The Power of Opposition Parliamentary Party Groups in European Scrutiny

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This paper investigates the power of opposition parliamentary party groups when scrutinising their governments’ decision-making concerning European Union issues, an important component in assuring democracy within the emerging multi-level system of governance in the EU. It first sets out the advantages that this provides to the political system, including improving government performance, improved democratic legitimacy, the channelling of disagreement and conflict into parliament, and preparing the opposition to govern. The article then proposes a set of criteria for measuring such power, which focus on the legal framework, institutional structures, and strategic behaviours, which give power to opposition parties when conducting scrutiny. Finally, the article considers these variables in four EU member states to evaluate empirically the power of opposition parties to scrutinise their government’s EU decision-making. Because the power of scrutiny over EU matters must be seen in the context of the overall relationship of executive–legislative relations in a country, the four countries have been chosen to represent a country with a majority government (UK), two coalition governments (Germany and the Netherlands), and a minority government (Denmark). This analysis shows that opposition parties in parliaments with minority governments have the greatest power to scrutinise their government, followed by parliaments with coalition governments. Opposition parties in parliaments with majority governments have the least power.

A central feature of democracies is institutional power giving both governing and opposition parties in parliament some measure of control or scrutiny over executive decision-making. Indeed, democratic accountability is often to be found primarily in the actions of opposition parties, because their interests are not as aligned with current governments as is the case with governing parties. Here we are interested in the power of opposition parliamentary party groups (PPGs) when scrutinising their governments’ decision-making concerning European Union (EU) issues, an important component in assuring democracy within the emerging multi-level system of governance in the EU and the Member States.

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The continuing evolution of the system of multi-level democracy in the EU and the Member States, with executive decision-making and parliamentary representation occurring at different levels, makes it fruitful to revisit fundamental democratic concepts like the balancing of powers of majority and minority interests. Democracy is concerned with creating a governing system in which the popular will is translated into workable government, with an emphasis that the will of the majority should ordinarily prevail. But democracies, for a variety of reasons, both ethical and practical, have always shied away from allowing a majority to do anything it desires, in order to avoid the tyranny of the majority.

State power in democracies and the right of the majority to legislate is thus typically restrained by constitutional considerations and the enshrinement of individual rights, at times protected and interpreted by a judicial branch of government. While courts have evolved to protect individual rights, other institutional features of democracies have been developed to protect broader minority rights and interests. This is done both to maintain social peace in the country, to maintain the territorial unity of the state, and to increase the responsiveness and effectiveness of the state by increasing the democratic inputs from society.

The article focuses on one aspect of the power of opposition parties – an important power within the emerging system of multi-level governance in the EU and Member States – the power of opposition parties in parliament to control, influence and monitor the executive’s decision-making over EU issues in the Member States. It proposes a set of criteria for measuring such power, which focus on the legal framework, institutional structures and strategic behaviours, which give power to opposition parties when conducting scrutiny. Finally, the article will consider these variables in four EU Member States to evaluate empirically the power of opposition parties to scrutinise their government’s EU decision-making.

Because the power of scrutiny over EU matters must be seen in the context of the overall relationship of executive–legislative relations in a country, the four cases have been chosen to represent a country with a majority government, two coalition governments (which differ in their typical coalition characteristics) and a minority government. It has traditionally been seen that the type of government formed in a country has a great deal of influence on both its executive–legislative relations and the role of opposition parties, and the four countries have thus been selected based on the expectation that important differences will also be seen when analysing national parliamentary scrutiny over EU decision-making.
ADVANTAGES OF STRENGTHENING THE VOICE OF OPPOSITION PARTIES IN PARLIAMENT

There are in principle four advantages resulting from a vibrant and active voice of opposition parties in a political system and in parliament:

1. **Improving governmental performance:** Governmental performance in democratic states may be measured by two factors: responsiveness to the people and effectiveness of policy-making. If government has more information from different parts of the electorate, often presented by a diverse range of political parties, it can reach better decisions. It can be both more effective at meeting the diverse needs of the people and be perceived as being more responsive to broad elements of the electorate.

