Accountability through Mutual Attunement:
Parliamentary Hearings & Agency Oversight in the European Union

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Abstract

The increased authority delegated to decentralized agencies raises questions about the conditions of politically accountable governance, and specifically parliament's role as a representative institution. Focusing on committee hearings as an accountability mechanism, we ask: How can a parliament employ hearings to ensure that the ends pursued by agencies have a democratic foundation? We propose a model of "mutual attunement" where accountability relations presuppose a process of working-out shared understandings of the ends, means and circumstances of policy needs. We test our argument through a case study assessing the interaction between the European Parliament's Committee on Economic & Monetary Affairs and the European Securities and Markets Authority in the backdrop of hearings conducted between 2011 and 2017. Theoretically, we contribute to discussions on agency accountability and European economic governance, while providing a novel conceptual model and the first analysis of its kind.

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1. Introduction

Independent agencies wield public authority at arms-length from elected representatives and partisan politics. The principles of democratic legitimacy, however, require that public authority is politically accountable to elected representatives. How can a parliament employ hearings to ensure that the ends pursued by agencies have a democratic foundation?

On the standard view, accountability presupposes a certain division of labour. Political bodies, like parliaments, choose the ends of policy and the role of independent agencies is to provide expertise regarding empirical consequences and to implement the adopted policy (Vibert, 2007; Richardson, 2002). Accountability can then be conceptualized in terms of a principal-agent relationship, where safeguards are institutionalized *ex ante* and performance control is exercised *ex post*. On this account, the expertise of independent agencies cannot be used to frame political mandate itself, it is rather restricted to identifying empirical constraints: "expertise acts as a kind of external filter on the deliberations of other parts of the division of labour such as politicians and ordinary citizens" (Christiano, 2012, p. 42).

In this paper, we aim to contest the common way of tying accountability to a strict division of political labour. Through a content analysis of parliamentary hearings organized by the European Parliament's Committee on Economic & Financial Affairs (ECON) and its interaction with participants from the European Securities and Markets Authority (ESMA), we illustrate a different mode of engaging with independent agencies. We conduct the first systematic study assessing the deliberation that takes place within committee hearings between MEPs and an agency, creating an original data set. In doing so, we provide the conceptual tools and material for further research into the relationship between agencies and elected representatives, and for normative assessments of its role in European governance.

In terms of accountability, traditional principal-agent frameworks would expect such forums to be used by the Members of the European Parliament (MEPs) as source of technical information or reports on performance (Bach & Fleischer, 2012; Rijsbergen & Foster, 2017). In a slogan, it would be about the means of policy, not its ends. By contrast, we will develop a framework where the forum can serve accountability interests through what we call "mutual attunement." In order for there to be a coherent mandate for independent agencies to comply with, there has to be a shared space of understanding. *Ex post* control measures cannot truly serve accountability unless the performance indicators are grounded in a sufficiently substantive justificatory relationship (which will be described in terms of an "authority of connection").

Insofar as the forum is governed by the aim of mutual attunement, we expect to observe three conditions. First, instead of a hierarchy where the principal sets ends and the agent reasons

about the means, there will be reciprocal reasoning about ends. Second, there will an active interaction between actors where they constructively engage with questions and comments raised during the deliberation, rather than a passive statement of positions. Third, we expect to see a forward-looking outlook on policy that discusses potential future regulatory spaces, rather than a backward-looking account of the agency's actions

The EU context is an especially interesting test case, seeing as the literature has identified growing fears over weak accountability mechanisms and agency drift (Dawson 2015; Levi-Faur, 2014; Busuioc, 2013; Lord 2011; Majone 2006). Our argument is not that such fears are unwarranted, but rather that the standards of assessment should track a feasible and normatively attractive model of accountability relationships. Most scholars agree that EU agencies are not making purely technical decisions, contrary to what the *Meroni* doctrine implies (Busuioc, 2013; Egeberg & Trondal, 2017; Mendes, 2016). Arguably, efficient agencies are impossible with the doctrine's prohibitive view on delegation (Everson, Monda, & Vos, 2014). Our argument brings out why the political nature of agency reasoning about political ends is not in and of itself a threat to accountability. What matters is that agencies pursue ends in ways that are appropriately attuned to the reason-giving processes of politically representative bodies, such as the committees of the European Parliament (EP).

2. Two kinds of authority

In this section, we want to clarify the accountability question by unpacking two distinct modes of engagement. Drawing on Anthony Simon Laden's differentiation between the authority of command and the authority of connection (2012, Ch. 2), we explain how the traditional principal-agent approaches misses a key feature of accountability.

