

# **Evolving Europe: Voices of the Future**

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# Accountability in a multilevel setting: Cohesion Policy

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## 1. Introduction

Over the last decade, a debate has emerged on the issue of accountability in the European Union. From a democratic point of view, the relationship between voters and the legislative order is an important one: democratic theory implies that voters transfer their rights through the electoral process to elected representatives. At the same time, these elected representatives have the task to monitor the activities of the executive powers on behalf of the voters. In both cases, this implies a principal-agent relationship in which the principal – being the electorate in the former and the legislative power in the latter- are delegating powers to the agent – respectively the elected representatives and the executive branch. Given these principal-agent relationships an accountability regime occurs which is the focus of this paper.<sup>2</sup>

This paper is part of a PhD research which examines accountability issues in a specific policy area, which is Cohesion Policy. Cohesion Policy financially is an important policy field, because it involves one third of the EU budget in the form of the Cohesion Fund and the Structural Funds. Regarding the literature on accountability and looking at the fact that it is agreed there is an accountability deficit in the EU,<sup>3</sup> the research will examine the level of accountability in Cohesion Policy.

In paragraph 2 the concept of accountability in its core form will be analyzed, consisting of reporting obligations of the agent, information seeking or investigation by the principal, verification of the information and direction or control, the last two both by the principal. After describing agency theory, essential in accountability relationships, we will furthermore look in detail at the elements of an accountability relationship, which are the actors, the object and the enforcement mechanisms in place.

The third paragraph will describe what multilevel governance, characteristic for Cohesion Policy,<sup>4</sup> consists of.

In the last paragraph, we will give conclusions and some considerations leading to discussion on the implications for accountability, given the multilevel character of Cohesion Policy.

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<sup>2</sup> We can distinguish between three types of regimes concerning accountability, following JERRY L. MASHAW, 'Accountability and institutional design: some thoughts on the grammar of governance', in Michael W. Dowdle (ed), Public Accountability. Designs, Dilemma's and Experiences 2006). There is the regime of public governance, directed at governance structures, the regime connected to the market which is directed at product, capital and labor markets and finally social accountability which focuses on the relations between people. This research will have its focus on the regime of accountability in public governance, leaving the other regimes aside.

<sup>3</sup> See for instance DEIRDRE CURTIN, et al., 'Positioning Accountability in European Governance: An introduction', (2010) 33 West European Politics, p. 934-938 and SVERKER GUSTAVSSON, et al., 'Taking accountability seriously', in Sverker Gustavsson (ed), The Illusion of Accountability in the European Union 2009).

<sup>4</sup> LIESBET HOOGHE & GARY MARKS, Multi-level Governance and European integration (Rowman and Littlefield Publishers Inc. 2001). p. xiii and GARY MARKS, 'Exploring and Explaining variation in EU Cohesion Policy', in Liesbet Hooghe (ed), Cohesion Policy and European integration: Building multilevel governance (Oxford university Press, 1996). p. 413.

## 2. Accountability

### 2.1 Introduction

To start with, a distinction can be made between accountability 'the word' and accountability 'the concept'.<sup>5</sup> Accountability as a word is characterized as synonymic for a lot of other concepts. It is in its meaning depending on different cultural and contextual factors leading to a different meaning from person to person. It is used as an indicator for various other concepts but it is also used as an indication of the conditions it is assuming to create.<sup>6</sup> In fact, it is more broad and normative in its essence, seeing accountability as 'a set of standards for the evaluation of the behavior of public actors.'<sup>7</sup> It has also been known as 'active accountability',<sup>8</sup> because it concerns the actions of actors. It is seen to be composed of different dimensions, such as transparency, liability, controllability, responsibility and responsiveness.<sup>9</sup> In this context, the word accountability is primarily used as a normative concept to describe the actions of organizations or officials. This makes it an ideal word to be used for rhetoric purposes, but not per se for (empirical) research on accountability.

On the other hand, accountability as a concept refers to 'a primary characteristic of governance in contexts where there is a sense of agreement and certainty about the legitimacy of expectations of community members.'<sup>10</sup> The European view<sup>11</sup> on this concept is directed at accountability as a description of the institutional process, focused at 'whether [agents] are or can be held accountable *ex post facto* by accountability forums.'<sup>12</sup> It is also called 'passive accountability', because of the fact that the actor is to be held accountable.<sup>13</sup> Bovens describes the definition of this kind of accountability as 'a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences'.<sup>14</sup>

In this more narrow view of accountability it is undefined and to be assessed from the situation which actor is the principal, or the actor to who the conduct of the agent is justified. As we have mentioned in the introduction, this paper will focus on public governance, which ultimately always has to do with the democratic principles with voters or citizens in the end – or in fact the beginning – of the chain of accountability.

Before going into detail of the concept of accountability, we will first turn to agency theory, to describe how principal-agent relationships are organized and what problems they face.

### 2.2 Agency theory

A thoroughly researched theory within economics is agency theory, which is studying principal agent relationships. Although it originates from new institutional economics,<sup>15</sup> it is also used in other academic disciplines, such as management, political science, law and to lesser extent also in

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<sup>5</sup> MELVIN J. DUBNICK & JONATHAN B. JUSTICE, 'Accounting for Accountability', in, 2004 Annual Meeting of the American Political Science Association 2004). p. 5. See also MARK BOVENS, 'Two concepts of Accountability: Accountability as a virtue and as a Mechanism', (2010) 33 West European Politics, on the same distinction.

<sup>6</sup> DUBNICK & JUSTICE, in. p. 5.

<sup>7</sup> BOVENS, p. 947.

<sup>8</sup> Id. at p. 949.

<sup>9</sup> JONATHAN G.S. KOPPELL, 'Pathologies of Accountability: ICANN and the Challenge of 'Multiple Accountabilities Disorder.', (2005) 65 Public Administrations Review, p. 96.

<sup>10</sup> DUBNICK & JUSTICE, in. p. 12.

<sup>11</sup> Shared by Canadian, Australian and British scholars.

<sup>12</sup> BOVENS, p. 948.

<sup>13</sup> Id. at p. 951.

<sup>14</sup> MARK BOVENS, 'Analysing and Assessing Accountability: a Conceptual Framework', (2007) 13 European Law Journal, p. 450. See also for a similar definition EDWARD RUBIN, 'The Myth of non-bureaucratic accountability and the anti-administrative impulse', in Michael W. Dowdle (ed), Public Accountability. Designs, Dilemma's and Experiences 2006). p. 74 and RICHARD MULGAN, Holding Power to Account (Palgrave MacMillan 2003). p. 10.