2. **Improving legitimacy of the democratic system:** Improvement in government performance in specific policy areas is linked to an increase in specific support among the citizens for the regime. An active role for opposition parties is also likely to increase the diffuse support for the political system because diverse portions of the electorate are more likely to see the process of finding governmental decisions as fair and inclusive. Additionally, there is evidence that satisfaction with democracy is higher in consensual systems of democracy, which includes input from opposition parties.

3. **Channelling disagreement and conflict into parliament:** Opposition parties bring debate into parliament to lessen social tensions and avoid fissures in society. The idea is to avoid conflicts spilling into the streets and instead to have issues debated in parliament.

4. **Preparing the opposition to govern:** If the alternation of power among parties is to take place smoothly with a minimum of disruption to society and governmental decision-making, then opposition parties must be prepared to take the reigns of government in case of a fall of government or fresh elections.

Parliamentary efficiency and the right of opposition parties to be heard are factors which must be balanced in institutional design. Parliamentary rules must allow majorities eventually to move forward and reach decisions, after hearing the views and concerns of opposition parties. Often the committee structure of a parliament is important to integrate the opposition into the life of the parliament without unduly burdening the general plenum with every objection from every single member of the opposition. But in the media age, when debate in plenum is often the only opportunity for the opposition to reach out to the broader public, the voice of opposition must also be heard at times in plenary sessions to receive all of the benefits of the voice of the opposition delineated above.
Representation and legitimacy of government decision-making emerges in the first instance from parliament – the body directly elected by the people in periodic, competitive elections. It is not sufficient that a parliament installs a government at the beginning of the term or holds the ultimate power to dissolve government. Representation and legitimacy demands an ongoing role for parliament. Traditional concepts of executive–legislative relations emphasise two formal powers of parliament: (1) installing a government and powers of dissolution, and (2) law-making powers. But parliamentary oversight and scrutiny over government decision-making is becoming an increasingly important power of parliaments and an object of growing research. One of course needs to understand the formal constitutional powers and laws which mandate parliaments to conduct scrutiny over the government, but these are just the starting point, the rules under which a very important strategic game is played. The players are the governing and opposition parties within parliament. This game works quite differently in systems with a one-party majority government, those with a coalition government or systems with a minority government.

National parliamentary scrutiny is important for increasing the representation and legitimacy of European decision-making because it is the primary institutional source for receiving input from opposition parties. In the Council of Ministers, only governments, elected from governing parties, are represented and participate in setting European policy. Yet traditional democratic structures normally allow some opportunity for opposition parties to discuss and debate laws and policies set by the government. They are normally given the power to pose written and oral questions, to raise matters in committee and to place matters on the agenda for general debate in the plenary sessions. It is important that the voice of opposition parties is heard at the national level because the voice of opposition parties is non-existent or weak within the EU institutions themselves. The voice of these non-governing parties is not heard in the Council or the Commission and only rather weakly in the European Parliament (EP). Because the EP does not formally vote a government into office in the way a national parliament does, there is not the traditional division into governing and opposition party roles in parliament. To understand how national parliamentary scrutiny over EU matters functions in the Member States, one must analyse the interaction between governing parties and opposition parties in the process of scrutinising their national executive.

Parliamentary scrutiny is the exercise of power by the legislative branch to control, influence or monitor government decision-making. These three terms refer to various degrees of influence that parliament may have on the govern-
ment. Dahl defines the term ‘influence’ as ‘a relation among actors such that the wants, desires, preferences or intentions of one or more actors affect the actions or predisposition to act, of one or more other actors’. Dahl furthermore states that this influence may either be ‘manifest’, which means that parliament explicitly acts to achieve a given outcome, or ‘implicit’, in the way that parliament is successful in achieving a given outcome without taking any overt actions because a government may act in anticipation of reactions from parliament.

Parliamentary scrutiny may occur publicly in the formal institutions of parliament, such as committees, public hearings, the submission of written or oral questions and plenum debate. These activities may also occur privately within the various institutions of parliamentary groups, such as PPG meetings, committees or working groups of the parties and informal consultations between specialists in the party group and government ministers.

Now we turn in more detail to institutional features, which give power to opposition parties when scrutinising their executives’ decision-making over EU issues and discuss these in terms of formal rules, institutions and party behaviour. The information in this section has been gathered by an analysis of materials produced by the EACs in the four countries and interviews held by the author with the leading Member of Parliament from each of the parties serving on their parliaments’ EAC.

