schelling Conjecture.

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Introduction

Democracies face a trade-off between the legitimacy and efficiency of political decision making. Whereas the former norm calls for encompassing participation and an uninterrupted, short chain of delegation, the latter norm implies division of labor and the delegation of competences to executive specialists. Yet, any delegation implies agency problems if the policy preferences of voters – the principal - and their political agents (i.e. MPs, governments, bureaucrats) diverge. Agents may use their informational advantage to implement policies that misrepresent the preferences of their constituents (Niskanen 1971; Kiewiet and McCubbins 1991). The size of this potential agency problem increases with the length of the delegation chain.

Parliaments fulfill two functions indispensable for solving the trade-off between legitimacy and efficiency. First, parliamentary majorities are required for adopting legislation. Second, parliaments scrutinize the policies implemented by governmental executives. The main function of scrutiny is to reduce the parliament's information deficit and avoid shirking by the government. Accordingly, parliamentary scrutiny is especially relevant for those decisions by the executive which are not subject to parliamentary approval as is often the case in foreign politics. The need for parliamentary scrutiny is even more important for EU politics. Here, governments decide legislation in the Council of Ministers that is binding on the national level. Only in the case of directives have parliaments ex post the possibility to influence policy within a prescribed range. Therefore, government's accountability decreased when an increasing number of policy areas have been shifted to the EU level. The limited transparency of Council decision making increases the information deficit of parties in the domestic opposition who find it hard to assess the set of politically feasible policy alternatives. From a normative perspective, this extension of governmental discretion calls for additional parliamentary scrutiny activities.

Existing studies compare the instruments and procedures available to national parliaments when scrutinizing EU legislation (Bergman et al. 2003). In contrast to studies which compare different institutional designs, we raise the question of why some law proposals are subject to parliamentary scrutiny whereas others go unchecked. To our knowledge this is the first empirical study to explain the variation of parliamentary scrutiny activities across the set of EU law proposals. We start with the assumption that parliamentary scrutiny can reduce the information asymmetry inherent to legislative politics. Compared to parties in the opposition, the government in general and the leading minister in particular hold superior information on any specific law proposal. Hence, the opposition has a motivation to reduce this information asymmetry by means of parliamentary scrutiny (Döring 1995;

Müller and Strøm 2000; Powell 2000). By contrast, Martin and Vanberg (2004) argue that parliamentary scrutiny is used to reduce the information asymmetry among coalition partners.

However, these approaches have been developed for domestic politics and neglect the opportunities and incentives available to parliamentary parties in EU politics. As a consequence, existing theoretical approaches have to be adapted to account for parliamentary scrutiny of EU law proposals. Accordingly, we consider the strategic interaction between the domestic and the European level of government. In particular, the leading minister himself may initiate parliamentary scrutiny in order to increase his bargaining leverage in the Council of Ministers (Pahre 1997). On the flip-side, other domestic parties may have an incentive to whistle blow intra-coalition conflict, thereby weakening the minister's bargaining leverage in the Council. Moreover, opposition parties can influence EU law making via the European Parliament. Therefore, opposition parties have an incentive to extort information on Council proceedings via domestic level scrutiny whenever their policy preferences differ from those of the government.

We test our arguments using data on parliamentary scrutiny during the German grand coalition (Merkel I) and the Czech minority government (Topolánek II). Our empirical findings suggest that a reform-skeptic minister may point towards an even more reform-skeptic coalition partner to credibly shrink his discretion to grant concession in the Council of Ministers. This mechanism is particularly powerful for highly salient issues which imply high costs of intra-coalition dissent. On the flip side, the revelation of a reform-friendly coalition partner can just as well weaken a minister's bargaining power. Any domestic party that stands to gain from a weaker minister may whistle-blow the existence of a reform-friendly coalition partner by initiating parliamentary scrutiny. In both cases parliamentary scrutiny is used to strategically reveal information on the domestic interest constellation to the Council of Ministers. Finally, the opposition initiates parliamentary scrutiny to gain information on Council proceeding whenever its policy preferences differ from those of the government. This information is forward to the fellow party members in the European Parliament in order to influence EU policies.

This paper continues by summarizing the existing literature on parliamentary scrutiny of EU legislation. Thereafter, we derive and present our theoretical arguments which we test in the subsequent empirical section.

The Role of National Parliaments in EU Politics

The deepening of European integration has been accompanied by concerns about democratic legitimacy. These concerns were met by an increasing parliamentarization of EU politics. Beside the well-known empowerment of the directly elected European Parliament, the role of national parliaments in European policy formulation has been strengthened in various ways (Norton Conclusion). First, national parliaments have increased their cooperation on the supranational level via institutionalized meetings. Importantly, the “Conference of Community and European Affairs Committees of Parliaments of the EU” (COSAC) has been recognized officially in a protocol to the Treaty of Amsterdam and the Lisbon Treaty (Krekelberg 2001). Second, cooperation between national parliaments and the European Parliament has improved the members’ information level. Examples of such mechanisms include bilateral committee meetings (Maurer and Wessels 2001: 458-460) and participation of MEPs in European Affairs Committees (Raunio and Hix 2000: 157). Third, the national parliaments’ level of information has been strengthened by European treaty revisions as well as by the so-called Barroso-Initiative. In 2004, the Commission committed itself to provide national parliaments directly with all legislative proposals. Thus, an important consequence of the new treaty revisions is a substantial improvement of parliaments’ access to information on European policies (Raunio 2005). At the domestic level the additional supply with EU documents has been met by significant improvements of parliamentary scrutiny systems (e.g. Raunio and Hix 2000). Gradually, all member states have established European Affairs Committees and procedures that ensure systematic scrutiny of EU law proposals. Discussing the effectiveness of these mechanisms, Raunio and Hix (2000: 161) claim that by the end of the 1990s parliamentary control of executives had achieved the same level as in the absence of European integration (see also Maurer and Wessels 2001).

The literature on Europeanization of national political system (for an overview refer to Goetz and Meyer-Sahling 2008) discusses the role of national parliaments during the making and implementation of EU law. Comparative empirical studies find that EU law rarely affects more than 30% of the domestic legislation. Yet this number hardly serves justice to the importance EU law for national politics. Firstly, EU regulation and decision are directly binding and do not need transposition to national law. Secondly, many EU directives are implemented via governmental decrees (e.g. König and Mäder 2008; Raunio and Wiberg 2010; Mueller et al. 2010). Franchino and Hoyland (2009) find evidence that the participation of national parliaments during the implementation stage depends on the ideological distance inside the coalition government. These facts highlight the relevance of parliamentary scrutiny at the lawmaking stage. Yet the secret nature

of decision-making in the Council of Minister and the application of QMV makes ex-ante parliamentary scrutiny a difficult task to accomplish effectively.