<sup>15</sup> DIETMAR BRAUN & DAVID H. GUSTON, 'Principal-agent theory and research policy: an introduction', (2003) 30 Science and Public Policy, p. 303.

sociology.<sup>16</sup> Although the basics of the theory are the same in all those disciplines, the focus may be on different aspects.

Agency theory is about the exchange of resources in a relationship between two actors. A principal contracts an agent to act on his behalf to achieve a certain result. A contract is set between the agent and the principal, which describes what the agent should do and what the principal is doing in return or what the reward for the agent is.

The principal knows one thing for sure: both the principal and the agent have different interests, which will ultimately lead to a different outcome than when the principal would have acted by himself. The theory assumes that both actors are acting in their self interest and not being fully transparent in their preferences. They are acting rational and opportunistic.

This behavior of the agent in particular leads to two problems for the principal. At first there is the problem that the principal does not have a good view on the agents that are available to perform the task.<sup>17</sup> Of course he wants the best to act in his behalf, but the principal does not know which agent should have its preference. This problem, in fact a problem of information asymmetry, is known as *adverse selection* or *hidden information*.<sup>18</sup> Some information on the abilities of the agent is hidden for the principal.

Another problem for the principal is the fact that he is not assured whether the agent is really acting to its best abilities to achieve the goal the principal has set. He cannot directly make a connection between the acting of the agent on the one hand and his achievements on the other. Or in other words, he does not know whether the acting of the agent is fully responsible for the achieved outcome. This is known as *moral hazard* or *hidden action*.<sup>19</sup> The action of the agent not acting fully in the interest of the principal is called *shirking*,<sup>20</sup> meaning the agent is not working hard enough or is not acting to its best abilities. The agent will always feel a tension between his inclination to shirk on the one hand and his awareness of the desired outcome by the principal on the other.

Because of these problems, the principal has to consider whether he will act by himself, or whether he will ask the agent to act on its behalf. By leaving the task for the agent, the principal needs mechanisms to be assured that the agent is not (or to a lesser extent) shirking and thereby lowering the principal's welfare loss. The principal can use three measures for this.<sup>21</sup> First, the principal can use persuasion, to direct the outcome of the agent's actions to coincide (as much as possible) with the principals preferences. Secondly, he can use incentives to encourage the agent to act in its best interest. Thirdly, there is the mechanism of direction, thus reducing the discretion of the agent. All these mechanisms are in fact agency costs, costs that the principal has to bear to be assured that the outcome of the actions of the agent come as close to the preferences of the principal as possible. By using these mechanisms, the principal will try to minimize the sum of his *monitoring costs* and his residual loss.<sup>22</sup>

The agent also plays its part in the agency theory, by introducing bonding arrangements, or in other words, activities to please the principal and thereby camouflaging its own acting and even possibly its shirking behavior. These actions in fact bear costs for the agent, which are known as *bonding costs*.

The principal and the agent thereby both have their advantages and disadvantages in this theory: both are bearing costs, monitoring costs by the principal and bonding costs by the agent. The principal has the advantage that he can prescribe the conditions for the relationship between both,

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<sup>16</sup> See SUSAN P. SHAPIRO, 'Agency Theory', (2005) 31 Annual Review of Sociology,

<sup>17</sup> BRAUN & GUSTON, p. 304.

<sup>18</sup> See for instance Id. at p. 304, RICHARD W. WATERMAN & KENNETH J. MEIJER, 'Principal-Agent Models: An Expansion?', (1998) 8 Journal of Public Administration Research and Theory, p. 177 and K.J. ARROW, 'The Economics of Agency', (1984),

<sup>19</sup> See for instance BRAUN & GUSTON, p. 304, WATERMAN & MEIJER, p. 177 and ARROW,

<sup>20</sup> BRAUN & GUSTON, p. 303.

<sup>21</sup> See NICO GROENENDIJK, 'A principle-agent model of corruption', (1997) Crime, Law & Social Change,

<sup>22</sup> Id. at p. 214.

the contract, while the agent on the other hand can take advantage of the fact that the principal has limited information on the actions of the agent and the link between those actions and the outcome.<sup>23</sup>

### 2.3 What is accountability?

This relationship between a principal and an agent is lying on the basis of the concept of accountability. Accountability as a concept can be regarded as a process, consisting of four main steps;

- a) Reporting by the agent,
- b) information seeking or investigating by the principal,
- c) assessment or verification by the principal and
- d) direction or control by the principal, posing sanctions on the agent.<sup>24</sup>

This process can also be put in a figure, see below.

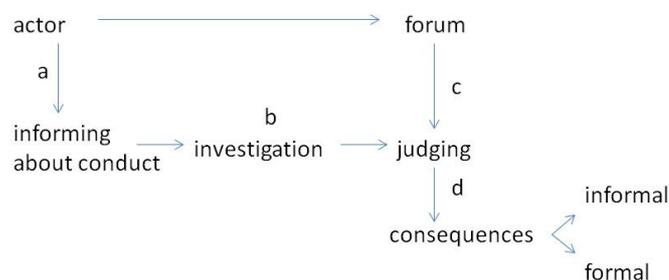


Figure 1. Process of accountability<sup>25</sup>

In the first stage, there is an obligation for the agent to inform the principal on the aspects of what the agent is accountable for. This means that the process starts with the agent after an accountability relationship has been established. The second stage refers to an action of the principal: it should either search for (extra) information by itself on the aspects the agent is accountable for, or at least it should investigate the information handed over by the agent. This leads to a set of information available for the principal to form an opinion on.

That leads then to the third stage, verification by the principal. Based on the information provided by the agent and/or collected by the principal, it takes a stand on the behavior of and the results achieved by the agent. This leads to the final stage, where the principal is acting towards the agent following its actions. This may be in the form of sanctions or other mechanisms, however mostly negative in its basic principle.

It is important to keep in mind that the principle of accountability relates to the *possibility* for the agent to be called and held accountable for its actions by the principal; someone in fact can be accountable without actually having been called to account. 'Accountability is not so much being called to account as the expectation of being called to account.'<sup>26</sup> Or put differently: 'the whole point of being held to account is to avoid being sanctioned; in theory, being sanctioned for bad conduct is the whole point of being held to account.'<sup>27</sup>

<sup>23</sup> Id. at p. 214.