The authority of command is the most familiar kind of authority. It is about having the unilateral standing to change the normative environment. Addressees of this kind of authority are subordinates liable to receive instructions or sanctions. For our purposes, it is worth highlighting how this is the default mode of authority of the principal-agent approach, which focuses on the unidirectional ability to impose incentives on the agent. The basic premise of principal-agent models, as used in economics and political science, is that there is an information asymmetry between principals and agents. Seeing as the interests of agents may diverge from those of the principal, the authority of the principal manifests itself in incentives designed to align the interests of the agent with the mandate (Miller, 2005).

With regards to independent agencies, this leads to a control-oriented conception of accountability (McCubbins, Noll, & Weingast, 1987; Hammond & Knott, 1996). The problem is

couched in terms of how elected politicians can secure compliance without having the information to determine what specific outcome serves the interests of their constituents. The solution is framed in terms of administrative procedures that automatically steer the agency in the right direction—such as notice-and-comment requirements and evidentiary standards. What is particularly relevant here is that accountability is conceived as checking fidelity to pre-determined political ends. The main question is said to be "how—or, indeed whether—elected politicians can reasonably effectively assure that their policy intentions will be carried out" (McCubbins, Noll, & Weingast, 1987, p. 243). In other words, the command structure of the principal-agent framework rests on a strict division of political labor.

By contrast, the authority of connection leads to a conception of accountability that does not presuppose that political intentions are settled. The authority of connection concerns an essentially mutual answerability, where both parties shape a shared normative environment. In terms of standards of political interaction, this has much in common with the ideas of reciprocity and reasonableness associated with deliberative democracy (Gutmann & Thompson, 1996; Rawls, 2005). What Laden brings out, however, is that there is a form of authority involved in relations of reciprocity. It is the authority to confront others with considerations that must be responded to in terms of reasons rather than mere volition or decisional fiat (2012, pp. 66-67). While one cannot command any specific action, one has the standing to demand that proposals be heard and given a reasoned response.

On the face of it, independent agencies do not have the political standing that the authority of connection requires. Formally speaking, they are executive or technical bodies, and as such they are considered end-takers rather end-shapers when it comes to political questions. But this picture is misleadingly coarse-grained, and in the end it may obscure the conditions of a feasible and normatively attractive model of accountability. That is because the picture does not capture parliaments as potential addressees of political considerations articulated by independent agencies. Independent agencies are institutionally committed to pursue public interest in a way that is guided by non-partisan considerations and ongoing consultation with relevant stakeholders (Pettit, 2004; Seidenfeld, 1992). Many administrative procedures are designed to promote impartial and inclusive reasoning (as opposed to mere compliance with settled political intentions of the elected politicians).

Regarding the authority of connection, the important point is that representatives of independent agencies and MEPs are both bound by a commitment to the common good rather than partisan strategy or non-public interests (cf. Lord, 2011, p. 916). Arguably, this joins the two bodies in a way that enables the authority of connection. Naturally, they have different areas of

expertise and are bound by distinct standards of argument, but independent agencies may have a legitimate standing to reason with the parliament about what ought to be done (ends), not simply what can be done (means). We call this process mutual attunement.

The argument pursued in this paper is not that the accountability of independent agencies should be conceptualized in terms of one kind of authority rather than the other. Instead, both the authority of command and the authority of connection are necessary features of the accountability relationship to parliaments. The point is that command without connection with independent agencies does not serve accountability. Insofar as accountability is supposed to be a virtue of institutions, mere authority of command may be morally reckless given the access independent agencies have to relevant public reasons. Moreover, mere command without connection will also be ineffective. Independent agencies may prefer sanctions or irritating principals to the alternative of compromising their principles and professional judgment (Pollack, 2007, p. 7; Waterton & Wynne, 2004, pp. 101-102).

3. Parliamentary Hearings & Measuring Modes of Authority

Hearings in most congresses and parliaments allow for the exchange of views between members of the parliament and various other actors over policy issues (Leyden, 1995). Hearings offer the grounds for interactions between elected representatives within specialized committees and agencies that fall under their political responsibility (i.e. where they have agency oversight). Significantly, because of their argumentative nature, hearings may provide a venue for mutual attunement. However, without systematic analyses of these interactions, we treat hearings as a black-box, and limit our conceptual understanding of accountability to a static macro-form where aggregate institutional needs shade all interactions.