European Affairs Committees (EACs) can be regarded as the “most important institutional innovation connecting the national Parliament to supranational decision-making” (Bergman et al. 2003: 174). The institutional setup and activities of EACs vary across member states and parliamentary chambers. Often EACs are the corner stone of a larger scrutiny system that includes sectoral committees. The committees’ powers for limiting the discretion of national government in the Council of Minister vary, too. Most parliaments operate a document-centered system which enables the scrutiny of specific law proposal by issuing a non-binding scrutiny reserve. Only few parliaments have the right to issue a binding mandate that limits the minister’s discretion in the Council. For example, the Danish Folketing can issue voting instructions to the minister (Raunio 2005: 322-323).¹ In any case, given qualified majority voting in the Council of Ministers the actual effect of such mandatory systems on EU policies remains highly questionable. The effectiveness of document-based scrutiny systems depend on the available resources such as the number of administrative staff, the size and composition of the EACs (Bergman et al. 2003), the density of informal contacts to MEPS (Maurer and Wessels 2001) and the close cooperation with sectoral committees (Raunio 2005). Behavioral assessments of scrutiny activities are often based on aggregate indicators such as the frequency of EAC meetings, the opinions produced, number of meetings with EP committees and memoranda received by the government on its positions (Karlas 2011). Although the categorizations differ slightly, Denmark and Finland emerge as having the strongest scrutiny system and Greece, Portugal and Spain clearly rank last indicating a north-south divide that corresponds to the implementation records (Bergman 1997; Bergman et al. 2003; Tapio Raunio 2005; Saalfeld 2005) .

Another branch of the literature deals with explaining the observable cross-country variation in scrutiny provisions. Turning to empirical findings, Raunio (2005) and Karlas (2011) find that strong parliaments² tend to establish strong scrutiny systems. This effect is stronger in the presence of a eurosceptic³ public (Tapio Raunio 2005). The evidence for the effect of minority governments is mixed since. Whereas Raunio (2005) does not find an effect, others explain the exceptionally strong scrutiny system in Denmark by the presence of minority governments (Pahre 1997, Bergman 1997). Deploying a principal-agent model to the relationship between ministers and government backbenchers, Saalfeld (2005: 357) argues that intra-governmental conflict makes strong scrutiny

¹ For an overview of the member states please refer to COSAC 2007: 14-19, Bergman et al. and Raunio 2005.

² A strong parliament is defined by two criteria in the study of Raunio (2005) for the EU 15: agenda setting power and attractiveness to lobbyists. Karlas uses an index for participation rights in his study on the new member states.

³ Euroscepticism is measured by the good-bad-benefit question in the Eurobarometer (Raunio 2005: 332).

systems more likely. Moreover, he claims that the strength of parliamentary scrutiny is correlated with the size of the government, the frequency of coalition governments as well as a history of early cabinet terminations. Finally, a high saliency of EU affairs leads to stronger parliamentary control.

Other authors point to the fact that an assessment of the formal powers and resources does not suffice to evaluate the role of national parliaments in EU politics (Auel and Benz 2005; Holzacker 2002). Based on a typology developed by Döring (1995), Holzacker (2002) highlights the importance of the strategic interaction between party groups and the leading ministers. The leading minister might not pay attention to party groups at all (non-party mode), interact with members of other party groups (inter-party mode) or act across party boundaries (cross-party mode). Following Auel and Benz (2005, 389) parliamentarians find themselves in a dilemma between strictly scrutinizing the government and optimizing the policy outcome in the Council of Ministers. By tying the hands of the responsible minister, parliaments risk a worse bargaining outcome (Auel and Benz 2005, 373). Assuming a powerful role of the voters, the authors consider public statements issued by the parliament to effectively constrain the government. Therefore, MPs of governmental parties rarely criticize the minister in public because such criticism may weaken the government's bargaining power. To overcome this dilemma MPs from governmental parties cooperate informally with the responsible ministries, thereby excluding the opposition from information and avoiding formal scrutiny. By contrast, opposition parties make use of informal contacts e.g. to European actors (Auel and Benz 2005, 388). Holzacker (2002, 470) finds that German and Dutch opposition parties tend to initiate scrutiny over issues that are salient for the public.

To sum up, most of the existing literature compares the institutions for parliamentary oversight of EU lawmaking across member states and across history. Yet, our knowledge on the effect of these different institutions with respect to observable scrutiny activities is still limited. As pointed out by Benz (2005: 519) more studies are needed "to find out in which way they [national parliaments] make use of their power and how their strategies are affected by different institutional conditions or parliamentary democracy." Specifically, neither of the existing empirical studies explains why some EU proposals become subject to parliamentary scrutiny whereas others go unchecked. The paper proceeds by adapting theories developed for domestic-level parliamentary scrutiny to the bicameral and two-level nature of EU politics.

Explaining Parliamentary Scrutiny of EU law Proposals

Theories of delegation and oversight were initially applied to the relation between Congress and administration in US politics (e.g., McCubbins and Schwartz 1984; McCubbins et al. 1987, 1989;

Kiewiet and McCubbins 1991). In this context the issue of parliamentary oversight salvages special importance in periods of divided government when the majority party in Congress differs from the party of the president. In comparison to parliamentary democracies political parties are generally assumed to hold weaker control over the US administration thus inhibiting an important means of indirect control. Accordingly, the US Congress has developed a powerful arsenal of oversight instruments.

In parliamentary democracies the oversight instruments have long been considered less powerful (Strom 2000). Nevertheless, numerous studies point towards the existing information asymmetry between government and parliaments in Europe (e.g. Saalfeld 2000; Strom 2000; Müller 2000). More recently, Vanberg and Martin (2004, 2011) find that parliamentary oversight is just as important for our understanding of legislative politics in parliamentary democracies.

Kiewit and McCubbins (1991) distinguish between those control instruments applied when installing the principal-agent relationship (*ex-ante*) and those instruments applied once the agent is at work (*ex-post*). The present study aims at explaining observable variation once the principal agent relationship has been installed. Here, we are primarily interested in the agents' „monitoring and reporting requirements“ for each individual law proposal (Kiewit and McCubbins 1991: 31-33; Saalfeld 2000: 362-369). Specifically, we consider the referral of EU law proposals to national parliamentary committees as crucial indicator of parliamentary scrutiny. In almost all European parliaments the composition of committees reflects the partisan composition of the plenary. In most cases, each individual political group can refer an EU law proposal to the committee. Although in many cases the formal rules of procedure reserve the agenda setting right for the committee chair, political groups hold powers which guarantee them an informal say over the agenda. For example, in the German Bundestag each MP can interpellate the government and each group can propose motions for resolution in plenary. Accordingly, any committee chair will find it hard to ignore other groups' proposals when drafting the agenda. Committees are composed of policy experts qualified for catching up on any agents' private information (Harfst and Schnapp 2003). Moreover, committees themselves hold broad investigative powers, including the right to schedule hearings, call witnesses and subpoena relevant documents (Martin and Vanberg 2004; Powell 2000: 32; Strom 1990: 71).

Subsequently, we answer the question of who initiates parliamentary scrutiny over EU legislative proposals. The most common perspective in comparative politics conceptualizes the government and the legislature as two separate bodies (e.g., Lijphart 1999; Gallagher et al. 2001). Viewed from this angle, it appears that parliaments play only a marginal role in the policymaking process and are dominated by the government. Recent work has begun to question this perspective by exploring institutional features of the legislative process that can enhance legislative influence over policy,

such as a strong committee system with proportional assignment of seats (e.g. Strom 1990; Döring 1995; Müller and Strom 2000; Powell 2000). This research claims that parliamentary oversight mechanisms provide one important avenue for opposition influence on policymaking. Following this argument we should expect that parliamentary scrutiny activities increase with the conflict between government and opposition (“Opposition issue divisiveness”; Martin and Vanberg 2004: 20).

Yet, given the bicameral and two-level nature of EU lawmaking opposition parties may find it difficult to influence policy making despite extensive opportunities for parliamentary oversight. The closed nature of meetings in the Council of Ministers exaggerates the informational asymmetries between government and opposition. In contrast to domestic politics the asymmetry extends to the effects of competing policy alternatives *and* to the set of politically feasible alternatives represented in the Council. Considering these difficulties, Proksch and Slapin (2010) argue that only government parties can use the Council of Ministers to oversee and influence EU legislation whereas opposition parties are bound to use the European Parliament.