<sup>24</sup> RICHARD MULGAN, 'The Processes of Public Accountability', (2008) 56 Australian Journal of Public Administration, p. 19. See also ELIZABETH FISHER, 'The European Union in the Age of Accountability', (2004) 24 Oxford Journal of Legal Studies, p. 497, following ANNE DAVIES, *Accountability: A Public Law Analysis of Government by Contract* (Oxford University Press 2001).

<sup>25</sup> Based on the figure drawn up by Bovens in BOVENS, 'Analysing and Assessing Accountability: a Conceptual Framework', p. 454.

<sup>26</sup> MULGAN, *Holding Power to Account*. p. 10 and 11.

<sup>27</sup> HEIDRUN ABROMEIT, 'Accountability and democracy', in Sverker Gustavsson (ed), *The Illusion of Accountability in the European Union* (Routledge, 2009). p. 29.

Accountability has three necessary characteristics.<sup>28</sup> The first is democracy, the connection between institutions and the public. In public policy 'the people' are characterized as the ultimate principals and therefore play an important, though not always visible, role. Institutions or specific actors are put in place to act in behalf of the people, but all the relationships within the accountability framework of public governance do end up with voters or citizens in the end.<sup>29</sup> However, the difficulty with this concept is that there is no such thing as 'the people' or 'the public', its meanings and intentions are not clear and almost always unclear and opaque.<sup>30</sup> Also, there can be a role for civil society as originating from the democratic perspective, but the same goes on for this 'concept' as well: its role is not particularly well defined, or even not specifically democratic.<sup>31</sup>

Secondly, an important characteristic of accountability is transparency.<sup>32</sup> This concept refers to the fact that decision-making is opened up for the public, in the way that decision-makers should explain what decisions they have taken and why. 'Transparency ensures that decisions are taken out of the 'backroom.'<sup>33</sup> Or put differently: 'how can the public hold public authorities accountable if the public is not allowed to know what goes on within the public authorities, or if what goes on is obscure?'<sup>34</sup> Transparency can have different forms, such as clear drafting, simplification of regulation, debate, efforts to trace the influence of interest-groups in the decision making process, transparent enforcement procedures, freedom of expression of servants, whistle-blower protection and probably the most important function: public access to documents.<sup>35</sup> In the White Paper on governance the European Commission mixes up the concepts of accountability and transparency,<sup>36</sup> and it happens more often that transparency is mixed up with the concept of accountability.<sup>37</sup> We agree with Fisher that transparency is an essential element of accountability and therefore should not be confused with accountability.

Finally, we end up at the third important characteristic of accountability, which is legal constraint. This principle is all about the legal boundaries that are set and the need for public-policy makers to stay within these boundaries. In fact, one can also say that these legal constraints are there to prevent the abuse of public authority, and are designed to 'keep the bastards honest.'<sup>38</sup> Courts then are often the institutions to enforce these rules.

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<sup>28</sup> FISHER, p. 501-508 mentions four types of accountability processes, the three mentioned here are based on Fisher's typology. The fourth process as mentioned by Fisher, 'checks and balances that arise due to the interrelationship between different institutions' is connected to the EU in specific and not to the general idea of accountability. This process is therefore not included in this categorization. We see her categorization not specifically as processes, but as principles of accountability, because they are or should be in place in case of accountability relationships. Connection can also be made with the functions and forums of an accountability relationship mentioned by TOM WILLEMS & WOUTER VAN DOOREN, 'Coming to terms with Accountability', (2012) 14 Public Management Review, Although we have a somewhat different categorization of the characteristics and elements of accountability, not using the concepts functions and forums, the elements mentioned in this paper are the same.

<sup>29</sup> See for instance MULGAN, 'The Processes of Public Accountability', p. 29 and MICHAEL W. DOWDLE, 'Public accountability, conceptual, historical and epistemic mappings', in Michael W. Dowdle (ed), Public Accountability. Designs, Dilemma's and Experiences (Cambridge University Press, 2006). p 3.

<sup>30</sup> DOWDLE, in. p. 3.

<sup>31</sup> See FISHER, p. 501.

<sup>32</sup> See MULGAN, Holding Power to Account. p. 98-103.

<sup>33</sup> FISHER, p. 503, following A.-M. SLAUGHTER, 'Agencies on the Loose? Holding Government Networks Accountable', in G. Bermann, et al. (eds), Transatlantic Regulatory Co-operation (Oxford University Press, 2000). p. 523-524.

<sup>34</sup> PETER DYRBERG, 'Accountability and Legitimacy: What is the Contribution of Transparency?', in Anthony Arnall (ed), Accountability and Legitimacy in the EU (Oxford University Press, 2002). p. 83.

<sup>35</sup> Id. at in. p. 84.

<sup>36</sup> This in contrary to the conclusion of the Council of December 10, 2010 on 'Mutual Accountability and Transparency: A Fourth Chapter for the EU Operational Framework on Aid Effectiveness' 177769/10, to be found on <http://register.consilium.europa.eu/pdf/en/10/st17/st17769.en10.pdf>

<sup>37</sup> BOVENS, 'Analysing and Assessing Accountability: a Conceptual Framework', p. 453.

<sup>38</sup> MARK BOVENS, et al., 'Does public accountability work? An assessment tool', (2008) 86 Public Administration, p. 232.

All these three principles are essential in an accountability relationship. In fact, they should all be in place in some sort of balancing situation: more attention for the democratic side of accountability can cause problems when it comes to legal accountability: a focus only on the democratic process and connection with the citizens might neglect the fact that public-decision makers should also stay within the legal boundaries. At the same time, too much focus on legal constraints might also neglect attention that should be paid at measures for transparency. These three principles should be taken into account when studying an accountability relationship. There needs to be some kind of balance between these three principles altogether, whereas at the same time they should all be present at some sort of minimum level.

#### *2.4 Elements of accountability*

As we considered in the previous subparagraph, the process of accountability consists of four phases. We can also look at the elements of accountability and look at what accountability is in fact all about. This leads us to three important questions to be identified in an accountability relationship:

1. Who are the actors in an accountability relationship?
2. What is the accountability relationship all about (object)?
3. And what is the enforcement mechanism in the accountability relationship?

We will further discuss these three questions below.

##### Ad 1. Who are the actors involved?

Accountability is in fact a concept clearly linked to the principal-agent theory and therefore points at a description of both the principal and the agent in relationship concerned. The principal has delegated its powers to an agent, to act in its behalf. At the same time, the principal wants to be assured that the agent does what he is told to do and that he really acts in the interest of the principal. Since there is no equilibrium in the information between both actors, in fact there is an information asymmetry, there is also some sort of unbalance between them. At the same time the relationship is hierarchical, which makes it possible for the principal to call the agent to account for its actions.

