

### Parliamentary scrutiny of EU law proposals in Denmark: why do governments request a negotiation mandate?

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# **Parliamentary Scrutiny of EU Law Proposals in Denmark: Why do Governments request a Negotiation Mandate?**

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**Daniel Finke and Marius Melzer**

**February 2012**

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Founded in 1963 by two prominent Austrians living in exile – the sociologist Paul F. Lazarsfeld and the economist Oskar Morgenstern – with the financial support from the Ford Foundation, the Austrian Federal Ministry of Education, and the City of Vienna, the Institute for Advanced Studies (IHS) is the first institution for postgraduate education and research in economics and the social sciences in Austria. The **Political Science Series** presents research done at the Department of Political Science and aims to share “work in progress” before formal publication. It includes papers by the Department’s teaching and research staff, visiting professors, graduate students, visiting fellows, and invited participants in seminars, workshops, and conferences. As usual, authors bear full responsibility for the content of their contributions.

Das Institut für Höhere Studien (IHS) wurde im Jahr 1963 von zwei prominenten Exilösterreichern – dem Soziologen Paul F. Lazarsfeld und dem Ökonomen Oskar Morgenstern – mit Hilfe der Ford-Stiftung, des Österreichischen Bundesministeriums für Unterricht und der Stadt Wien gegründet und ist somit die erste nachuniversitäre Lehr- und Forschungsstätte für die Sozial- und Wirtschaftswissenschaften in Österreich. Die **Reihe Politikwissenschaft** bietet Einblick in die Forschungsarbeit der Abteilung für Politikwissenschaft und verfolgt das Ziel, abteilungsinterne Diskussionsbeiträge einer breiteren fachinternen Öffentlichkeit zugänglich zu machen. Die inhaltliche Verantwortung für die veröffentlichten Beiträge liegt bei den Autoren und Autorinnen. Gastbeiträge werden als solche gekennzeichnet.

## **Abstract**

Political scientists have been concerned about the loss of power of national parliaments through the shift of competences to the EU level. In this respect the Danish system of parliamentary scrutiny has been recommended as being highly effective. In this paper, we explain why the Folketing issues negotiation mandates on some EU law proposals whereas the government can freely chose its negotiation position on other proposals. Our empirical analysis of Danish scrutiny decision between 2006 and 2008 uncovers three answers. First, in contrast to other scrutiny measures, most of which can be initiated by single party groups, the issuance of negotiation mandates is a collective decision. Specifically, it requires the consent of a majority of deputies in the Folketing. As a consequence, the position of the minority government must win the support of a third party. This third party tends to requests a negotiation mandate if it fears that collusion between the government and its international partners might violate its interests. Second, the leading minister requests a negotiation mandate if a majority of Danish parties stand united against an adverse majority in the Council. Third, the coalition partner requests a negotiation mandate to control the leading minister in case of significant intra coalition dissent<sup>1</sup>.

## **Keywords**

European Union; Denmark; coalition building; parliamentary scrutiny; minority government

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**General note on content**

The opinions expressed in this paper are those of the authors and not necessarily those of the IHS.

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## I. Introduction

The European Union (EU) has been accused of suffering from a democratic deficit. One of the arguments underlying this accusation is the increasing discretion on the part of national governments who in highly non-transparent Council meetings decide policies which subsequently are binding on the national level. Only in the case of directives do parliaments *ex post* have the possibility to influence policy within a prescribed range. Therefore, the accountability of governments has decreased as a result of an increasing number of policy areas shifting to the EU level. The limited transparency of Council decision making increases the information deficit of the domestic opposition, who find it difficult to assess the set of politically-feasible policy alternatives. From a normative perspective, this extension of governmental discretion calls for additional forms of parliamentary scrutiny.

On first sight the normative problem increases in cases of minority government. Within the realm of domestic politics, minority governments depend on third parties to pass legislation. In this respect Europeanization threatens to undermine the basic requirement for democratic government, namely the majority principle. In countries that regularly experience minority government we often find additional institutional safeguards to ensure the government's responsibility in EU politics. In contrast to studies that compare different institutional designs (Bergman et al. 2003), we raise the question of why some EU law proposals are scrutinised by parliamentary committees whereas others go unchecked. More specifically, we answer this question for the scrutiny mechanisms applicable in the Danish Folketing which can limit governmental bargaining discretion by specifying a negotiation mandate.

The literature on parliamentary scrutiny of national legislation provides two prevalent arguments. Firstly, compared to parties in the opposition, the government in general – and the leading minister in particular – hold superior information on any specific law proposal. Hence, the opposition has a motivation to reduce this information asymmetry by means of parliamentary scrutiny (Döring 1995; Müller and Strøm 2000; Powell 2000). Secondly, parliamentary scrutiny is used to reduce the information asymmetry between the leading minister and her coalition partner (Huber and Shipan 2002; Martin and Vanberg 2004).