Instead, we argue that the opposition’s influence on EU policies depends on its relative strength in the European Parliament as compared to its strength in the national parliament. Specifically, opposition parties which are strong in the EP, but weak domestically will focus their efforts on the European level. By contrast, opposition parties which are weak in the European Parliament, but strong in the national parliament will try to influence their own government. The opposition’s strength at the domestic level depends on the size and stability of the government. The opposition’s strength in the European Parliament depends on the number, skills and information of their MEPs as well as on the networks between their parliamentarians in the national and the European Parliaments.

The opposition’s relative strength in the European as compared to the national parliament implies different incentives for initiating domestic level scrutiny with respect to a proposal’s degree of transparency and politicization. More specifically, legislative decision making inside the EP follows either of two modi.

First, many legislative proposals are settled informally in the so-called trilogue between EP, Commission and the Council. Inside the EP such trilogues are headed by the rapporteur in close consultation with potential shadow rapporteurs representing other party groups. The floor cannot amend such an interinstitutional agreement; otherwise the agreement reached in the fast-track procedure would be void. Therefore, political outcomes reached via trilogue have been criticized for being non-transparent to actors outside the responsible committees (Heritier 2009). Opposition parties who are weakly represented in the EP may initiate scrutiny to increase transparency. This

effort is particularly rewarding if the position represented by the national government in the Council differs from its own position. Otherwise, the opposition could simply rely on the intergovernmental branch of interest representation and on government parties who may be represented in the responsible EP committee.

Second, some legislative proposals provoke open and visible bargaining inside the EP. Many of these proposals are characterized by a high degree of ideological (rather than interinstitutional) conflict (Hix et al. 2006). These dossiers are subject to numerous amendments voted upon in plenary. In these cases, the information on the potential coalitions and the set of feasible outcomes inside the EP is highly transparent. Yet, the opposition still lacks information on the proceedings inside the Council. Here, domestic level scrutiny is an attempt by the opposition parties who are strong in the EP to gather relevant information on Council proceedings which is then forwarded to support their fellow party members inside the EP. Again, this effort is particularly rewarding if the position represented by the national government in the Council differs from the position of the opposition. In other words, the opposition's strength in the EP has two effects. First, it decreases the information asymmetry between government and opposition. Second, it increases the opposition's ability to influence EU policies via the EP.

Accordingly, we adapt the opposition control argument to the bicameral and two-level nature of EU lawmaking.

Opposition Control

In case the opposition parties are *weak in the EP, but strong in the national parliament*: The likelihood for parliamentary scrutiny increases with the conflict between government and opposition *if* the law proposal is handled under the non-transparent trilogue modus.

In case the opposition parties are *strong in the EP, but weak in the national parliament*: The likelihood for parliamentary scrutiny increases with the conflict between government and opposition *if* the law proposal is handled under the transparent bargaining modus.

Naturally, the degree of opposition representation in the EP is correlated to the total number of seats available to each member state. In other words, we expect the first effect to be more likely for small member states, whereas the second effect should be more likely for larger member states.

More recently, Martin and Vanberg (2004) find that parliamentary scrutiny is also used to reduce information asymmetries among coalition partners. Specifically, they argue that the leading minister holds private information on the law proposals in his jurisdiction. This can cause ministerial drift in the sense that ministers violate the coalition agreement. The information asymmetry can be mitigated by a number of mechanisms such as the nomination of junior ministers from each coalition partner who function as watchdogs, the cross nomination of committee chairs and minister in the same jurisdiction and, most importantly, parliamentary scrutiny. From this perspective the leading minister is the agent and the coalition partners can be conceived of as his principals. The adverse effects of ministerial drift increase with the intra-coalition dissent (“government issue divisiveness”; Martin and Vanberg 2004: 20). Accordingly, the authors expect that the likelihood of scrutiny increases with intra-coalition dissent.

The question is how the intricate, multi-level nature of EU law-making affects the Martin-Vanberg argument. It seems plausible to assume that parties in the governing coalition attempt to influence the policy outcome via the Council of Minister. In what follows, we establish the conditions under which national parties can influence the policy outcome via the Council of Ministers by initiating parliamentary scrutiny.

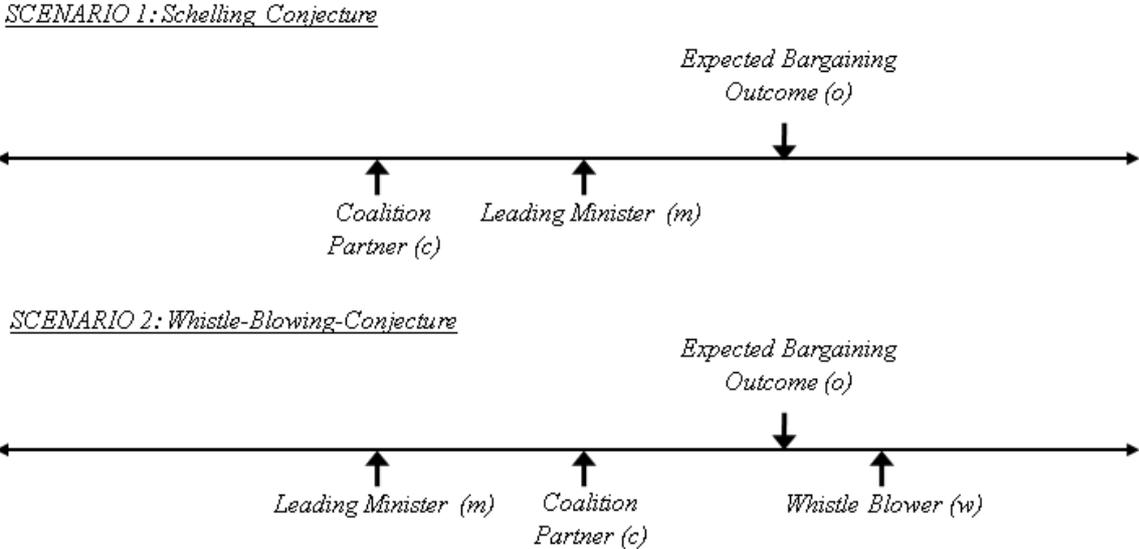
In his interviews with German and Dutch MPs Holzacker (2002) found evidence that government parties initiate parliamentary scrutiny to improve their bargaining leverage in the Council of Ministers. The underlying mechanism reflects the so-called “Schelling Conjecture” (Milner 1997): “In international negotiations, the ability of a negotiator to credibly say to his or her counterpart that “anything we sign here has to be ratified by my country's legislature” provides a bargaining advantage that this person would not otherwise have.” (c.f. Tarar 2001: 320) In contrast to international treaties EU legislation does not require formal ratification by national parliaments to become effective. On the contrary, regulations and decision are legally binding, whereas directives must be implemented at a later stage. Even when no direct ratification is necessary, displeased coalition partners have diverse means for ex-post sanctioning the minister such as withdrawing support for the government. Thus, a reform skeptic minister may credibly shrink his room for bargaining concessions by pointing towards an even more reform-skeptic coalition partner.