Therefore, if we are to observe an authority of connection rather than an authority of command between agency and parliament, we should observe a communication where specific conditions are met in their exchanges. Drawing from work on social reasoning (Laden) and deliberative approaches to policy-making (Dryzek, Mansbridge, Papadopoulos, Schmidt), we identify three main criteria that can be used to assess whether we are observing an authority of connection or an authority of command in place, which we employ as analytic measures in this paper. These criteria respond inversely under different modes of authority. The criteria are relationship, interaction, and orientation. We discuss these measures below, and present them concisely in table 1.

Relationship: Hierarchy vs. Reciprocity. The PA understanding of accountability assumes a distinct hierarchy under an authority of command, where the political principal dictates to the agent the limits and scope of its powers. In the context of deliberation, participants can appeal to their position (rank) to resolve disagreements, and/or force perspectives. Therefore, the participants are unequal in terms of formal authority which spills over to their discussion in an observable manner.

In contrast, the authority of connection is grounded in reciprocal answerability. Each participant must appeal to reasons rather than mere expressions of will. As we will understand it here, the form of reciprocity required for connection can manifest itself against a background of institutional hierarchy. In our analysis, the relevant sign is how parties back their opinions and specifically disagreements; are they appealing to mutually shared standards as opposed to mere decisional fiat? Do political representatives attempt to force their perspective on to the discussion?

As Laden nicely puts it "particular instances of the authority of connection are not wielded like a sword, but jointly constructed like a bridge" (Laden, 2012, p. 72). Hence, based on this view, a refusal of a suggestion is more like a dismissal than disobedience. In our analysis, we are concerned with how disagreements are dealt with; are they couched in terms of compliance or acknowledgment? If there is an authority of command structure in place, we expect to observe disagreements to be solved with final decisions made by the committee members.

Interaction: Active vs. Passive. Under a traditional system of agency oversight, due to the separation of ends and means, we expect principal and agent to exchange views on a broader theme without necessarily engaging in debate. Therefore, each institutional actor engages with a different aspect of the discussion's theme but not with the points raised by its counterpart. That is to say, under an authority of command, the communication between agency and the committee should resemble a series of monologues rather than a discussion.

Under authority of connection, there is a joint shaping of the normative environment. This requires that participants have the capacity to seek common ground by appeal to mutually acceptable reasons. It is a capacity to issue and respond to proposals, invitations, and questions rather than merely assertions, instructions and answers. This capacity must be exercised on both sides of the relationship; speech-acts like proposals, invitations, and question are unsuccessful without appropriate uptake and response.

Therefore, we consider how policy ends are shaped; is there genuine engagement or is one part merely subservient? We expect that under an authority of connection, elected representatives and agency representatives interact through discussion rather than passive speech reading that

serves a theatrical management of expectations. They discuss and mutually attempt to shape means and ends together. Conversely, if there is an authority of command we expect a passive interaction between representatives and agency.

Orientation: Forward-looking vs. backward-looking: Having the standing (or *de jure* authority) to change the normative situation can be treated either as settled in the past or as depending on the ongoing interpretation of the relationship. The command perspective takes backward-looking perspective; actors have been given prerogatives for unilateral use, and their authority is independent of the agreement of the addressee. In the connection perspective on authority, by contrast, the credentials are dependent on the interaction between participants. That is, the normative credentials of speech-acts depend on their ability to engage with the others in a way that is taken seriously and that enables mutual attunement. The authority of a proposal or invitation is to some extent acceptance-dependent.

Under an authority of connection we expect that agency and representatives engage in discussions primarily over future policy actions in an attempt to reach common ground over forthcoming expectations, rather than assess actions in the past. Conversely, under an authority of command model we expect that agency addresses past actions which it reports to its political principals.

Table 1: Expected measurement outcomes depending on the authority mode in place between parliament and agency communication.

Relationship	
Authority of Connection	Reciprocity.
	Statements do not reflect a clear hierarchy between agent & principal but an open discussion.
	Points of disagreement are open-ended i.e. they are not resolved through direct order by the committee members.
Authority of Command	Statements reflect a clear hierarchy between principal & agent.
	Points of disagreement are close-ended i.e. they are resolved by direct order by the principal.
Interaction	
Authority of Connection	Interaction reflects active engagements.
	Statements reflect an exchange of views based on questions asked during the hearing time.
	Agency *and* parliament reflect on ends *and* means.

Authority of Command	Passive Engagement.
	Statements comprise primarily of read statements that reflect the discussions theme but do not engage with speakers statements.
	Agency discusses *only* policy means.
	Parliament discusses *only* policy ends
Orientation	
Authority of Connection	Forward-looking.
	Discussions address future policy actions such as potential future policy proposals
Authority of Command	Backward-looking.
	Discussions address past policy actions such as agency activity.