**FORMAL RULES**

The first base of parliamentary rights of scrutiny to be discussed is the formal rules. These rules – including constitutional provisions, statutory law and procedural rules – give parliament formal powers and may be cited by parliament in their dealings with the government. These rules are normally given the utmost respect by government and are sometimes enforceable by involving other constitutional bodies, such as the highest court of the land, in any disputes over their application. Legal rules are especially important and valuable for opposition parties, for they provide rights to the parliament which are not easily waived by the governing parties through pressure by the government.

**Constitutional Provisions**

The highest of these legal rules, and the first criterion for assessing the parliamentary powers of opposition parties when conducting scrutiny, is constitutional provisions or decisions from the highest court in the land concerning parliamentary rights of scrutiny over EU decision-making in the country. These provisions and decisions may provide parliament with important rights of timely information, consultation and decision-making powers over the government when acting at the EU level, rights that are especially
important to opposition parties. These give certain powers to parliament, which it may claim vis-à-vis the government and which would be difficult for the government to violate.

Of the four countries under consideration here, Germany’s constitution is the only one that contains specific provisions which structure the relationship between parliament and government for purposes of conducting scrutiny over EU matters. Article 23 of the Grundgesetz (German constitution) gives the Bundestag powers of information and the power of Mitwirkungsrechte (a concept between consultation and co-decision) and Article 45 established the European Affairs Committee. Additionally, a strong decision by the Bundesverfassungsgericht (Constitutional Court) demanded a strong role for the Bundestag in EU decision-making. Constitutions of the other Member States under consideration here have not been specifically amended to take into account decision-making at the EU level, and thus do not accord the same powers that parties, including opposition parties, may rely upon when scrutinising the government.

**Constitutional Structure: Existence of Second Chamber with Competency**

The second criterion for assessing the parliamentary powers of scrutiny of opposition parties has to do with the constitutional structure of the state. In countries with a strong second chamber, which possesses some competency to scrutinise the government and must pass laws related to EU directives, the powers of the first chamber are strengthened. This may occur because of different strengths of the PPGs in the two chambers. For example, whereas members of one party may be in opposition in the lower chamber, if their party is part of the majority coalition in the upper chamber they can assert their strength in the lower chamber as well.

Because of the federal nature of the German state and the existence of a strong second chamber, the Bundesrat, the power of opposition parties in the Bundestag are strengthened. This is much less true in the other countries under consideration here, the Netherlands has a weak second chamber (although called the Erste Kammer – First Chamber), Britain has the House of Lords with essentially advisory powers on EU matters and Denmark has no second chamber.

**Laws and Procedural Rules of Parliament**

The third criterion for assessing the power of opposition parties is laws and rules, which although below the level of constitutional provisions, have either been agreed on by government and passed into law by parliament or are procedural rules decided by the parliament to structure its relationship with government and have been acquiesced by successive governments. These laws and rules provide formal rules to prescribe the relationship
between parliament and government in the conduct of scrutiny over EU decision-making. Like constitutional provisions, these laws and rules are especially important to opposition parties because their rights of scrutiny cannot be waived by the governing parties upon government pressure. Because of the alternation of power between governing and opposition parties over successive elections, parties see the advantage that these laws and procedural rules have for preserving the powers of parliament and the interest of the various political parties represented therein, whether at the moment in government or in opposition.

Denmark has the strongest laws and rules giving its EAC power to scrutinise the government, followed by Germany, Britain and the Netherlands. The Danish Accession Act of 1972 provides that the government shall inform a committee set up by the Folketing about proposals for Council decisions, but the decisive provision which establishes the requirement that the Danish government receive a mandate for the negotiating position before a Council of Ministers meeting is contained in an agreement reached between the parliament and the government and announced in the first Report of the EEC Committee (forerunner of the present committee) in 1973. These laws and rules effectively give opposition parties a great deal of power because the Danish government is often a minority government and depends upon opposition parties to support (or refrain from blocking) the government’s proposed mandate.