In scenario 1 of figure 1 we consider the case of a one-dimensional law proposal where the leading minister (m) is located to the left of the expected bargaining outcome in the Council (o), i.e. $m < o$. Following, Achen (2006) the symmetric Nash Bargaining Solution can be approximated by the weighted mean of all ministerial positions represented in the Council. Under this scenario the leading minister will point towards his coalition partner (c) if $c < m < o$, i.e. the leading minister is located between the *expected* bargaining outcome and his coalition partner. Specifically, the minister will

claim that his costs of justifying the outcome towards his coalition partner increase with the bargaining outcome moving to the right and decrease with the bargaining outcome moving to the left. In this scenario the minister has a motive to initiate parliamentary scrutiny as a means to credibly reveal this information to his colleagues in the Council of Ministers.

The Schelling Conjecture: If $m < o$ the likelihood for parliamentary scrutiny increases with $(m - o) - (c - o)$ increasing⁴.

Figure 1: Two Conjectures for explaining Parliamentary Scrutiny.



The flip-side of the Schelling-Conjecture is a situation in which the leading minister loses his credibility for denying concessions once information on his coalition partner(s) has been revealed to his colleagues in the Council. Under this scenario parliamentary scrutiny is initiated by a whistle-blower who stands to gain from a weakened minister. Please consider scenario 2 in figure 1 where $m < c < o$. Under this constellation the leading minister would be foolish to reveal the location of his coalition partner to his international partners. However, any political group located to the right of the expected outcome o has an incentive to whistle-blow by bringing the topic on the agenda of the national parliament. Note that the whistle blower w may be identical to the coalition partner c if $m < o < c$. As mentioned previously in most European parliaments a single political group is sufficient to initiate parliamentary scrutiny.

⁴ We are dealing with one-dimensional policy space, hence the assumption $m < o$ is can be guaranteed by turning the sign.

The Whistle-Blowing Conjecture: If $m < o$ and $o < w$ the likelihood for parliamentary scrutiny increases with $(m-o)-(c-o)$ decreasing.

Our empirical analysis reveals that a potential whistle-blower existed in almost 99% of the cases. Accordingly, the Whistle-Blowing and the Schelling Conjecture yield diametrically opposed predictions on the likelihood for parliamentary scrutiny. However, the Schelling Conjecture depends on the cost implications of violating the domestic constraint. A decisive factor to determine the political costs of violating a coalition agreement is the salience of the issue for the domestic party competition. If the legislative proposal is of high salience for the domestic party competition the leading minister can make credible use of the Schelling Conjecture. By contrast, if the issue is of little relevance to domestic politics the international bargaining partners may question the accruing costs of further concessions.

Domestic Party Competition: The Schelling Conjecture is more likely for issues of high salience to the domestic party competition.

In sum, existing theories assume that either the opposition initiates parliamentary scrutiny to reduce governmental drift or one of the coalition partners initiates scrutiny to reduce ministerial drift. We apply both arguments to EU lawmaking where the policy outcome can be influenced either via European Parliament or via the Council of Ministers. Specifically, we establish three hypotheses: *First*, opposition parties are more likely to initiate scrutiny if their position differs from that of the government. We suspect that the effect of the government-opposition dissent depends on i) the oppositions' relative strength in the EP as compared to the national parliament and ii) the degree to which a law proposal becomes politicized inside the EP. *Second*, the minister initiates scrutiny to gain bargaining leverage in the Council. This strategy is especially promising for issues of high domestic salience. *Third*, the coalition partner or a third party may initiate parliamentary scrutiny to weaken the minister in the Council by whistle-blowing a coalitions' political weakness. The paper continues with the empirical test of these hypotheses.

Empirics

For an empirical test of our hypotheses we use a new dataset that includes all European legislative proposals and the respective parliamentary scrutiny activities from 2006 until 2009⁵. Specifically, we select two coalition governments which share most of the relevant scrutiny mechanisms, but differ with respect to their strength in the European as compared to the domestic level: the grand coalition in Germany (2006-2008) and the Czech minority government (2007-2009). The differences between the two coalitions are significant. On the one hand the oversized and stable grand coalition between two integration-friendly, moderate parties in the largest and oldest EU member state. On the other hand, the unstable minority coalition headed by a starkly integration-skeptic ODS (Hooghe et al. 2010) in one of the smaller and younger EU member states. In addition, the two cases differ with respect to their representation in the EP. In contrast, the committee systems are very similar in that both EACs are described as document based systems that focus on government scrutiny (COSAC 2007: 15).

The grand coalition between SPD and CDU/CSU in Germany held 466 of the 614 seats in the 16th German Bundestag. At the time the opposition consists of the three smaller parties, the FDP, (liberals, 61 seats), the Greens (51 seats) and Die Linke (54 seats). Both government parties are well renowned for their European integration-friendly positions (Hooghe et al. 2010). Of the opposition parties, only die Linke holds a rather integration-skeptic position. Within the European Parliament each of the two coalition parties dispatches the largest number of MEPs to the respective political groups, i.e. the CDU/CSU to the European People's Party and the SPD to the Party of European Socialists.

Furthermore, we investigate the Czech coalition formed by the ODS (centre-right), the KDU (christian democrats) and the Greens between January 2007 and March 2009. In this coalition the ODS (81 seats) was the senior, KDU (13 seats) and the Greens (6 seats) the junior partners. Accordingly, the minority government held only 100 of the 200 seats in the Czech chamber of deputies. In contrast to the German situation, this government was formed out of an instable situation. It has been inaugurated in January 2007 after a period of deadlock that followed the general elections in June 2006. In March 2009 –during the country's EU presidency- the opposition of social democrats (CSSD) and communists (KSCM) brought the government down by a successful vote of no-confidence and Prime Minister Mirek Topolánek resigned in May 2009. Considering the composition of the coalition

⁵ The data on the dependent variable has been gathered at the University of Heidelberg between September 2009 and May 2010. The authors gratefully acknowledge the research assistance by Dennis Schnur and Marius Melzer.

the smaller parties were overrepresented by attaining five (KDU) and two (SZ) of the fifteen ministries.

Table 1 reveals that despite of the Grand Coalition the German opposition parties had 27 members in the EP who were represented in all of the 16 Committees relevant for EU legislation⁶. By contrast, despite the minority government the Czech opposition had only seven members in the EP who were represented in five⁷ of the 16 Committees. Accordingly, we suspect that the Czech opposition parties (CSSD and KSCM) held insufficient information on many law proposals handled in the remaining 11 Committees. For the 6th EP other reasons exist to suspect that the German opposition was better informed than their Czech counterpart. The Czech parties had little more than two years time to build up informal contacts and networks inside the EP. Moreover, the EU Affairs committee in the German Bundestag is exceptional in size and composition in that it includes MEP from all parties. This institution fosters the network between German MPs and MEPs.

Table 1: Representation of National Parties in the 6th European Parliament

European Party Group	German National Party (seats)	Czech National Party (seats)
European Peoples' Party	CDU/CSU (EP: 48 // BT: 226)	ODS (EP: 14 // PS: 81)
Party of European Socialists	SPD (EP: 24 // BT: 222)	CSSD (EP: 2 // PS: 74)
Greens-EFA	Die Grünen (EP: 12 // BT: 51)	KSCM (EP: 5// PS: 26), non affiliated (1)
Alliance of Liberals and Democrats for Europe	FDP (EP: 8 // BT: 61)	
European United Left – Nordic Green	PDS (EP: 7// BT: 54)	
Independence and Democracy		non affiliated (1)
Non-Inscrits		non affiliated (1)

While the governments are very different, we find that the mechanisms for parliamentary scrutiny are similar with respect to the most important aspects. In each of the two lower chambers the partisan composition of the committees resembles the plenary. Following all four chambers' rules of procedure the committee chairs set the agenda for each meeting⁸. Nevertheless, in both parliaments

⁶ Some committees such as Constitutional Affairs, Women's Rights, Development and Human Rights do not obtain legislative dossiers on a regular basis.