4. Why expect authority of connection?

Having clarified the two modes of interaction and the associated measures, why should we expect to see one rather than the other? Some work on the EP's role in the accountability relationship with agencies has focused on the role of the budgetary committees, where a principal-agent relationship of *ex post* control has been identified (Bach & Fleischer, 2012, pp. 161-162). Do we have reason to suppose things will be different in the specialized ECON Committee? From the language of a recent overview of the accountability practices ESMA is subjected to, one would suspect not. It suggests that political accountability involves the EP's and ECON's ability to "interrogate the actor and to question the adequacy of the information or the legitimacy of the conduct" (Rijsbergen & Foster, 2017, p. 68). Practices of interrogation are much closer to authority of command than authority of connection. Nevertheless, there are reasons for the EP and ESMA to seek mutual attunement under the authority of connection. In this section, we explain three general aspects of relationships between elected politicians and agencies that highlight the relevant reasons.

The first is uncertainty. As they attempt to regulate in the face of unknown unknowns, neither the agency nor the elected representatives can be sure about the line between means and ends. Moreover, key regulatory terms like reasonable precaution and proportionality tie professional considerations up with political values in complex ways. Thus, to address the constantly evolving regulatory demands of any domain, the responsible institutional players need to work out a shared space of reasons.

The second is mutual dependence. Often, the public image of an institution is connected to another institution's performance. An agency's reputation is linked to the public acceptability of the ends it pursues, which means it has an interest in engaging in evaluative matters regarding legislation (Carpenter, 2010). Conversely, the parliament's reputation is linked to its capacity to enable efficient promotion the public interest. For instance, limited support of an agency may turn it impotent, which in turn affects the parliament's public standing.

The third, which is particularly relevant in governance settings beyond the state, is the dynamic nature of institutional relationships. For example, it has been argued that the EU should be seen as a form of "deliberative polyarchy," where, at the limit, principal-agent accountability gives way to peer-review (Cohen & Sabel, 1997; 2005). Moreover, legal scholars doubt that a strong separation of powers between the legislative and executive branch along functional lines is either feasible or normatively attractive given the institutional realities (Carolan & Curtin, 2018).

5. Research Design

To assess our expectations, we require information on the discussions held between a parliament and an agency during committee hearings. We focus on the EU's context for two reasons. First, the explosion of EU agencies led to a rich literature examining accountability relations (Wonka & Rittberger 2010). Whereas the EP is identified as the "locus of political accountability" vis-à-vis EU agencies (Busuioc 2013) researchers employ traditional approaches to assess its powers, such as MEPs written questions and agency report, budgetary controls. While there is no doubt that EU agencies are held accountable by the EP under an authority of command, we argue that it is only a mode of authority in place within a broader system, where different modes of authority co-exist. Therefore, the EU provides fertile ground to test complementary accountability frameworks.

Second, following the financial crisis the EP and specifically ECON gained substantive policy-making powers due to the Europeanization of financial regulation. Part of this move included the creation of the European Supervisory Framework, and the creation of ESMA (along with the EBA, and the EIOPA they form the ESA). We chose to focus on ESMA because it is an important example of a recent move towards delegating more formal authority to agencies in the EU, such as direct intervention and supervisory powers. Indicatively, the agency was the centre of attention in a much-debated case that the United Kingdom brought before the Court of Justice of the European Union, where precisely the mandated political discretion of the agency was a core matter of contention (C-270/12). ESMA is therefore already a salient agency when it comes to conceptualizing the political judgment exercised in supranational regulatory practice.

The agency mentions on its website that it is "*an independent EU Authority that contributes to safeguarding the stability of the European Union's financial system by enhancing the protection of investors and promoting stable and orderly financial markets*". Nevertheless, ESMA continues: "*Whilst ESMA is independent, there is full accountability towards the European Parliament where it appears before the Economic and Monetary Affairs Committee (ECON), at their request for formal hearings.*" Therefore, from the EP's perspective we decided to focus on ECON to which ESMA is directly accountable. The Committee is responsible for policy linked to the economic and monetary union, it is also responsible for the regulation of financial services, the free movement of capital and payments, taxation and competition policies, and policy linked to the international financial system.

The EP's committee hearings are recorded and made available to the broader public on the EP's website. To assess the type of authority in place during ECON's hearings, we used the available search engine and located all ECON hearings where ESMA was a participant. We found seven (7) hearings between 2011 and 2017 where ESMA was included; the relevant hearings were transcribed using f4transcript software and were aided by a research assistant.