The 'who' can both be individual or collective. In the case of individual accountability, one can think of a politician, for instance an elected politician facing voters, as opposed to government agencies or firms in case of collective accountability. Networks in this sense create problems in attributing the 'who' question to a specific organization or person and are therefore a complicated factor in an accountability analysis.<sup>39</sup>

A fourfold categorization can be given of the forums that can be concerned, when looking at an accountability relationship in public policy:<sup>40</sup>

- a. To members of the public, either as individual or as a community, acting as voters,<sup>41</sup>
- b. To politicians,
- c. To judicial courts or tribunals,<sup>42</sup>
- d. To bureaucrats,<sup>43</sup> such as agencies or specific institutions, acting on behalf of the public.

In case of public governance, 'the people' will always be the ultimate 'whom' or principal,<sup>44</sup> no matter whether a specific body or organization is placed between the agent and the principal (the

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<sup>39</sup> MULGAN, *Holding Power to Account*. p. 23 and 24.

<sup>40</sup> Based on the distinction given by WILLEMS & DOOREN, and MULGAN, 'The Processes of Public Accountability', p. 29, following PAUL FINN, 'Public Trust and Public Accountability', (1993) 65 *Australian Quarterly*, p. 53 and 54. Mulgan distinguishes between the public, agencies or superior officers. Agencies in fact are an organization formed by bureaucrats, and as such mentioned in this distinction. As regards superior officers, this can also be connected to bureaucrats, but can also be seen as a form of social accountability, and is therefore put aside (see introduction).

<sup>41</sup> Combining the political and public forum, as mentioned by WILLEMS & DOOREN, p. 1019.

<sup>42</sup> See *id.* at p. 1019 and MULGAN, *Holding Power to Account*. p. 45 and 46.

<sup>43</sup> RICHARD MULGAN, 'Accountability': an ever expanding concept?', (2000) 78 *Public Administration*, p. 556.



In the European context, an important role is set in this respect for the European Court of Justice (ECJ) and the Court of First Instance (CFI). In fact, this characteristic has the goal to prevent unfairness or abuse of power.<sup>51</sup>

### 2.5 Views from the literature on accountability in the EU

Regarding the elements of accountability, as mentioned previously, in the literature there have been different observations of the problems with accountability in the EU in general.

#### Ad 1. Actors

As important as it is to be aware of the actors in an accountability relationship, it is often also difficult to identify these actors. As mentioned before, 'the people' are seen by a lot of academics as the ultimate principal,<sup>52</sup> and therefore in a direct or more indirect form to be seen as an actor. But this also poses a problem: who are 'the people'? In the EU a common identity, culture, language and history are lacking.<sup>53</sup> This makes it difficult, also for decision-makers, to really be accountable to 'the people'. In fact, on the EU level, control by 'the people' is in fact not a viable option,<sup>54</sup> because of this lacking of a common background.

What contributes to this difficulty is that for outsiders it is often difficult to find out who the actor or agent is in a relationship. Because policy decision cross different desks before they are implemented, it is specifically hard to unravel which actor is to be held accountable. This is also known as *the problem of many hands*.<sup>55</sup>

An important 'puzzle' on the European level, as Curtin describes,<sup>56</sup> is the fact that accountability mechanisms are in place on the national level, but that these mechanisms are lacking on European level. Curtin gives examples of issues that have been present on the European level during the last few years, such as the influenza pandemic, climate change and bonuses in the banking sector, which used to be dealt with on a national scale but have become more and more active on the European agenda. The actors that used to deal with these issues on a national level, such as governments, ministers and civil servants, use their authority, backed-up by accountability processes on the national level, also on the European stage. But they in fact lack a European mandate.<sup>57</sup> This raises the position that there is a need for more accountability mechanisms on the European level to match these existing (national) executive orders.

Bovens<sup>58</sup> has made a distinction between various types of accountability. In his typology some of these are linked to the actors in the accountability relationship, being both the forum (principal) and the actor (agent). This brings him to a list of different kinds of accountability relationships, which can be put in a figure as follows:

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<sup>51</sup> Corresponding with the constitutional function of accountability, as mentioned by WILLEMS & DOOREN, p. 1023.

<sup>52</sup> See for instance MULGAN, *Holding Power to Account*. and SVERKER GUSTAVSSON, et al., 'The illusion of accountability in the European Union', in (Routledge, 2009).

<sup>53</sup> ABROMEIT, in. p. 24 and 25.

<sup>54</sup> FISHER, p. 501.

<sup>55</sup> BOVENS, 'Analysing and Assessing Accountability: a Conceptual Framework', p. 457.

<sup>56</sup> CURTIN, et al., p. 933.

<sup>57</sup> Id. at p. 934.

<sup>58</sup> BOVENS, 'Analysing and Assessing Accountability: a Conceptual Framework',

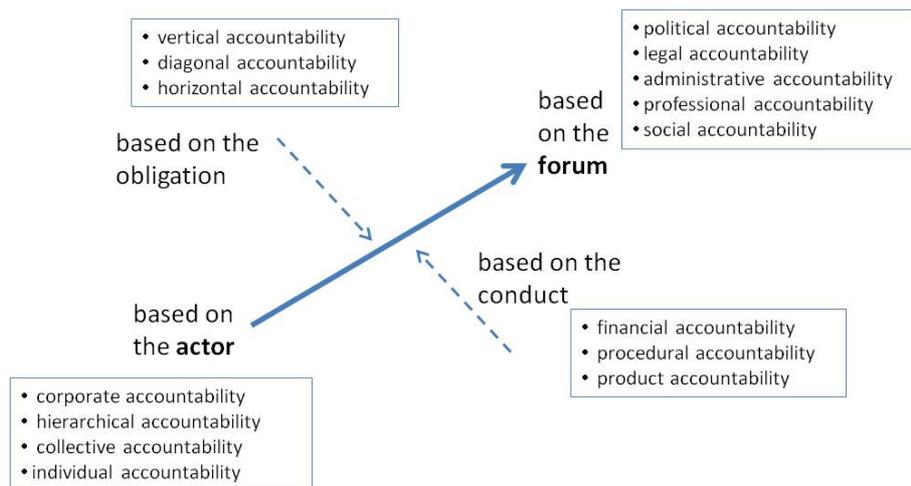


Figure 3. Types of accountability<sup>59</sup>

When looking at the actors in the process, Bovens gives an overview of various types, based on either the forum or the actor concerned. Although we acknowledge the fact that it is important to be able to describe the nature of an accountability relationship, we are more interested in a more evaluative process of accountability to see whether the relationship concerned has really to do with an accountability relationship.