In Germany, the Bundestag passed a law titled the Zusammentarbeitgesetz (EUZBBG, Cooperation Law between Federal Government – German Bundestag), adding detail to the general framework agreed to in Article 23 of the constitution and which makes the rights of parliament more concrete and enforceable. It requires the government to provide the Bundestag not only with documentation from the EU from the very earliest stages of proposals, but also to inform the parliament of the government’s own position in these negotiations, as well as those of the European Parliament, the European Commission and the other national parliaments. This information greatly increases the possibility of effective national parliamentary control because it allows the parliament to see ‘political’ arguments on various sides of a proposal, instead of merely the EU proposal. Additionally, by hearing about the prospective points of view of other national governments, members of the EAC can better judge on which issues their scrutiny may be most effective in making an impact upon the final outcome of the European Union decision-making process. This process provides information especially invaluable to opposition parties, because they do not enjoy the same channels of communication available to governing parties.

The British House of Commons claims a right of ‘scrutiny reserve’ of issues under the first pillar (the original European community with the creation
of a Single Market as the principal goal). This power, originally resting on the undertakings of successive governments, was later formalised by a resolution of the House. The scrutiny reserve requires that no minister of the government may normally give agreement in the Council of Ministers to any proposal for EC legislation which is still being examined by the Select Committee on European Legislation or has been sent to one of the two European Standing Committees or to the whole house for further debate. Thus the scrutiny reserve requirement gives the parliament the right to demand time from the government to be able to consider matters and debate them before the government may vote in the Council of Ministers. This feature forces the government to present matters to the House of Commons and gives the opposition parties time to raise questions they deem important.

The Netherlands has the thinnest statutory basis to guide its conduct of scrutiny, with the notable exception of decision-making arising under the EU’s third pillar (Justice and Home Affairs), among the four countries under consideration here. Instead parliamentary procedures guide how the government consults with parliament, requiring documents from the European Union and a short form, called ‘fiches’, which briefly describes the proposal, indicates the possible consequences for national law and lists the Ministry which has been given primary responsibility for conducting the negotiations on behalf of the Netherlands.

There is a statutory basis for the power of the Tweede Kamer (the Second Chamber – the more powerful, directly elected chamber) to scrutinise the government’s position, taking on issues in the third pillar. An amendment to the bill approving the Treaty on European Union (TEU), adopted in November 1992, declares that the government is obliged to make public and provide the States-General (both Houses) with draft proposals and to obtain the consent of (or be given tacit consent if no action is taken within 15 days of the draft being submitted) the States-General before the Council of Ministers takes any decisions under Title VI of the TEU.

INSTITUTIONS

Establishing specialised institutional bodies within parliament, like the European Affairs Committees (EACs – with various names in each parliament, but similar functions), which all the parliaments of the Member States have now created, is a way to focus the power of parliament to scrutinise the decision-making process of the government on EU matters. The two criteria presented concern the way that the membership of this committee is selected and the extent to which other committees in parliament also play a role in this scrutinising function beyond the EAC.
Overlapping Membership

The fourth criterion for evaluating the power of opposition parties to scrutinise is the extent to which membership on the EAC overlaps with the membership of other important committees in parliament. This is a way of bringing diverse expertise to the committee, which broadens and strengthens its knowledge and allows the committee to understand the implications of policy in one area and prepared by one ministry, with other policy areas. Overlapping membership also allows knowledge learned about the EU and its operation from service on the EAC to be used when the MP is acting on another committee. A system of overlapping membership both focuses a diverse expertise on the committee and distributes expertise on the EU to the other committees of parliament, thus involving larger parts of the parliament in the process of scrutiny when necessary. This institutional feature clearly strengthens the power of parliament vis-à-vis the government. It is especially important to opposition parties because such parties typically have fewer members than the governing parties and the opposition parties cannot rely on government expertise to inform them of the policy and political implications of EU proposals.

The EAC of the Danish parliament consciously attempts to bring MPs from various committees onto the EAC, concentrating policy expertise on the committee. Furthermore, the committee attracts MPs from the top leadership positions from the various parties, thus concentrating political authority on the committee and giving it a strong mandate to act in many cases on behalf of the whole parliament, thus further strengthening the committee.

In Germany, the EAC also attempts to assure overlapping membership from the important policy committees. However, the committee does not necessarily attract the very highest political leaders.