We conducted a content analysis taking into consideration our expectations and the outlined measures. Content analysis is a systematic examination and interpretation of a body of material in an effort to identify patterns and variation (Berg & Latin 2008; Leedy & Omrod 2005). There are different types of content analysis which depend on the degree of inductive reasoning applied (see Hsieh & Shannon 2005). In this paper, we conducted a two layered analysis. We first conducted a directed content analysis, this involves creating coding categories that have been derived from existing theories, in this case we developed measures drawing from deliberative theory and social reasoning (see table 1).

To test our measures that act as an independent variable, we require a unit of analysis that acts as dependent variable. Considering the speech patterns observed we employ themes as the unit of measurement. Themes include a string of words such as a sentence or a series of sentences that address a specific issue and/or sub-issue, per speaker. Using these counts as our context we assessed to what degree our developed measures revealed an authority of command or an authority of connection. Against a theme we coded whether it corresponded to our measures (0/1, or null). For example, a theme could be forward looking (1) or not (0) in which case it would have to be backward looking (1). However, it is possible that a theme does not correspond at all to the measure (orientation) in which case it is null. Each theme was tested against each measure (orientation, relationship, interaction).

We would like to highlight that our analysis assessed first the manifest meaning of the statements, and following also examined the potential latent meanings within each theme if we

deemed there was one. We are particularly interested in latent meanings because we are assessing the themes within each speaker's statement, but also the potential reaction to the themes by the other side. As such, our analysis contains a second layer of summative content analysis that explores potential latent meanings in the discussion. Our assessment indicates that the manifest meaning in the transcribed speeches provides enough information to test our measures and deduct a reasoned conclusion on the mode of authority in place.

To improve the validity of our analysis each author and a research assistant involved in the hearing's transcription conducted a content analysis of the hearings. Each conducted an independent assessment of the relationship observed between MEPs and agency representatives, taking into consideration the literature on agency oversight, and the proposed conceptual frameworks. Whereas there was some minor variation between the three coders, all three identified a limited mode of authority of command, and identified a mode of authority of connection associated with the proposed measures.

Whereas automated text analysis provides an alternative methodology to our approach, we identified two key factors that led us to conduct a content analysis. To begin with, considering that even in automated text analysis ultimately the research must make some qualitative decisions (Benoita et al. 2009), and bearing in mind the need to identify manifest meaning across themes rather than specific words in the text, making predictive text reading difficult, employing an automated text analysis would limit the scope of our analysis.

Moreover, to the best of our knowledge this is the first study assessing the actual content of the discussion that takes place within an EP committee hearing between its MEPs and an agency. As such, there is no other point of reference in the literature from which to draw pre-assigned values or principles of behaviour which in turn we can correlate with specific strings of words. The undertaking of such an enterprise is a research project in itself. Being one the first to assess the content of the discussion between MEPs and agencies this paper aims to act as a point of reference for future work; outlining their structure, some behavioural principles, and guidelines for future research in this area either through automated text analysis or content analysis.

6. Analysis

We begin our analysis with an overview of the hearings' structure. Overall, we identified a protocol of interaction in committee hearings that can be broken down into the following seven steps:

1. The committee chair makes a brief opening speech regarding the overall aim of the hearing;

2. The rapporteur makes an opening speech linked to the specific objective of the hearing e.g. the policy proposal's focus and general questions;

3. The participants make a speech discussing the hearing's point of discussion from their perspective, this speech is often pre-distributed to the MEPs beforehand.

4. The chair opens the opens to discussion, where a set of MEP's questions are directed to the panel. Most likely the responsible shadow-rapporteurs or political group representatives responsible for the issue, will ask the question. Usually each political group will ask 1-2 questions per hearing, each question can be directed to more than one panellist.

5. The panellists respond to the sets of questions.

6. The Chair asks the rapporteur to draw conclusions.

7. The Chair closes the hearing with a brief speech.

Taking this pattern into consideration, we identified variation in the hearings' purpose which somewhat impacts their protocol of interaction, their participants, and to what degree they forward or backward looking. Specifically, we identified two central types of hearings: (i.) expertise-seeking hearings; (ii.) oversight-seeking hearing. Out of the seven hearings assessed, two fall under the oversight category where the European Supervisory Authorities were invited to discuss their activity so far and future perspectives (ESMA, EBA, EIOPA). While five hearings out of seven reflected a discussion-panel type of hearing with a variety of actors invited.

In the first case, hearings seeking expertise consist of a diverse panel of participants involving a mix of representatives from EU agencies, think tanks, civil society, and national agencies and institutions, among others. The overall aim here is to conduct a debate/discussion where different perspectives over an issue are presented, for example hearing on FinTech or the MiFID II review. This hearing-type addresses either a policy proposal that has entered/soon will enter the legislative process (e.g. MiFID II); or discusses the potential needs for future regulation (e.g. FinTech).