An important characteristic of accountability in the EU, connected to the three characteristics mentioned in paragraph 2.1, is institutional balance.<sup>60</sup> This characteristic refers to the principle that each European institution has to act in accordance with the division of powers set by the Treaties. In a national situation, there is the division of powers, within the EU context this principle is put into the principle of institutional balance. The principle itself is not codified in the Treaties, but follows from judgments by the Court of Justice.<sup>61</sup> It prohibits the institutions to use powers that are attributed to other institutions, thereby assuring that they stay within the boundaries of their own powers. As can be derived from the fact that rulings from the Court of Justice have brought this principle in the open, the Court guards the implementation of the principle.

As Fisher points out, in fact the web of different institutions within the EU can in itself also been seen as a form of accountability.<sup>62</sup> Because of this balancing of powers, derived from the principle of institutional balance, all institutions are in fact constantly being called to account by the other institutions or in fact by the system as a whole.

## Ad 2. Object of accountability

In the literature on accountability there is also attention for the object of an accountability relationship. As we have summarized in the previous paragraph, the essence of this aspect in the literature is that the object of accountability can differ along the phases of the policy-process-chain. The distinction made by Bovens, as seen in the figure above mentioned under the types of accountability based on the conduct, seem to show a focus on different objects, seemingly not specifically related to the policy-process-chain. But when looking to this distinction in more detail, by referring to the work of Day, Bovens in fact also points at the processes of the policy-process-chain, consisting of 'the 3 E's', which are economy, efficiency and effectiveness (see figure 2).<sup>63</sup>

<sup>59</sup> Based on the list of accountability types as given by Id. at p. 461.

<sup>60</sup> FISHER, p. 506 - 508.

<sup>61</sup> See the Meroni Case (C 9-56) and case C 70-88.

<sup>62</sup> FISHER, p. 507.

<sup>63</sup> This also connects with the performance function of accountability as mentioned by WILLEMS & DOOREN, p. 1023.

In the literature special attention has been given to political or democratic and to financial accountability in the EU, both related to the object of accountability.

The main problem that is identified in the literature with democratic accountability in the EU has to do with the democratic deficit. This democratic deficit is caused by an increase of executive power on the European level, while at the same time a decrease is seen in national parliament control.<sup>64</sup> On the European level, parliamentary control by the European Parliament has also said to be weak,<sup>65</sup> although with the Treaty of Lisbon the European Parliament has gained powers. Also, the distance between voters and their political representation on the European level is very large, in the fact that voters lack a real opportunity to vote on European issues, but the European policy making cycle is also very different from the national process.<sup>66</sup> Voters therefore feel that the policy outcome on the European level is not what the majority would want.<sup>67</sup> With respect to democratic accountability, this also means that citizens do not feel recognized, in the sense that they are unsure whether politicians are acting in their common interest.

Financial accountability on the other hand, relates to 'the control and elimination of waste and corruption and involves compliance with legal procedures, as well as the use of external audit mechanisms.'<sup>68</sup> This form of accountability is connected to the first stage in the policy-process-chain (see figure 2), to the principle of economy. There has been an increase in the attention for financial accountability in the last decade, based on detailed EU rules. Checks by the European Commission and the European Court of Auditors have also increased.<sup>69</sup> There are suggestions that an increased focus on financial accountability - and thus economy - might affect the net impact of Cohesion Policy,<sup>70</sup> leading to less attention for efficiency or even effectiveness. As the European Commission has written in the fifth report on economic, social and territorial cohesion: 'A recurrent evaluation finding across all areas of investment was a preoccupation with 'absorption', i.e., with spending the money more than focusing on what the programmes were actually designed to achieve. While the former is obviously a pre-condition for success, the latter is ultimately what matters.'<sup>71</sup>

### Ad 3. Enforcement mechanisms

Gustavsson<sup>72</sup> poses (and answers) an important question in this regard: 'Do EU citizens have real opportunities to hold decision-makers accountable, or does the current institutional set-up in the Union merely create an *illusion* of accountability?'<sup>73</sup> His conclusion is that there are in fact mechanisms in the process that promote accountability directed at monitoring and evaluating the actions of EU-decision makers, but they are rather weak. He points out that there are democratic mechanisms in place which make it possible for citizens to use their democratic rights to vote in favor of the politician of their choice, but the problem is that the elections that are used for this purpose do not suit well on the European level. With regard to the elections of the European Parliament and also for the national parliaments which should hold the representatives in the Council of Ministers indirectly accountable, on both arena's European policies are absent because national problems and issues are dominant and European issues are not present.<sup>74</sup> In fact, no real European parties exist for

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<sup>64</sup> ANDREAS FOLLESDAL & SIMON HIX, 'Why There is a Democratic Deficit in the EU: a Response to Majone and Moravcsik', (2006) 44 *Journal of Common Market Studies*, p.534.

<sup>65</sup> *Id.* at p. 535.

<sup>66</sup> *Id.* at p. 536.

<sup>67</sup> *Id.* at p. 537.

<sup>68</sup> SARA DAVIES & LAURA POLVERARI, 'Financial Accountability and European Union Cohesion Policy', (2011) 45 *Regional Studies*, p. 697.

<sup>69</sup> *Id.* at p. 703.

<sup>70</sup> *Id.* at p. 703.

<sup>71</sup> EUROPEAN COMMISSION, 'Investing in Europe's future. Fifth report on economic, social and territorial cohesion', in (European Commission, 2010). p. XXI and XXII.

<sup>72</sup> GUSTAVSSON, et al., 'The illusion of accountability in the European Union', in.

<sup>73</sup> SVERKER GUSTAVSSON, et al., 'Examining the illusion of accountability', in Sverker Gustavsson (ed), *The Illusion of Accountability in the European Union* (Routledge, 2009). p. 1.

<sup>74</sup> SIMON HIX, *What's wrong with the European Union and how to fix it* (2008).

politicizing European issues,<sup>75</sup> on the European level – visible in the European Parliament - coalitions of national parties are formed based on their political direction.