⁷ Legal Affairs, Industry and Research, Employment and Social Affairs (2), Culture, Foreign Affairs (2).

⁸ Bundestag: §61; Poslanecka Snemovna: §36.

political groups possess powerful instruments that allow them to influence the meeting agenda. Political groups are entitled to propose resolutions and to question the government. In the German Bundestag it takes 30% of the deputies, in the Czech lower house only 20% to prompt a debate in plenary or to call in a committee meeting. Moreover, both lower chambers grant weekly questioning time to the opposition during which they can broach any issue to their liking. In addition, the upper chambers (Bundesrat and Senate) can put an issue on the agenda of the lower chambers' committees. Finally, and most importantly, committee chairs are from governmental and opposition parties. As a consequence each party group chairs at least one committee in which it could initiate scrutiny measures. Therefore, we argue that in both countries a single political group suffices to initiate scrutiny.

To construct our dependent variable we resort to the IPEX data base⁹ which provides scrutiny information at the level of EU documents such as the Commission's law proposals. For every proposal, IPEX includes an entry indicating the history of scrutiny activities in the lower and upper chamber of all member states. To validate the information provided by the data base, we conducted interviews with the national IPEX representatives indicated in the database. In both countries each of the four chambers notifies "scrutiny in progress" if one of the Committees is scheduled to hold a discussion over a specific EU document. The date of notification corresponds to the date of the committee meeting. Based on this information, we define a dichotomous variable that is 1 if a scrutiny procedure has been initiated in either the lower or the upper house. To check for the validity we distinguish between EU documents which appear on the agenda only once and those documents which had been discussed during more than one committee meeting ("recurrent scrutiny"¹⁰). Such follow-ups indicate that Committee members needed to obtain additional information before they were willing to reach a final agreement on the matter. In Germany, between 37% and 45% of Commission proposal appear recurrently on the agenda. By contrast, in the Czech Republic only 17% to 22% of Commission proposal have been discussed during more than one committee meeting.

Figures 2a and 2b depict the percentage of Commission proposals subject to parliamentary scrutiny in Germany and the Czech Republic during our period of observation. Due to the different time period, the numbers of observation differ in the two countries. The total number of proposals considered amounts to 522 in Germany and 412 in the Czech Republic. In Germany, between 40% and 60% of Commission proposals were scheduled for discussion in either Bundestag or Bundesrat each year. In the Czech Republic these numbers are similar.

⁹ IPEX is an online database provided by COSAC and publicly accessible online: <http://www.ipex.eu/ipex/>.

¹⁰ The choice of the depend variable does not affect the results (see appendix).

Figure 2a Percentage of law proposals subject to parliamentary scrutiny during the German Grand Coalition.

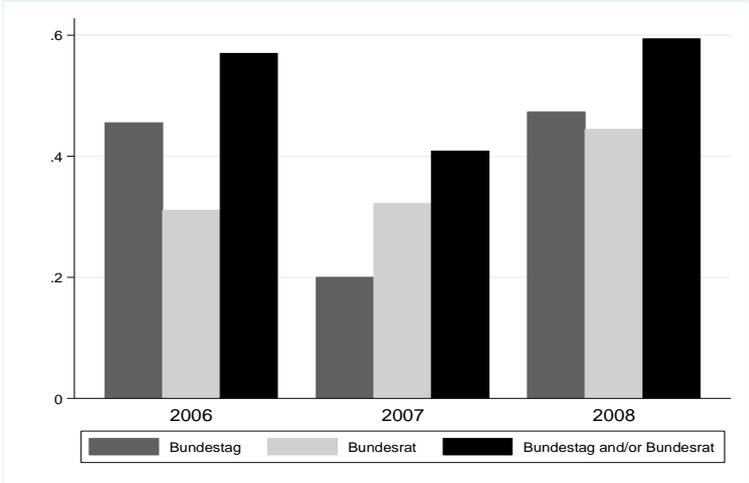
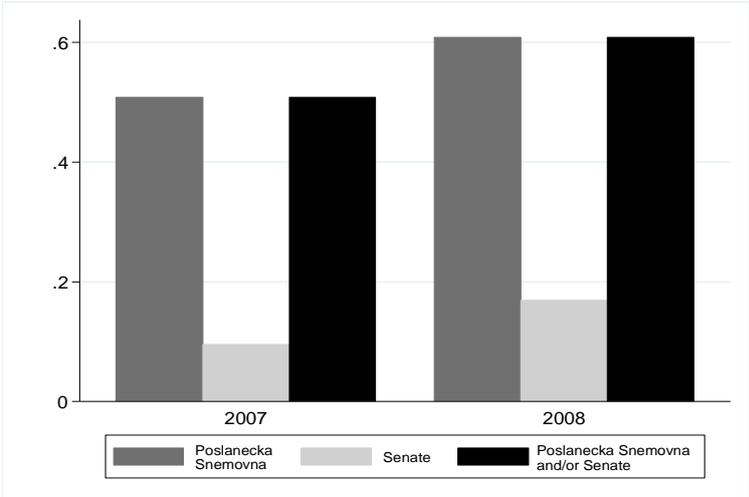


Figure 2a Percentage of law proposals subject to parliamentary scrutiny during the Czech Minority Government.



Independent Variables

Central to our hypotheses is a measure for the position of the parties as well as the salience of the issue to the governing parties. For this purpose we use ten questions from the Chapel Hill expert survey on party positions carried out in 2006 (Hooghe et al. 2010). As mentioned earlier we consider the leading EP committee as a proxy for a proposal’s policy area. Accordingly, we assign the ten Chapel Hill variables to each of the twenty EP committees (see appendix 1). Next, we assign each of the ministries in Germany (14) and the Czech Republic (15) to one of the EP committee which allows us to infer the partisan affiliation and *position of the leading minister*. We approximate the *salience*

of each policy area for domestic party competition by the percentage of text parties dedicate to this area in their manifestos. For this purpose we resort to the CMP data set and assign suitable quasi-sentences to each of the twenty policy areas (Klingemann et al. 2006) (see appendix 1).

Using this data, we calculate the variables necessary to test our hypotheses. Recall that the opposition control hypothesis expects an increase in the likelihood of scrutiny with growing conflict between government and opposition depending on the politicization in the EP. We approximate the *position of the government* and the *position of the opposition* by the mean of the respective party positions weighted by seat share in the lower chamber and issue salience. The conflict between government and opposition parties is operationalised by taking the absolute difference between these two positions. We consider the number of EP amendments (log) as a proxy for a dossiers' *politicization* at the EU level. If zero amendments have been proposed we suspect that the proposal has been handled under the non-transparent trilogue, fast-track procedure.

In order to calculate *intra coalition conflict* we have to determine the position of the coalition partner, which is unproblematic in the German Grand Coalition. In the case of the Czech three party coalition, we assume that each leading minister faces a composite, single *position of the coalition partners*, which we conceive of as the mean of the two existing partners weighted by seat share in the lower chamber and issue salience. Using this measure we calculate the absolute distance between the minister and its coalition partner to measure intra-coalition conflict.