The membership of the EAC in the Netherlands has a form which at first glance appears to be overlapping membership, but the advantages of structuring the institution in this way are eviscerated by normally meeting to perform scrutiny in what is technically a joint meeting of the EAC and a specialised policy committee, but in reality it usually consists of only one person appearing from each party who serves on the committee and the specific policy committee which routinely oversees a particular ministry. The whole committee normally only meets to scrutinise the Foreign Minister, Finance Minister and the Prime Minister. This is an example that once again shows the importance of a careful analysis of the actual practice of institutions, instead of merely looking at the formal institutional structure.

The British House of Commons has not institutionalised a system of overlapping membership between the EAC and the specialised policy committees, so this only occurs haphazardly and by chance. However, the political
parties themselves attempt to find MPs to serve on committees with various sectoral interests, such as agriculture or business.

Involvement of Other Committees

The extent to which other committees in parliament also discuss EU matters and upcoming business on the Council of Ministers agenda is another indicator of the parliamentary power of opposition parties. It allows a specialised committee to consider matters arising for the government at the EU level, in terms of the committee’s own institutional expertise of the policy area. Thus, the involvement of other committees proceeds even further than a system of overlapping membership, but allows the full institutional competency of the specialised committee to analyse EU matters, increasing parliamentary power as a result. Because the voice of opposition parties is often heard more in committee than in the plenum, institutional arrangements, which bring EU decision-making in the member state to the specialised committees, strengthens the power of opposition parties.

None of the four countries has systematically institutionalised a system of review encompassing both the EAC and any applicable specialised committees. Nonetheless, the specialised committees in Denmark, the Netherlands and Germany will pick up issues that become particularly salient to a committee or a political party by interest group activity or through media attention. This has been most apparent in the environmental committees, but also increasingly in justice and home affairs committees because of the increasing saliency of decision-making in this area. Furthermore, the commerce committee of these parliaments will address EU issues at times, although the great bulk of the measures to create the Single Market have now been completed. Finally, there are times when the foreign relations committees of the three countries assert themselves, refusing to allow the EAC complete domination to scrutinise decision-making towards the EU. These committees especially discuss development in the EU’s second pillar (Common Foreign and Security Policy) and also during periods when treaty changes are being actively discussed.

The committees in the British parliament other than the EAC generally stay away from addressing EU issues in any systematic way. European issues can be quite sensitive for both the Labour and the Conservative parties, so avoiding the discussions even within one’s own PPG is desirable. Many in the parliament seem to be pleased that EU subjects scheduled for general debate are normally now sent to one of two specialised Standing Committees on Europe, instead of the normal committee system or the floor of the house.
PARTY BEHAVIOUR

The final base of parliamentary power for opposition parties emerges from their own strategic behaviour, that is, how they use the formal rules and institutional arrangements to their advantage.

Power of Governing Parties for Agenda Setting

The relationship between the governing parties and government in setting the parliamentary agenda is an indicator of parliamentary power, which impacts greatly upon opposition parties as well. Strong parliaments give voice to both governing and opposition parties. Here the question is, how much power do the governing parties have to set the agenda in parliament, and how much power does the government have? Here one sees a progression from governing parties where the power of the parliamentary power group is fused with government power (giving governing parties great power to set the parliamentary agenda because their power is fused with that of the power of the government), to systems where one sees a separation of powers and thus a competition to set the agenda, to systems where the agenda is clearly set by government and enforced through a whip system in parliament.

The almost daily necessity of the minority governments in Denmark to obtain support from both governing and opposition parties in order to obtain a mandate for Council of Minister negotiations and to pass legislation gives the governing parties in parliament a great deal of influence over the setting of the agenda. In Denmark it can be said that the power of the governing parties is to a great extent fused with the government, because it is necessary for government success to negotiate continuously with other parties in parliament, both the governing minority and the majority not in government, formally the opposition.

In the Netherlands, with a coalition government typically consisting of two relatively equal parties and one smaller one, the government also needs to consult frequently with parliament to make sure that it maintains these broad coalitions. There have been times when portions of the parties within the governing coalition will threaten to temporarily defect and side with an opposition party to bring a policy proposal closer to their own party’s view and away from the politically mixed bag coalition (in power from 1994–2002), combining Labour (PvdA) and Conservative Liberal (VVD) parties, with a smaller Social Liberal party (D66). This need and the traditions of consensus decision-making within Dutch political culture result in some fusion of power with the government to set the agenda in parliament. This does not reach the level seen in Denmark, with the situation of a minority government requiring continuous bargaining between the parties in parliament, but none-
theless the need to keep the broad, politically mixed coalition together and avoid temporary defections gives the governing parties a measure of power to set the agenda in parliament.