The argument of Gustavsson therefore is that there seems to be a good institutional context which makes it possible for citizens to hold decision-makers accountable, but in fact real opportunities are lacking. Following Hix,<sup>76</sup> he pleads for stimulation of opposition on the EU level. Without opposition there is not a real choice in the democratic process, citizens do not have a real possibility to show in elections what they really feel about the policies concerned. In fact, this may lead them to turn away from their democratic rights, not feeling recognized, and in fact leading to a democratic deficit. And, as Gustavsson mentions, ‘without opposition not even strong accountability mechanisms can offer EU citizens real opportunities to hold their representatives to account in practice.’<sup>77</sup>

Curtin recognizes this lack of ‘an explicit and effective mechanism of sanctions when people are dissatisfied.’<sup>78</sup> She stresses that in fact none of the elected – members of the EP – and non-elected actors in the European arena – members of the Council and the Commission – are in fact really accountable to the public.

After this overview of accountability issues in the EU in general, we will now turn to multilevel governance and describe what its characteristics are.

### 3. Multilevel governance

#### 3.1 What is multilevel governance?

The literature on public policy is dominated by different models concerning integration within the European Union. The three models, federalism, liberal intergovernmentalism and neofunctionalism have evolved across time but nowadays all take a specific place within the literature on integration in the EU. We will describe these models shortly below, then turning to the position of multilevel governance in this debate.

Federalism can be characterized by the idea of ‘unity in diversity’, in the sense that it acknowledges different entities and their voluntary commitment of membership into a union, which has the purpose to integrate different entities, but not to assimilate them.<sup>79</sup> This federal union is therefore based on the recognition of difference and diversity.<sup>80</sup>

The problem with the concept of federalism is that it in fact has two faces:<sup>81</sup> the first side refers to the idea of different entities forming a union, which has been emphasized in different contexts as *the* important feature of federalism. The other side of federalism stresses the importance and recognition of the fact that the entities forming a union are in fact independent, different but surely enough capable of cooperating in some form of a union. Federalism therefore is based upon a pluralist society, and the fact that it is accepted to be different in one way or the other.

It is important to note a difference between a federation, which ultimately is derived from the theory of federalism, and confederation. The former points at ‘an institutional arrangement, taking the form of a sovereign state, and distinguished from other such states solely by the fact that its central government incorporates regional units in its decision procedure on some constitutionally entrenched basis.’<sup>82</sup> This means that the basis is the nation state, which is composed of different regional entities that have a certain kind of independence on the regional level. Confederation on the

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<sup>75</sup> ABROMEIT, in. p. 24.

<sup>76</sup> HIX.

<sup>77</sup> GUSTAVSSON, et al., ‘Taking accountability seriously’, in. p. 174.

<sup>78</sup><sup>78</sup> CURTIN, et al., p. 937.

<sup>79</sup> MICHAEL BURGESS, ‘Federalism’, in Antje Wiener & Thomas Diez (eds), *European Integration Theory* (Oxford University Press, 2009). p. 28.

<sup>80</sup> Id. at in. p. 28.

<sup>81</sup> Id. at in. p. 29.

<sup>82</sup> Id. at in. p. 29 quoting P KING, *Federalism and Federation* (John Hopkins University Press 1982). p. 77.

other hand refers to a union of states, which compose a political body on the level of the union.<sup>83</sup> The difference between both concepts is the position of the nation state, in the former this is the level above the independent regional units, whereas in the confederation these are the independent units, forming together a union. The idea of confederation therefore is more suitable for the European situation, whereas the member states form an important and independent institutional level, where in a way the union level has been put on top.

The second theory important in European integration is liberal intergovernmentalism (or LI). This theory has a focus on the nation state level and looks at the European Union as some sort of international organization. It is based on two basic assumptions:<sup>84</sup> states are the primary actors in international policy making and states are rational, leading to collective outcomes as a result of individual actions based on the pursuit of the preferences of these states. Policy making on the international level then is the result of international bargaining.<sup>85</sup> The EU then is just '(simply) a sophisticated international organization, nothing more, nothing less.'<sup>86</sup> This means that from this perspective, policy making on supranational level always will serve the ultimate goals of national governments, EU decisions then always will reflect the lowest common denominator among national government positions,<sup>87</sup> otherwise there will be reached no consensus. On the EU level, national representatives will only accept a position when they can gain from it; none is forced into deeper collaboration than it really wants.<sup>88</sup> From this perspective, seeing the nation state as the predominant level, all questions relate to the national level; either being the actors rendering account should be pointed at (the principal, 'to whom') or the content of the accountability which is concerned ('about what'). From the intergovernmentalists point of view, the nation state will always be the only, or at least the most important actor involved in accountability issues and political interests coming from the autonomous national arenas determine policy making on EU level.<sup>89</sup>

The third theory having a position within the debate of European integration is neofunctionalism. The history of neofunctionalism is quite turbulent, as it has been given different meanings to different people.<sup>90</sup> Still, it is possible to give some basic assumptions, underlying this theory. To start with, the most important principle, as opposed to the other two theories, is that integration is understood as a process in itself. There is no specific endpoint this theory is directed at, but it sees integration as a process that evolves over time and has its own dynamic. Secondly, the theory is pluralistic in nature, in the sense that it contests that states are unified actors and the only relevant ones in the playing field. It also recognizes different actors, which are diverse and constantly changing, interacting with each other and thereby leading to different compositions within the policy making context.<sup>91</sup> In this sense, it is opposed to the view of the intergovernmentalists, who see the nation state as the predominant actor. The process leading to change that follows from these assumptions, leads to the notion of spillover, which is directly linked to the neofunctionalist theory. The idea is that some sectors are in such a way connected to other sectors, that integration in one sector almost automatically leads to integration in the others. 'Problems arising from the functional integration of one task can only be solved by integrating yet more tasks.'<sup>92</sup>

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<sup>83</sup> BURGESS, in. p. 30.

<sup>84</sup> ANDREW MORAVCSIK & FRANK SCHIMMELFENNIG, 'Liberal Intergovernmentalism', in see id. at p. 68.

<sup>85</sup> MARK BOVENS, et al., 'The Quest for Legitimacy and Accountability in EU Governance', in Mark Bovens, et al. (eds), *The Real World of EU Accountability: What Deficit?* (Oxford University Press, 2010). p. 14.

<sup>86</sup> Id. at in. p. 14.

<sup>87</sup> HOOGHE & MARKS, p.3.

<sup>88</sup> Id. at p. 3.

<sup>89</sup> Id. at p. 3.

<sup>90</sup> ARNE NIEMANN & PHILIPPE C. SCHMITTER, 'Neofunctionalism', in Antje Wiener & Thomas Diez (eds), *European Integration Theory* (Oxford University Press, 2009). p. 46.

<sup>91</sup> Based on E.B. HAAS, 'Technocracy, Pluralism, and the New Europe', in S.R. Graubard (ed), *A New Europe?* (Houghton Mifflin, 1964). p. 68 and further.