In order to test the Schelling and the Whistle blower Conjecture, we further need to determine the expected outcome in the Council. Following Achen (2006) we conceive of the *expected bargaining outcome in the Council* as the weighted mean of the positions of all 27 governments (weighted by their respective Nice-vote and issue salience). Following our hypothesis, the variable "*Schelling conjecture*" is generated by subtracting the directed distance between the coalition partner and the expected outcome from the distance between the minister and the expected outcome (i.e. $(m-o)-(c-o)$). Importantly, the variable has been rescaled such that for every policy area the minister is located to the left of the expected bargaining outcome (i.e. $m < o$). Hence a positive effect supports the Schelling Conjecture, whereas a negative effect supports the Whistle-Blowing Conjecture.

In addition, we include three important control variables. First, we add a dummy variable that indicates whether a law proposal amends existing EU legislation or implements new primary law. Second, we control for the inter-institutional procedures, i.e. consultation or co-decision. Third, we control for the type of legal instrument, i.e. directive, decision or regulation. Given the scarce resources of parliaments, directives might be less likely to be subject to scrutiny because parliaments

can influence the policy in the implementation stage. Table 2 summarizes the descriptive statistics for all dependent and independent variables.

Table 2 Descriptive Statistics

<i>Variable</i>	German Grand Coalition					Czech Minority Coalition				
	<i>Obs</i>	<i>Mean</i>	<i>S.D.</i>	<i>Min</i>	<i>Max</i>	<i>Obs</i>	<i>Mean</i>	<i>S.D.</i>	<i>Min</i>	<i>Max</i>
Scrutiny	522	0.515	0.500	0	1	414	0.565	0.496	0	1
Recurrent Scrutiny	522	0.391	0.486	0	1	414	0.207	0.405	0	1
No. EP Amendments (log)	522	1.011	1.206	0	5.22	414	1.030	1.188	0	4.81
Issue Saliency	522	5.021	3.582	1.12	14.46	414	4.930	4.370	0	16.13
Government- Opposition	522	4.061	0.802	0.53	4.92	414	3.112	1.744	0.52	6.65
Minister-Coal.Partner	522	1.972	1.281	0.22	4.09	414	2.609	1.428	0.29	5.17
Schelling Conjecture	522	1.013	2.121	-3.15	4.09	414	1.327	1.258	-1.98	5.17
Amended Legislation?	522	0.629	0.483	0	1	414	0.635	0.481	0	1
Directive?	522	0.303	0.460	0	1	414	0.302	0.459	0	1
Codecision?	522	0.500	0.500	0	1	414	0.535	0.499	0	1

We run a series of three logistic regression models for each coalition. The results are depicted in table 3. The first model is limited to control variables. Most of the results turn out unsurprising. In both countries, the degree of politicization (no. of EP amendments) in the European Parliament has a very strong and positive effect on the likelihood for parliamentary scrutiny. In both countries, the likelihood for scrutiny decreases for law proposal that amend existing EU legislation. In both countries, directives are less likely to be scrutinized. As opposed to decision and regulations, directives once adopted by the EU must be implemented in each member state. Most of the time implementation requires domestic legislation, i.e. consent by the national parliament. In both countries, issue saliency has a positive effect on the likelihood for scrutiny – yet this effect turns out insignificant for Czech unless we control for other factors (see model 3). Moreover, in Germany we find scrutiny to be significantly more likely for law proposals handled under Co-decision. This finding reasserts that our theoretical link between the national and the European Parliament depends on the opposition power to influence policy making in the European Parliament.

Table 3 Logistic Regression Models on Y=Scrutiny.

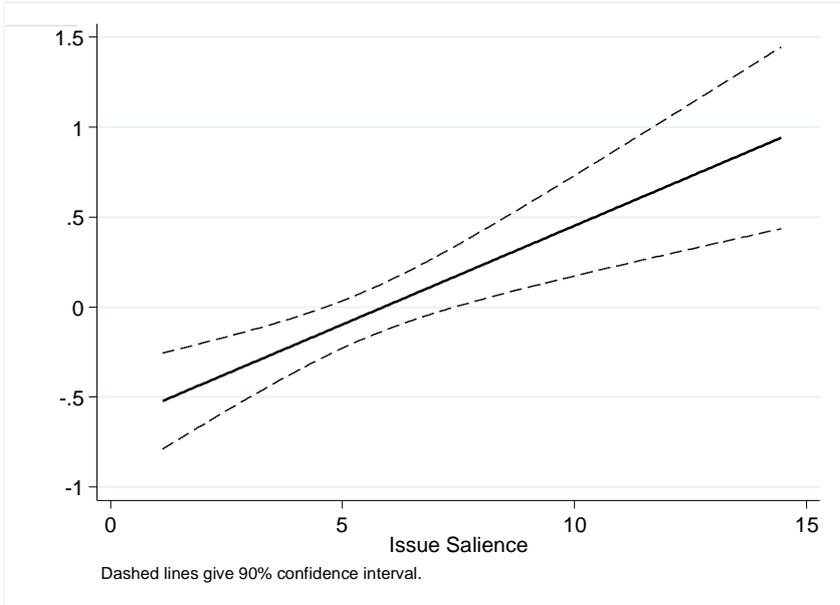
	German Grand Coalition			Czech Minority Coalition		
	Model 1 b/se	Model 2 b/se	Model 3 b/se	Model 1 b/se	Model 2 b/se	Model 3 b/se
No. EP Amendments (log)	0.87*** (0.11)	0.80*** (0.11)	-1.07* (0.42)	1.07*** (0.14)	1.12*** (0.15)	1.44*** (0.29)
Issue Salience	0.09** (0.03)	0.08** (0.03)	0.15*** (0.04)	-0.00 (0.03)	0.05 (0.03)	0.33*** (0.10)
Amending Proposal	-0.50* (0.24)	-0.67** (0.25)	-0.57* (0.26)	-0.81** (0.27)	-0.58* (0.28)	-0.63* (0.29)
Directive	-0.56* (0.25)	-0.37 (0.26)	-0.36 (0.29)	-0.63* (0.29)	-0.78** (0.30)	-0.77* (0.31)
Co decision	0.58* (0.23)	1.03*** (0.26)	1.02*** (0.28)	0.18 (0.29)	-0.03 (0.30)	0.01 (0.31)
 Gov – Opposition 		-0.54*** (0.15)	-0.74*** (0.19)		0.16* (0.07)	0.28** (0.10)
 Minister – Coal.Partner 		-0.15 (0.09)	-0.58*** (0.17)		-0.25** (0.09)	-0.45*** (0.13)
 Gov – Opposition *No. EP Amendments			0.47*** (0.11)			-0.09 (0.08)
Schelling Conjecture			-0.67** (0.21)			-0.76*** (0.22)
Issue Salience*Schelling Conjecture			0.09** (0.03)			0.12*** (0.04)
Constant	-0.96*** (0.26)	1.45* (0.63)	2.30** (0.74)	-0.16 (0.23)	-0.33 (0.40)	-1.83*** (0.58)
Number of Cases	522	522	522	412	412	412
Pseudo-R	0.16	0.18	0.24	0.18	0.21	0.25

The second model includes those variables which capture the preexisting theories on parliamentary scrutiny at the domestic level. First, we find that during the Czech minority coalition scrutiny has been more likely in policy areas characterized by severe conflict between government and opposition. For the German coalition this variable turns out significant, too, but it reveals a negative sign. Second, we find that the political distance between leading minister and coalition partner turns out insignificant in the German case and reveals an unexpected, negative significant effect for the Czech case.