In Germany, with the current coalition government consisting of the typical constellation of a larger, more dominant party and a smaller coalition partner, the government itself has more power to set the agenda in parliament. The government can be fairly confident of support from the governing parties in parliament, especially the larger party with the Prime Minister from its ranks, but also its smaller coalition partner, which has few alternatives if it wishes to remain a governing party.

The agenda-setting power of the British government over its parliament is legendary, and a whole institutional apparatus involving whips with a heavy tool bag of carrots and sticks. These rewards and punishments extend through various institutions involving the career of the MP – including the MPs standing in parliament, the party and his or her constituency. These devices are normally quite effective in keeping most of the members in line, most of the time. In these situations of majority government, the government is able, to a great extent, to control parliament and set the agenda. Of course, when a real revolt among members of the governing party emerges, as it did a number of times during the rule of Prime Minister Margaret Thatcher with a Conservative Party deeply divided on European issues, the debate is bitter and the very leadership of the Prime Minister over the party is placed in question. The only protection that an individual member of parliament has in such situations is to be part of a strong minority faction within the governing party, which makes it difficult for the government to use its normal whip enforcement mechanisms against them as individuals. They must also hope that they have a chance of winning, to topple the current party leadership and elect a new Prime Minister. This may be viewed as a type of opposition faction which may emerge at critical junctures and which plays the role that an opposition party might play in other systems.

Power of Opposition Parties for Agenda Setting

The power of opposition parties to have a voice in determining the parliamentary agenda is very important in holding the government accountable and challenging it with policy alternatives, in ways the governing parties may be unable or unwilling to do. As such, they play an essential role in a democratic system and make sure that alternative views in society are heard during government decision-making. Although differences in the formal rights of opposition parties are apparent between various parliaments, for example, how much time they are given to determine the agenda in the plenum or their ability to place oral or written questions to challenge the government, their greatest power emerges when the governing parties need the support
of opposition parties in support of their own aims. So, for example, opposition parties in countries with a minority government have a great deal of power because the governing parties need their support to pass legislation or to scrutinise the government effectively and give government a mandate for negotiation. In countries with coalition governments, a governing party will occasionally temporarily side with an opposition party to bring government policy closer to its own preferences, thus giving opposition parties’ power in the system. The power of opposition parties is most limited in countries with a majority government, where the opposition may rely only on their formal powers of opposition contained in the rules and traditions of the parliament.

A final source of power for opposition parties in the lower chamber emerges if the party has real power in the second chamber. In such cases, an opposition party may argue that the governing parties should discuss and compromise matters in the lower chamber, because otherwise the party will use its strength in the upper chamber to block or modify the government’s proposal. Thus, the type of government formed out of a parliament (whether majority, coalition, or minority) and the formal powers and the distribution of party strength in the upper chamber has a great deal of impact on the power of opposition parties to set the agenda and thus on the overall power of parliament.

The Danish opposition parties have the highest level of power to influence the parliament’s agenda in scrutinising the government’s decision-making on EU matters because the government needs their support to receive a mandate to negotiate in the Council of Ministers.

Next in line is Germany, where the power of opposition parties may be increased by the strength that the party has in the upper chamber, the Bundesrat. If the government knows that a particular measure must also be approved by the Bundesrat (or other issues which the Bundesrat has the power to decide may be influenced by the government’s position on such an issue), parties with strength in the Bundesrat also have increased powers to set the agenda in the Bundestag.

The power of the Dutch opposition parties to set the agenda emerges not only from formal rights of the opposition parties, which all these parliaments enshrine in their procedural rules, but also from their occasional ability to get one of the governing parties to defect temporarily and amend the government proposal more closely to their own preferences. A governing party will not do this if the coalition agreement between the parties has spoken on this matter, but many EU issues are not envisaged at the start of a government’s term and are thus not part of the written coalition agreement. Therefore, at times, a proposal of the government, which has emerged from a compromise from this politically mixed bag coalition, will be modified by either the
Green-Left Alliance opposition party encouraging the governing PvdA party to defect from the coalition temporarily, and bring policy more to the left. Similarly, at times the Christian Democratic Party (CDA) has been successful at getting the VVD to defect on issues and bring policy more to the right. This occurred a number of times during the government under consideration here, with the Green-Left Alliance party bringing environmental policy closer to its preferences, and the CDA bringing policy towards agriculture closer to its preferences. Normally, the temporarily defecting governing parties try to accomplish this without voting against a formal proposal of the government, so these actions are discussed during preliminary discussions between government and parliament or perhaps in a resolution on an issue to the government, which is less binding than passing a law.