<sup>92</sup> NIEMANN & SCHMITTER, in. p. 49.

Multilevel governance fits within this last theory of European integration, neofunctionalism. Within multi-level governance, decision-making competencies are shared between different actors on all levels. This refers to the different levels of government, leading in fact to multilevel *government*, but also to the active involvement of actors from the non-public actors, which leads to multilevel *governance*.<sup>93</sup>

Also, decision-making on the EU level means that states need to accept some winners and losers, because consensus needs to be reached and this is only possible with some 'give and take.' Another important characterization of multilevel governance is that the arenas in which the actors operate are intertwined, rather than separated. Also, non-public actors can play a role in the governance of a policy field, which leads to the creation of 'policy networks',<sup>94</sup> in which both public actors from different levels of government and non-public actors are represented.

As opposed to the intergovernmentalist view, which sees separate domestic and international arenas, this approach sees links between arenas and actors, as well as from the domestic and the international arena. This means there can be a connection or link between a subnational actor and the European Commission, whereas the state-centric model will always consider the state as an actor in the same arena as well.<sup>95</sup>

It is important to note that the multilevel governance perspective does not challenge the sovereignty of states.<sup>96</sup> Instead of focusing entirely on the role of the nation states, as the intergovernmentalists do, multilevel governance notes that other actors also have an important role in the policy-making process within the EU. As Hooghe puts it: 'Multilevel governance does not confront the sovereignty of states directly. Instead of being explicitly challenged, states in the European Union are being melded into a multi-level polity by their leaders and the actions of numerous subnational and supranational actors.'<sup>97</sup>

### 3.2 Why multilevel governance in Cohesion Policy?

There are a few characteristics of Cohesion Policy which make this policy area different, compared to the other policy areas in the EU, and specifically suitable for the idea of multilevel governance.

To start with, Cohesion Policy is connected to and touches a lot of other policy areas with the possibility to use funds, for instance R&D, education, environment, transport or agriculture.<sup>98</sup> It is not so much an isolated policy area, but it is really 'at the heart' of policy making in the EU. It is part of an integrated approach to policy making,<sup>99</sup> which means that various policies are combined to ultimately reach one goal, that of reducing the gap between the member states. Cohesion thereby becomes a standard concern for all other policies.<sup>100</sup> In practice this means that in specific policy areas where Cohesion Funds are being used, there will be civil servants from the EC concerned from both DG Regio as well as the policy DG concerned.

An important principle in Cohesion Policy is the partnership principle. This principle prescribes that all authorities concerned, national, supranational and subnational authorities, have their own

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<sup>93</sup> YANNIS PAPADOPOULOS, 'Accountability and Multilevel Governance: More Accountability, Less Democracy?', (2010) 33 West European Politics, p. 1031.

<sup>94</sup> See TANJA A. BÖRZEL, 'Organizing Babylon - On the different conceptions of Policy Networks', (1998) 76 Public Administration, for more information on policy networks.

<sup>95</sup> Characterization derived from HOOGHE & MARKS.p. 4.

<sup>96</sup> Id. at p. 27.

<sup>97</sup> Id. at p. 27.

<sup>98</sup> LIESBET HOOGHE, 'Reconciling EU-Wide Policy and National Diversity', in Liesbet Hooghe (ed), Cohesion Policy and European Integration: building multilevel governance 1996). p. 10.

<sup>99</sup> LIESBET HOOGHE, 'Building a Europe with the Regions: The Changing Role of the European Commission', in Liesbet Hooghe (ed), Cohesion Policy and European Integration: Building multilevel governance 1996). p. 101.

<sup>100</sup> Id. at in. p. 101.

responsibilities concerning the implementation of the measures and they are obliged to arrange this in close cooperation and consultation. The effect of the introduction of this principle was that the subnational authorities in the member states were empowered, especially in those member states where the subnational, both local and regional, government was rather weak.<sup>101</sup> The idea was in fact to reach a 'uniform pattern of subnational involvement,' although this was a rather ambitious goal.<sup>102</sup> Although the picture within the EU is rather multiform than uniform regarding the role of the subnational governments, one can claim that regional authorities do have been participating more in EU policy making throughout the years because of the existence of Cohesion Policy. This process is often also outside the control of the national authorities, traditionally the 'gatekeeper' of the involvement of the member states.<sup>103</sup> The partnership principle therefore has led to the involvement of multiple actors from all levels of government. Research has also shown that a characteristic of Cohesion Policy, derived from the partnership principle, is that where in most policy areas different actors have a coordinating role in a specific stage of the policy cycle, in Cohesion Policy all actors are involved in all stages, although to a variable degree.<sup>104</sup> This aspect of the multiplicity combined with the other policy areas connected to Cohesion Policy further complicates the implementation of Cohesion Policy and contributes to the number of actors involved, not having one actor solely responsible for the implementation of Cohesion Policy.

Within Cohesion Policy the EC also has a special role. In most policy areas the EC plays a coordinating role, leaving the implementation of the policy to the member states. But in Cohesion Policy, the EC is extensively involved in the implementation, which is explicitly different compared to other policy areas. This is also known as the principle of shared management. Next to Cohesion Policy, this principle also affects the Agricultural Policy. It has been laid down in the General Provisions of the Funds<sup>105</sup> that the management of the Structural Funds is a shared responsibility between the EC and the member states. As Ingeborg Gräßle, rapporteur in the Committee of Budgetary Control states in a Working Document from the European Parliament,<sup>106</sup> there is a certain tension 'between both Article 274<sup>107</sup> of the Treaty ("The Commission shall implement the budget, (...) on its own responsibility (...)") and Article 5 (subsidiarity and proportionality)' which leads to a sort of 'Governance-pendulum, swinging between the Member State position (Article 5) and the Commission position (Article 274). The more the pendulum moves towards Article 5 the higher delegation risk for the Commission and the more difficult it becomes for the Commission to implement the budget "on its own responsibility". On the other hand, the more the "Governance-pendulum" moves towards Article 274 the less subsidiarity there is.' This shows that the partnership principle, leading to the involvement of also subnational actors, combined with the principle of shared management, which puts the responsibility of the EC on one line with those of the Member States, complicates the implementation of Cohesion Policy.

#### 4. Discussion and conclusions

As mentioned above, the character of multilevel governance is that public actors from all levels – supranational, national and subnational – are involved with policy making and implementation, including also non-public actors. This creates some sort of web, with different actors, participating on different levels and in different networks. All these actors are connected by relationships that can have different forms, leading to different kind of relations between different actors. These can be

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<sup>101</sup> HOOGHE, 'Reconciling EU-Wide Policy and National Diversity', in. p. 5.