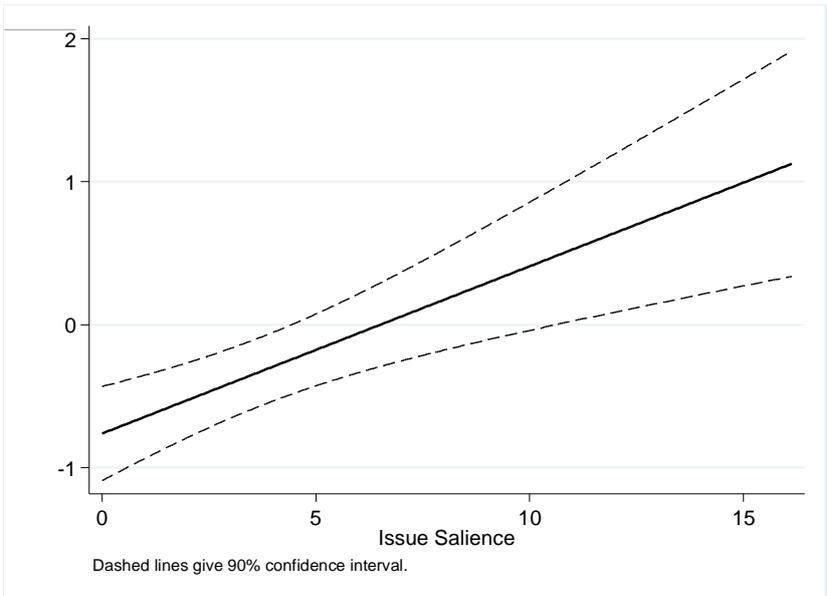
The results of model 2 indicate that preexisting theories can hardly explain parliamentary scrutiny in a two-level political system such as the EU. Accordingly, model 3 adds those variables which operationalize our three main hypotheses. Following the Schelling conjecture we claim that a reform-skeptic minister initiates scrutiny to improve his bargaining leverage in the Council by credibly revealing an even more skeptical coalition partner. We argue that this effect should be stronger as the issue becomes more salient, i.e. the issue-specific costs of intra-coalition conflict increase. Accordingly, we include an interaction effect with issue saliency. Figures 3a and 3b reveal that the estimated marginal effects strongly support our claims. Note that a positive effect supports the

Schelling Conjecture, whereas a negative effect supports the Whistle-Blowing Conjecture. Figures 3a and 3b reveal that for highly salient issues the effect is indeed significant and positive. By contrast, the effect turns out significant and negative for issues of low salience. Accordingly, issue salience allows us to separate the Whistle Blowing from the Schelling Conjecture.

Figures 3a: Separating the Schelling from the Whistle-Blowing Conjecture. Marginal Effect on scrutiny conditional upon issue salience during the German grand coalition.



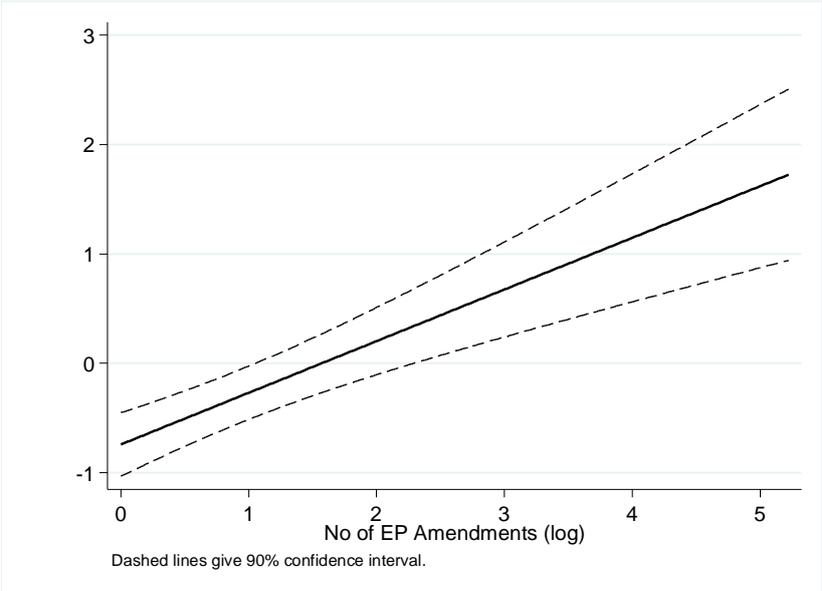
Figures 3b: Separating the Schelling from the Whistle-Blowing Conjecture. Marginal Effect on scrutiny conditional upon issue salience during the Czech minority government.



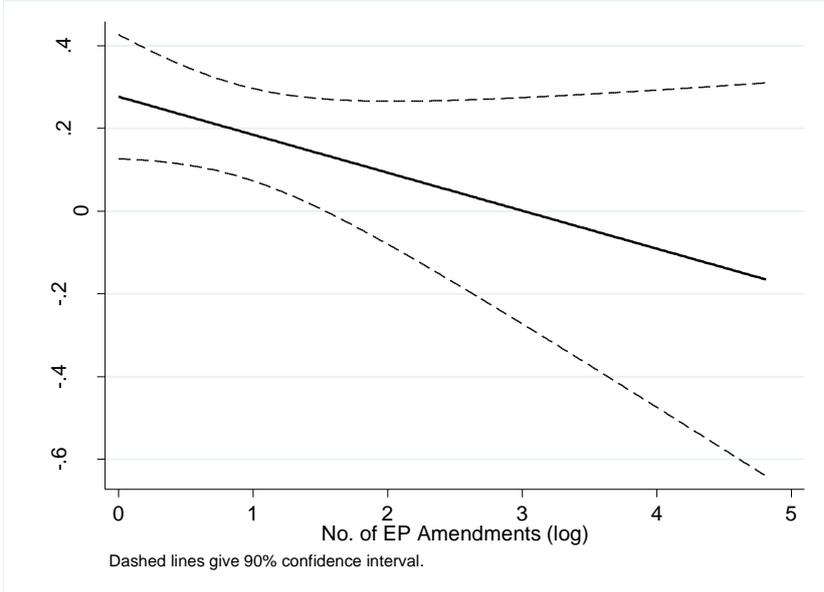
Finally, the opposition control hypothesis posits that national opposition parties scrutinize the government to extort information on either the proceedings inside the EP or the proceedings inside the Council. In Germany we argue the opposition parties are well informed with respect to the proceedings in the EP even if law proposals are handled under the non-transparent trilogue which forestalls amendments. Accordingly, we suspect that the German opposition scrutinizes the national government primarily to gain information on proceedings in the Council. This information is forwarded to Brussels in order to improve their colleagues' bargaining power over highly politicized EP dossiers. Thus, the likelihood for scrutiny should increase with the dissent between opposition and government if the proposal becomes politicized in the EP. Figure 4a reveals the expected effect in case of the German grand coalition. Whereas government-opposition dissent has a negative effect for unpoliticized issues, the effect turns significantly positive for highly politicized issues.

As for the Czech-case our discussion has shown that the opposition has been weakly represented inside the EP (table 1). Accordingly, they suffer from insufficient information whenever law proposals are handled under the non-transparent trilogue procedure. We expect that the Czech opposition seeks to remedy this information asymmetry by initiating scrutiny. Figure 4b supports this expectation and reveals that government-opposition dissent significantly increases the likelihood for scrutiny of unpoliticized proposals, i.e. proposals with zero or very few amendments. Yet, the effect of government-opposition dissent becomes insignificant once the number of amendments increases.

Figures 4a: Marginal Effect of Government-Opposition Dissent on scrutiny during the German grand coalition.