The power of the British opposition parties to set the agenda in parliament is limited. They of course have procedural rights to question the Prime Minister and ministers during Question Time or may use their scheduled opposition debate time to raise European issues. Additionally, the British opposition parties are especially good at raising European issues for public discussion, which the British press is more than willing to carry to the Euro-sceptical elements of the public.

Distribution of Power within the Parliamentary Parties

The final criteria for judging the parliamentary power of opposition parties to scrutinise the government is the distribution of power within the PPGs in the parliament. A system which both organises the parliamentary party members to discuss and act collectively in their committee work, and when necessary to share information and build consensus in meetings of the entire PPG, combines the advantages of specialisation and expertise with the power of the entire parliamentary party. This system increases the power of parliament vis-à-vis the government by allowing MPs to approach or surpass (by having knowledge of activities across different policy areas by different ministries) the expertise of the ministries and then rallying the rest of the PPG around this position to add the power of numbers.

Denmark and Germany have highly efficient parliamentary party structures to focus expertise in working groups and to disseminate this knowledge through the parliamentary party. In both Denmark and Germany a working group of each party, made up of the parliamentary party members sitting on the EAC, meet before the committee meeting to hammer out the parties’ positions in private first. The members of the working group from each party can normally take a position on behalf of the whole parliamentary party, but will raise the issue in the general weekly meetings of the PPG if he or she needs to consult others before a common party position can be taken, or to build support with the party for a position he or she expects to be controversial.
In the Netherlands, this formal system of concentrating control and oversight, and then channelling and dissemination through the parliamentary party, is less well developed. Here, normally, the party spokesperson on a specific issue area has authority to decide on behalf of the party which position should be taken on a given EU matter. Thus a single person may make the decision, instead of a special working group of the parliamentary party of those serving on the EAC.

The distribution of power in the House of Commons is quite different. Within the governing party a strong whip system controls parliament, and relatively atomised members of parliament serve on the EAC with no institutional vehicle for forging their own common position towards EU matters independent of the government and the whips. Within the opposition parties, organised dissent comes most powerfully from the ‘shadow cabinet’. But there are also groups of MPs, including cross-party groups, who can forge positions and apply pressure to the government at times over EU decision-making.

CONCLUSION

New institutional structures are being created to attempt to preserve democratic representation and legitimacy of decision-making above the level of the nation-state. This article has emphasised the importance of giving voice to opposition parties in democracies. It first set out the advantages that this provides to the political system, including improved government performance, improved democratic legitimacy, the channelling of disagreement and conflict into parliament and preparing the opposition to govern in the future. But it also noted that the rights of opposition parties are to various degrees limited to encourage parliamentary efficiency and preserve the rights of majorities.

The article focused on the situation of multi-level governance within the EU and proposed a model with a set of eight criteria for comparatively assessing the power of opposition parties in the national parliaments to scrutinise their government’s decision-making over EU matters. The criteria were organised into three categories: formal rules, institutions and party behaviour. It then empirically analysed parliamentary scrutiny in four Member States, which were selected based on the type of government formation in the country, whether minority, coalition, or majority.

We have seen from this analysis that opposition parties in parliaments with minority governments have the greatest power to scrutinise their government, followed by parliaments with coalition governments. Opposition parties in parliaments with majority governments have the least power. In parliaments with a coalition government, those with coalitions which are broad and diverse and thus must rely on the parliament continually to discuss and negotiate, have more power and thus edge a bit towards the power enjoyed
by parliaments with a minority government. Coalitions with a dominant party and a junior partner may be expected to need to rely less on discussions and negotiations in parliament to keep the coalition together, and thus edge more towards the power which opposition parties have with a majority government. Nonetheless, the power which these opposition parties have vis-à-vis their government is more similar to other parliaments with coalition governments than it is to either of the more extreme cases.