<sup>102</sup> HOOGHE, 'Building a Europe with the Regions: The Changing Role of the European Commission', in. p. 90.

<sup>103</sup> Id. at in. p. 121.

<sup>104</sup> HOOGHE & MARKS, Multi-level Governance and European integration. p. 102 and 103 for an overview of the stages and the influence of the actors p. 94.

<sup>105</sup> See art. 14 of Regulation 1083/2006 on the ERDF, ESF and Cohesion Fund.

<sup>106</sup> INGEBORG GRÄßLE, 'Working document on the role and functioning of supervisory and control systems for structural operations', in (European Parliament, 2008). p. 2.

<sup>107</sup> Currently article 317 of the Treaty on the Functioning of the European Union.

'ordinary' principal-agent relationships, but also combined principal-agent relationships, where an agent may also be a principal itself in a relationship with another actor. Multilevel governance therefore complicates public decision-making and implementation, by the fact that is often unclear which actor has which role in which context.

Connecting this view of multilevel governance with our analysis of the concept of accountability, as described in the second paragraph, shows that accountability in a multilevel context is in fact quite complex. Although we now have good mechanisms for describing and classifying an accountability relationship, at the same time preparing it to be used in a multilevel situation, as Cohesion Policy is, shows us that there still are some very fundamental problems to look at. Within this multilevel structure, it will not always be clear which kind of relationship is seen, and how actors behave. In a single accountability relationship, an actor has one single dimension, being a principal or agent. In a multilevel context, where relationships can be blurred, an actor can have different functions: being agent, an agent and at the same time a principal or principals, all in different relationships. Also, within multilevel governance settings, some policy making is characterized by informal or opaque procedures. Another characteristic is that often the responsibility is diluted between different actors, making it difficult to unravel which actor plays exactly what role within the policymaking process, *the problem of many hands*.<sup>108</sup> All these factors make it difficult to exactly identify what kind of relationship exists between different actors in the multilevel context.

While we have described accountability as a unilateral and quite simple relationship, in practice within public policy 'complex overlapping accountability relationships'<sup>109</sup> exist. Instead of being seen as an isolated process within a context of public policy, accountability is 'a continuous process of anticipation, identification, definition and responses to pressures, which eventually lead to certain actions.'<sup>110</sup> Together with the complex multilevel situation of Cohesion Policy, this asks for a specific approach to identifying accountability relationships in such a situation.

It is important to have a more broad view than only looking at one relationship. Instead one should focus on the multiple relationships visible in the policy area. To be able to do that, one should start with giving an overview or mapping in the form of a figure with all actors and relationships concerned, also mentioned as 'process-based approach to accountability.'<sup>111</sup> It should describe all relevant actors and forums, thereby exposing the dynamics between these actors. By this means, it should be possible to describe the actors, forums and relations involved and characterize them according to their main characteristic. These relations all together then will give a picture on the status of accountability in the sector concerned.

Still, there are some comments to be made for further discussion.

First, within the literature there is attention for problems with accountability in a situation of multilevel governance.<sup>112</sup> The problem with these contributions for the use in our research is that they focus on the idea of multilevel governance as policy networks or network governance. The problems that have been identified in these articles are not all very suitable for all multilevel situations, or Cohesion policy in peculiar. It seems like the problems that are referred to are specifically pointed at the inclusion of non-public actors and bureaucrats, not susceptible for democratic scrutiny. We question whether this is a real problem in accountability of Cohesion Policy in peculiar. It will deem us to perform in further research a thorough look at the problems of accountability within the specific situation of Cohesion Policy.

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<sup>108</sup> PAPADOPOULOS, 'Problems of Democratic Accountability in Network and Multilevel Governance', see also footnote 43.

<sup>109</sup> WILLEMS & DOOREN, p. 1015.

<sup>110</sup> Id. at p. 1015.

<sup>111</sup> Id. at p. 1032.

<sup>112</sup> See for instance CAROL HARLOW & RICHARD RAWLINGS, 'Promoting Accountability in Multilevel Governance: A Network Approach', (2007) 13 *European Law Journal*, and PAPADOPOULOS, 'Accountability and Multilevel Governance: More Accountability, Less Democracy?',

Second, it is questionable whether maximizing accountability is something that should be aimed at. Literature has shown that a tension exists between the democratic element of accountability on the one end and the performance of public policy on the other.<sup>113</sup> Or as Bovens puts it, there can also be an 'accountability overload.'<sup>114</sup> In the current situation, there is less attention for performance, as opposed to following rules and spending money. Or in other words: there is 'too much accountability for the wrong things, for processes and inputs, rather than outputs and outcomes.'<sup>115</sup> Although this tension will always exist, we plead for more attention for performance of public policy, especially within Cohesion Policy.<sup>116</sup> It will therefore always be necessary to guard the balance between different objects of accountability.<sup>117</sup> More attention for performance may, as is pointed out by Willems, even lead to a better focus on accountability.<sup>118</sup> Also within a multilevel governance situation there is hope for accountability: 'the more account holders are involved in diverse accountability forums, the higher the chance that an actor is being called to account to some authority for one's actions.'<sup>119</sup>

Therefore, the question we will try to answer in the following research is: is there a problem with accountability within Cohesion Policy? Let's see whether Cohesion Policy can stand the test...

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<sup>113</sup> See WILLEMS & DOOREN, p. 1025 and 1026, and MULGAN, Holding Power to Account. p. 155.

<sup>114</sup> BOVENS, et al., 'Does public accountability work? An assessment tool', p. 229.

<sup>115</sup> MULGAN, Holding Power to Account. p. 155.

<sup>116</sup> See also MAAIKE DAMEN & NICO GROENENDIJK, 'Performance auditing in EU Cohesion Policy: what do we know and what should we know?', in, ECSA-C 9th Biennial conference 'Europe in an Age of Austerity: Integration, Desintegration, or Stagnation?' 2012).

<sup>117</sup> Literature also suggests that it might be an option to advocate accountability avoidance, see SVERKER GUSTAVSSON, 'Putting limits on accountability avoidance', in Sverker Gustavsson (ed), *The Illusion of Accountability in the European Union* 2009). Although we agree with Gustavsson that this is not to be preferred because accountability also attributes to legitimacy and holding power to account.

<sup>118</sup> WILLEMS & DOOREN, p. 1026.

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