In this case, the hearing has all the steps mentioned above, but it is primed to be more forward-looking, and the discussion format is evidently more open. The MEPs ask for the agency's opinion over distinct political issues, which we cannot be interpret as a form of control. Moreover, as the interaction between MEPs and agency is about reasoned engagement, the relationship shows reciprocity. For example:

"I would like to thank…the panellists in the name of the ALDE group…And finally…What is your view on the Council's position and rapporteurs' position on the provisions…?"

Michale Theurer 13 June 2016 02:14:00

Table 2: Hearing Type (I, II), Title, Date

Type	Title	Date
I	MiFID Review: Objectives for MiFID/ MiFIR2	5 December 2011
II	Hearing with ESA chairs	19 September 2012
I	Market Abuse Directive	24 January 2012
II	Hearing with ESA chairs	30 September 2013
I	Securitisation	13 June2016
I	FinTech	29 November 2016
I	Recovery and Resolutions of CCPs	22 March 2017

In the second case, hearings that seek oversight, involve the MEPs and an agency (or agencies) representative. In these hearings there is no rapporteur (i.e. step 2 is absent, while the chair conducts steps 6 & 7). These types of hearings are closer to an authority of command. Thus, they are relatively more backward-looking but not exclusively, the agencies discuss primarily their activity so far but also make future projections.

Taking into consideration our analytic measures, it becomes apparent that there is a different mode of authority within the hearings. During steps 1-3, hearings take place under an authority of command where there is a distinct hierarchy, and the interaction is primarily passive as speakers essentially read written statements, which have been provided to the committee members before the hearing takes place. Moreover, speakers are more interested in making broader statements that contain a mix of forward- and backward-looking statements.

This result partially explains why committee hearings tend to be lumped with other static forms of accountability such as representatives' questions; their format makes it plausible that one type of authority permeates across the procedure. However, as we show below this ignores the actual discourse that takes place during the discussion/debate. While the hearing's general frame impacts its structure somewhat and specifically its outward/backward-looking component, assessments of speakers' themes did not find a clear mode authority of command in steps 4-7. Focusing on the discussion component across hearings, we noted that our measures corresponded

to an authority of connection. Below we provide an overview of our analysis vis-à-vis each measure, and some examples from the themes analysed to highlight our point.

Interaction

Assessing the themes content per speaker it became apparent that MEPs and agency representatives did not strictly divide their labour into a political jurisdiction of ends and an agency jurisdiction of means. Rather both speaker categories employed a mix of means and ends in their speech, often under a broader theme. The general pattern observed was one where the speaker opens up with a broader comment that is linked to the political aspects of a policy/action in question, and follows up with a question linked to the agency's technical means. Significantly, this active engagement took place across hearings, including those that had an oversight objective. For example:

> "*…We're always very happy to have you [ESAs] and we hold in very high regard the work that you do…What do you think of the future of the credit rating…?*"
>
> Sylvie Goulard 30 September 2013 00:43:44

> "*…And of course, here in Europe we want to have our share of the global economy pie…What do you think is the top priority…in the financial sector?*"
>
> Cora van Nieuwenhuizen 29 November 2016

> "*…I think the crisis is being exploited to put a European and international banking system in place…But what about the real economy?...*"
>
> Marco Valli 13 June 2016 02:21:16

Moreover, we noted a deliberation in place where speakers engaged with the other side's points, i.e. the agency representative took up the comments and questions raised by the MEPs in a constructive fashion. Similarly, MEPs considered points raised by the agency and posed relevant questions. We highlight that this engagement took place under an amicable environment where both sides provided positive framing devices over the procedure, their invitation to attend the hearing, and the agency's presence at the hearing. For example:

"Thanks for this response, but on…I raised a specific issue…which effort can ESMA make to ensure all over the common market that fees are limited and that they are fair and not burdening unfairly investors and their return?"

Sven Giegold 30 September 2013 00:58:12

Relationship

Considering the relationship between MEPs and agency representatives during the discussion phase, we noted a reciprocity in place. To begin with, the extent of disagreement between committee members and agency was rather limited. In the largest number of observations, MEPs or ESMA requested points of clarification or underscored key issues and/or objectives. Moreover, the response to these questions emphasized common reasoning and policy-making objectives. Furthermore, across all MEPs' statements we did not note an opinion pressed on to the discussion, or resolution of disagreement based on their authority forced onto the agency. The MEPs highlighted the agency's role in providing expertise necessary for the EP to progress with its policy-making responsibilities, while ESMA highlighted the EP's important role as a policy-maker. As such, the relationship presented does not reflect one of principal and agent but rather policy-makers addressing different aspects of the policy domain's needs.