Of the four countries examined here, opposition parties in Denmark are clearly the most powerful when scrutinising government decision-making toward the EU. Although it does not have great powers enshrined in the constitution, the parliament has a strong statutory framework giving it the right to grant or deny a mandate to negotiate in the Council of Ministers, which provides considerable power to opposition parties. It has a system of overlapping membership between the EAC and the specialised policy committees, thus concentrating expertise on the scrutiny committee. Additionally, from the party behaviour perspective, the power of the governing parties to set the agenda is very high because it is fused with the government, there is a heightened power for opposition parties also to set the agenda, and there is an effective distribution of power within each parliamentary party. The Danish parliamentary parties, including the opposition parties, are uniquely well organised to scrutinise the government.

Next in line are the two countries with a coalition government, with the opposition parties in the German parliament having greater power than those in the Dutch parliament. The German parliament has a strong constitutional and statutory base for its powers, with another constitutional body – the Bundesverfassungsgericht – having signalled its great desire to back the power of parliament. Additionally, the existence of the Bundesrat, with a different balance of political parties, often strengthens the power of opposition parties within the Bundestag. Although the German parliament and its EAC do not have the right to give or withhold a mandate from the government, they do have the right to be consulted and to guide EU policy (Mitwirkungsrechte). The system of overlapping membership with the EAC strengthens oversight. The organisation of the parliamentary parties themselves, with working group meetings of each party serving on the EAC and periodic discussions in the full parliamentary party, are very effective at asserting the power of parliament and opposition parties therein vis-à-vis the government.

The powers of the opposition parties in the Dutch parliament are considerably less than those in Germany. The Netherlands has less of a constitutional and statutory framework specifically designed to give parliament power to scrutinise the government’s decision-making over EU issues. A notable and very important exception to this is in the area of the third pillar, where the Dutch parliament’s right to give or withhold a mandate over justice and
home affairs issues is found in the statute approving the treaty for European Union. In terms of the way the parliamentary institutions are organised, although the Dutch formally have overlapping membership between their EAC and their specialised committees, in reality only one member from each party normally appears at the joint committee meetings, thus obliterating most of the advantages gained from overlapping membership. There is some fusion of the power to set the parliamentary agenda with the government, which strengthens parliamentary power, but mainly to the advantage of the governing parties. Finally, there are times when opposition parties are able to assert themselves and attract the support of one of the governing parties to influence the government, increasing parliamentary power.

The power of the opposition parties in the British House of Commons to scrutinise their government’s decision-making over EU matters is normally quite low. Certainly the institutions within the parliament and in the political parties are designed to control dissent and not give parliament much power to scrutinise the government in any real, meaningful way, beyond the exchange of words. The constitutional and statutory bases for scrutiny are weak. And instead of institutional structures designed for effective scrutiny, there are party structures designed to control and stifle debate, and parliamentary structures designed to keep debate off the floor of the House.

However, meaningful, powerful scrutiny does at times break out nonetheless in the House of Commons. It breaks out of the institutional attempts at constraining it when groups of MPs attack the Prime Minister’s ability to continue to lead his or her party and the parliament. But this is normally a power of the governing party, not that of the opposition. This is an extraordinary power, which the British parliament is able to muster occasionally to great effect. However, these extraordinary episodes are not part of the ordinary powers one sees when examining rules, institutions, and party behaviour when conducting scrutiny.

On a final note, as the system of multi-level governance continues to evolve within the EU and the Member States, it is important that traditional democratic notions of giving voice to both majority and minority interests, and governing and opposition parties, be considered and preserved.

NOTES

4. This was a great concern of western governments during the 1968 wave of protests. For example in Germany a crisis in democratic legitimacy was seen with the rise of the Ausserparlamentarische Opposition (Social movement outside of Parliament).


6. Although the Member States, which used to nominate two commissioners could select persons from different political parties, once serving on the European Commission these persons pledged to represent the interests of the EU.


8. Interviews with MPs serving on their parliaments’ European Affairs Committee were conducted in Germany in the period from November 1999 to January 2000, in the Netherlands in February 2000, in Great Britain June 2000, and Denmark from September to October 2000.