Figures 4b: Marginal Effect of Government-Opposition Dissent on scrutiny during the Czech minority government.



Conclusion

To our knowledge this is the first quantitative analysis of parliamentary activities to scrutinize EU law proposals. Specifically, we explain why some law proposals are subject of discussion during committee meetings whereas others go unchecked. On the empirical side the paper compares two coalitions that could not be more different, namely the German grand coalition (2006-2008) and the Czech minority government (2007-2008). Yet, the findings reveal similar mechanisms which have their roots in common institutional provisions for parliamentary oversight. On the theoretical side the paper adapts two hypotheses which had been developed for domestic level scrutiny to the bicameral and two-level nature of EU lawmaking.

First, the most prominent argument suggests that the opposition scrutinizes the government over proposals characterized by a high degree of “opposition issue divisiveness”. We adapt this argument to EU politics. Our findings indicate that opposition parties which are weakly represented inside the EP initiate scrutiny to improve information on non-transparent legislative bargaining, such as the

trilogue which forestalls written amendments. By contrast, opposition parties that are strong in the EP will scrutinize their national government in order to gain information on the proceedings inside the Council. Forwarding this information will help fellow party members in the EP to influence the policy making process at the European level. Both motivations for scrutiny are particularly worthwhile if the dissent between government and opposition is high. Accordingly, the opposition's relative strength inside the EP as compared to the national parliament has two mediating effects on the likelihood of domestic scrutiny. First, opposition parties which are strong in the EP hold superior information on the proceedings inside the EP. Second, opposition parties which are strong in the EP will find it easier to influence the policy outcome in the EP. Obviously, a proper test of this argument must include more than just two coalitions.

Second, the government is represented in the Council of Ministers. Following, the literature on two-level games governmental bargaining power at the EU level can be improved by strategically revealing a credible ratification constraint. We find ample evidence that leading minister's initiate scrutiny in order to reveal a coalition partner whose position limits his ability to grant concessions. Yet, the Schelling Conjecture presumes that the party of the minister is located between the expected bargaining position in the Council and the coalition partner. Any other interest constellation may cause scrutiny as whistle blowing. Under this scenario either the coalition partner or a third party initiates scrutiny to weaken the ministers' bargaining power in the Council. Finally, the cost implied by violating a coalition agreement depends on issue salience. Accordingly, revealing a skeptical coalition partner is a more credible strategy for highly salient issues. Hence, we find that an issue's salience can separate the Whistle-Blowing from the Schelling Conjecture.

Political scientists have been concerned about the loss of power of national parliaments by a shift of competences to the supranational level. Our quantitative results on the decision to initiate scrutiny corroborate case study evidence that national parliaments have adapted to the bicameral and two-level political system of the EU. In fact, our findings resort to the assumption that parties can use domestic parliamentary scrutiny to influence EU policy making. This strongly suggests that national parliaments are far from being disempowered. As has already been shown by Proksch and Slapin (2010), the European Parliament even opens up new channels of influence for parties in the domestic opposition. Our results indicate that the two most powerful explanations for domestic level scrutiny can be successfully adapted to EU politics. Most importantly, scrutiny provides a means for the opposition to control the government. Yet, it also provides a means for the coalition partner to exert control over the leading minister.

The next steps on our research agenda include an expansion of the data set in time and space. Specifically, we aim at including more than just two coalitions in the analysis which can be

accomplished by either going back in time or by including other countries than Germany and the Czech Republic. Also, we are about to gather more information on the domestic scrutiny activities such as the duration of scrutiny, the number and nature of sectoral committees which have been involved and the fact whether or not resolutions have been adopted.

Appendix A: Operationalization of Party Positions and Issue Salience

Policy Area	Source: Policy Position	Source: Policy Salience
Foreign Affairs	CP 2006, FOREIGN	CMP 2004, Internationalism: +
Human Rights	CP 2006, CIVLIB	CMP 2004, Freedom & Human
Security & Defence	CP 2006, FOREIGN	CMP 2004, Military: +
Development	CP 2006, FOREIGN	CMP 2004, Internationalism: +
International Trade	CP 2006, DEREG	CMP 2004, Free Enterprise: +
Budgets	CP 2006, LR_ECON	
Budgetary Control	CP 2006, LR_ECON	CMP 2004, Market Regulation: +
Economic & Monetary Affairs	CP 2006, LR_ECON	CMP 2004, Market Regulation: +
Employment & Social Affairs	CP 2006, LR_GEN	CMP 2004; Social Justice: +
Environment & Public Health	CP 2006, GALTAN	CMP 2004, Environmental
Industry, Research & Energy	CP 2006, INTMARK	CMP 2004, Technology &
Internal Market	CP 2006, INTMARK	CMP 2004, Free Enterprises: + /
Transport & Tourism	CP 2006, COHESION	CMP 2004, imputed by mean of all
Regional Development	CP 2006, URBAN / INTMARK /	CMP 2004: Farmer, Social Justice
Agriculture	CP 2006, URBAN	CMP 2004, Farmers: +
Fisheries	CP 2006, URBAN	CMP 2004, Farmers: +
Culture & Education	CP 2006, GALTAN	CMP 2004, Education Expansion: +
Legal Affairs	CP 2006, CIVLIB	CMP 2004, Law & Order: +
Civil Liberties & Justice	CP 2006, CIVLIB	CMP 2004, Law & Order: +
Constitutional Affairs	CP 2006, EP	CMP 2004, European Integration: +
Women's rights	CP 2006, GALTAN	CMP 2004, Non-economic

Appendix B: Regression Models with Y=recurrent scrutiny

	German Grand Coalition			Czech Minority Coalition		
	Model 1	Model 2	Model 3	Model 1	Model 2	Model 3
	b/se	b/se	b/se	b/se	b/se	b/se
No. EP Amendments (log)	0.76*** (0.10)	0.71*** (0.10)	-0.52 (0.42)	1.11*** (0.14)	1.14*** (0.14)	2.37*** (0.39)
Issue Salience	0.13*** (0.03)	0.12*** (0.03)	0.21*** (0.04)	0.06 (0.03)	0.08* (0.04)	0.33** (0.12)
New or Amend	-0.37 (0.24)	-0.47 (0.25)	-0.34 (0.26)	-0.35 (0.33)	-0.29 (0.35)	-0.38 (0.38)
Directive	-0.50 (0.26)	-0.37 (0.27)	-0.26 (0.29)	0.29 (0.35)	0.36 (0.36)	0.61 (0.39)
Co decision	0.77*** (0.23)	1.20*** (0.26)	1.23*** (0.28)	-0.01 (0.35)	0.02 (0.37)	0.05 (0.39)
 Gov – Opposition 		-0.40* (0.16)	-0.60** (0.21)		0.23* (0.10)	0.47** (0.17)
 Minister – Coal.Partner 		-0.26** (0.09)	-0.60*** (0.15)		-0.24* (0.11)	-0.49* (0.25)
 Gov – Opposition *No. EP Amendments			0.30** (0.11)			-0.36*** (0.10)
Schelling Conjecture			-0.73*** (0.22)			-0.69 (0.35)
Issue Salience*Schelling Conjecture			0.12** (0.04)			0.09 (0.05)
Constant	-1.99*** (0.28)	0.09 (0.66)	0.61 (0.83)	-3.13*** (0.37)	-2.34*** (0.53)	-5.43*** (0.96)
Number of Cases	522	522	522	412	412	412
Pseudo-R	0.16	0.19	0.23	0.25	0.25	0.34

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