To the extent that a hierarchy was observed this was noted in some specific instances where the MEPs and the agency highlighted the committee's role in shaping the agency. Nevertheless, these comments contained direct mentions to willingly expand the agencies powers, further underscoring a reciprocity where national vs. European perspectives the primary concern rather than legislature vs. agency. This lends support to our argument regarding the interconnectedness of institutional legitimacy, and the collective policy-making that takes place, while adding a Europeanization dimension to it.

"…The EPP will support you all [ESAs] when it comes to the budget, we believe your agencies need additional resources…So our objective is your objective, we want your agencies to fulfil your remit to the full and we want you to have the resources that you need. And the last thing we want is for you to be scapegoats when things go wrong."

Jean-Paul Gauzes 19 September 2012 01:52:53

"…Could you help us a bit more clearly [with] what you want? So which rights? Which rules? Which structures?"

Sven Giegold 19 September 2012 02:15:18

"…what is that drives innovation, and what do we in the parliament have to do to ensure that we don't just simply put stumbling blocks in your way? How can we give room for innovation and competition to work its magic?"

Beatrix von Storch 00:40:17

"…So, what kind of governance model for the colleges would you actually suggest? And then, on top of all this, is Brexit…can you comment on what you think the EU27 should do?..."

Perveche Beres 22 March 2017 00:41:16

Orientation

As we mentioned above, the forward-looking or backward-looking focus of the participants has a correlation with the hearing's purpose. Hearings seeking oversight tend to address more ex post issues. Nevertheless, even within these hearings a substantial component discussed future projections of the agency's activities and the necessary budgeting it would need to achieve said activities. In this case, the committee requested from the agency's representative an assessment of the budget it would require (political means), which the committee was eager to support and even surpass.

Moreover, this forward-looking perspective is closely linked with an open-ended understanding of the hearings. Therefore, in a number of statements the agency opted to carefully assess a point raised by the MEPs and provide a response at a later time. As such, the hearings do not provide a closed set for the assignment of responsibilities but rather serve as learning enterprise that guides the policy-making process, and which can be re-visited as a point of reference by the EP and the agency in the future.

"…What process do you envisage we're actually going to be following? How are we going to be treated as co-legislators in dialogue rather than as any other stakeholder…?"

Kay Swinbrune 19 September 2012 01:57:44-2

"…On the longer-term funding of the ESAs, and that of ESMA specifically, I think the overall model where typically, the day-to-day supervision will be conducted at the national level…strong argument to do it at the EU level…"

Steven Maijoor (ESMA Director) 30 September 2013 01:28:14.

"I think it's worth considering, but I don't have the answer today on that."

Verena Ross (ESMA Executive Director) 13 June 2016 02:28:47

7. Implications

In this paper, we attempted to assess to what degree we observe an authority of connection or an authority of command in the discourse of committee hearings focusing on the exchanges between elected committee members and agency representatives. Based on our analytic measures, our content analysis provides a nuanced understanding of agency oversight in the context of committee hearings. While committee hearings' protocol of communication contains aspects reminiscent of an authority of command, the actual discourse that is part of the discussion section, holds characteristics closer to an authority of connection.

The discourse highlights a reciprocity, where either side engages actively with points raised by the other addressing reasoned opinions not decisional fiat. Moreover, both means and ends of regulation are discussed by both elected representatives and agency, under a forward-looking attitude towards policy. We note that across all hearings the entire discussion is held in highly amicable environment. These results bring about three central implications.

First, the results paint an image that does not resemble the predominant understanding of accountability between political principals and technical agents. As both committee and agency deliberate and discuss the means and ends of future regulation, the relationship becomes intertwined. This lends support to scholars' arguing in favour of accountability models moving beyond PA theory and closer to the fast evolving reality on the ground. Political philosophy, and in particular its deliberative strands (Cohen, Sabel, Dryzek, Mansbridge), have moved in the right direction identifying a complex environment in new governance where the traditional dichotomy of policy labour cannot address the complex relationship between agency and political institutions.

Furthermore, hearings contain value in terms of substantive engagement. We observe an interaction that attempts to address potential future regulatory needs both on a political and a technical level through meaningful discussion. The interaction observed suggests that claims of technocrats having won or that politicians have lost some abstract power struggle are misconceived. First, they misunderstand the overall legitimacy framework under which both institutions operate. The institutions are not isolated but complementary; failures on one side reflect on the other. Thus, we observe a mutual interest in achieving fundamentally good policy. Attempting to create a common space of understanding and expectations through reasoned opinions is far from a power struggle. In addition, such claims employ an ideal setting that divide

technical and political across the board, which by default modern governance settings merged; particularly in day-to-day policy-making as the analysis demonstrates.

However, we do not wish to overstate the findings implications. The mutual attunement we observe in the hearings assessed is complementary and a part of a broader picture. The analysis confirms that a complex accountability universe exists. From a conceptual perspective this paper takes up authority of connection as an opposite pole ideal pole to the authority of command. It proposes criteria and measures to assess closer to which pole a particular accountability mechanism lies. Thus, future discussions on agency accountability should take stock and consider to what mode of authority a particular type of accountability tool corresponds. Empirically, this places weight on the accountability tool in the toolbox, i.e. modes of accountability are employed within the context a particular modes of authority.

At the same time, it seems that in this large mosaic it is difficult to assess the legitimacy of the sum of its parts without taking a normative stance. Assuming that deliberative procedures, such as hearings, provide a valuable space where two institutions that hold different macro-level responsibilities and legitimacy demands, we would argue that hearings provide a positive and constructive space for policy-makers. Moreover, as procedures open to the public they open up the black box of regulatory policy-making and agency oversight to the broader public.

Third, we find explicit statements where the agency thanks the committee for its support, while committee members express their active interest in expanding the agency's financial means and policy ends. On the one hand, this contrasts traditional accountability assumptions which expect political principals attempting to limit the agent's means and ends. On the other hand, it highlights our point on the complementarity of institutional legitimacy. Simultaneously, it provides an interesting perspective on the relationship's place within the broader field of European governance.

The EP through ECON actively supports the further Europeanization of financial policy, it has supported its creation and would like to see its expansion. In doing so, the analysis points to a dimension little addressed in the literature, which is the mutual support between elected representatives and independent agency in further empowering European regulatory authority. Thus, one fails to capture the interaction with a perspective that sees the committee as a geared exclusively to constraining, control, or steering.

In this paper, we have identified a core structure of communication, factors that impact hearings' structure, and participants. Moreover, we provide a template for the further assessment of agency oversight in the EU. It is possible that other factors influence a hearing's mode of authority. Potential crises, issue salience, mediatisation, or Europeanization may impact the

generalization of the results. We call upon further work to assess hearings as an accountability mechanism vis-à-vis different modes of authority.

8. Conclusions

New governance confronts us with the issue of how to understand new modes of authority and accountability in dynamic settings. In this paper, we have attempted to understand if independent agencies political accountability can be understood outside a mode of authority of command with strict division of political of labour. Drawing from work on deliberative theory and social reasoning, we have argued that there is an authority of connection, under which agency and parliament engage in a mutual attunement of expectations. Through mutual attunement, agency and parliament deliberate and develop a shared space of expectations. This is likelier to be revealed in forums that allow discussion and deliberation in real time, such as parliamentary hearings.

We examined our argument and provided theory-informed criteria that act as analytic measures testing the mode of authority in hearings' discourse. These criteria namely are relationship, interaction, and orientation. We tested our argument in the EU's context, specifically we focused on the European Securities and Markets Authority and the committee it is accountable to, the EP's Committee on Economic and Monetary Affairs. We transcribed the entire population of hearings where ESMA was present since its creation (2011) until the first half of the 8th legislature (2017).

Our results reveal a discourse where hierarchy is hard to distinguish, neither actor is limited to either means or ends, actors engage in an attempt to create a common space of expectations based on reasoning not fiat, and they are forward-looking in terms of policy. Accountability is practiced through the interplay of two distinct categories of authority: command and authority of connection. Significantly, the premise of division of labour where legislature defines normative ends which agencies aim to achieve, while agencies specify the terms of technical solutions, does not apply across the board. Rather there are mechanisms where the labour is merged and both agency and legislature attempt to contribute under a collective policy-making logic. While each institution has independent legitimacy needs, there is a distinct complementarity between them. As such, there is an interest on both sides to aid the other, particularly as modern governance demands both elected representatives and agency to deal with regulatory unknown unknowns.

Finally, this paper suggests that hearings provide rich data for observing agency oversight in a dynamic environment. While our results are generalizable vis-à-vis ESMA, we call for future work testing the proposed criteria either on different hearings (other agencies) or on different

accountability mechanisms. In doing so, we can improve our understanding of agency oversight in a comparative context.

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