However, these approaches have been developed for domestic politics and neglect the opportunities and incentives available to parliamentary parties in EU politics. As a consequence, existing theoretical approaches have to be adapted to account for parliamentary scrutiny of EU law proposals. Accordingly, we consider the strategic interaction between the domestic and European levels of government. In this respect the scrutiny in the Danish Folketing differs from the German and Czech systems analysed in Finke and Dannwolf (2011). In the latter cases, a single party group can refer to EU documents to be scrutinized by parliamentary committees. By contrast, parties representing a majority of deputies in the Danish Folketing can veto any proposed negotiation mandate. As a

consequence, minority governments depend on third-party support. They either form issue-specific coalitions with alternating partners or count on the implicit support of one and the same third-party. Subsequently, we elaborate the theoretical argument presented by Martin and Vanberg (2004), which we adopt to the two-level character of EU politics. Our findings suggest that scrutiny becomes all the more likely in case the leading minister is politically close to his international partners. Coalition partners request a negotiation mandate to avoid collusion between the leading minister and his international partners. By contrast, the very same international partners render domestic control superfluous in case their position differs from the one represented by the leading minister. In this situation, the leading minister may request a negotiation mandate to strengthen the Danish bargaining position in the Council.

This paper continues by summarising the existing literature on the role of national parliaments in EU politics. The following section adapts existing, party-centred theoretical approaches to the two-level character of European Union politics. Here, our primary focus is on the potential effect of requesting a negotiation mandate on the policy outcome. In doing so, we resort to the Schelling conjecture which claims that governments are able to improve their bargaining position in Brussels by pointing towards domestic political constraints. The paper continues with an empirical test of our hypothesis using data on Danish scrutiny activities between 2006 and 2008. We conclude by discussing our empirical findings.

## II. The Role of National Parliaments in EU Politics

The deepening of European integration has been accompanied by concerns about democratic legitimacy. These concerns were met by an increasing parliamentarisation of EU politics. Beside the well-known empowerment of the directly elected EP, the role of national parliaments in European policy formulation has been strengthened in various ways (Auel 2007, Norton 1995). First, national parliaments have increased their cooperation on the supranational level via institutionalised meetings. Importantly, the “Conference of Community and European Affairs Committees of Parliaments of the EU” (COSAC) has been recognised officially in protocols to the Treaty of Amsterdam and the Lisbon Treaty (Krekkelberg 2001). Second, cooperation between national parliaments and the EP has improved the amount of information available to members. Examples of such mechanisms include bilateral committee meetings (Maurer and Wessels 2001: 458-460), the establishment of offices of national parliaments at the EP (Neunreither 2005) and participation of MEPs in European Affairs Committees (Raunio and Hix 2000: 157). Third, the amount of information available to national parliaments has been strengthened by European treaty revisions as well as by the so-called Barroso Initiative. As of September 2006, the European Commission has forwarded all its communications and proposals to national parliaments on (European Commission 2008: 2). At the domestic level, the additional supply of EU documents has been met with significant improvements of parliamentary scrutiny systems that aim at exerting control over the government in the European legislative process (e.g. Raunio and Hix 2000; Maurer and Wessels 2001).

The literature on Europeanisation of national political systems (for an overview refer to Goetz and Meyer-Sahling 2008) discusses the role of national parliaments during the making and implementation of EU law. Comparative empirical studies find that EU law rarely affects more than 30% of domestic legislation (Mueller et al. 2010). Yet this number hardly serves justice to the importance of EU law for national politics. Firstly, EU regulations and decisions are directly binding and do not require transposition to national law in contrast to directives. Secondly, national parliaments may be involved during the implementation stage to help in solving intra-coalition disagreement (Franchino and Hoyland 2009), yet the majority of EU directives are implemented via governmental decrees (e.g. König and Mäder 2007; König and Mäder 2008; Raunio and Wiberg 2010; Mueller et al. 2010). The limited influence of national parliaments once European policies have been adopted highlights the relevance of parliamentary scrutiny during the European legislative process.

European Affairs Committees (EACs) can be regarded as the “most important institutional innovation connecting the national Parliament to supranational decision-making” (Bergman et al. 2003: 174). The institutional setup and activities of EACs vary across member states and parliamentary chambers. Often EACs are the corner stone of a larger scrutiny system that includes sectoral committees. The committees’ powers for limiting the discretion of a

national government in the Council of Ministers vary, too. Most parliaments are limited to issuing a non-binding scrutiny reserve. Few parliaments have the right to issue a binding mandate that limits the minister's discretion in the Council. For example, the Danish Folketing can issue voting instructions to the minister (Raunio 2005: 322-323)<sup>2</sup>. In any case, given qualified majority voting in the Council of Ministers, the actual effect of such mandatory systems on EU policies remains highly questionable. The effectiveness of parliamentary scrutiny systems depends on the available resources such as the number of administrative staff, the size and composition of the EACs (Bergman et al. 2003), the density of informal contacts to MEPs (Maurer and Wessels 2001), and the close cooperation with sectoral committees (Raunio 2005). Behavioural assessments of scrutiny activities are often based on aggregate indicators such as the frequency of EAC meetings, the opinions produced, number of meetings with EP committees, and memoranda received by the government on its positions (Karlas 2011). Although the categorisations differ slightly, Denmark and Finland emerge as having the strongest scrutiny system; Greece, Portugal, and Spain clearly rank last, indicating a north-south divide that corresponds to the implementation records (Bergman 1997; Bergman et al. 2003; Raunio 2005; Saalfeld 2005).

Another branch of the literature deals with explaining the genesis of the observable cross-country variation in scrutiny provisions. Turning to empirical findings, Raunio (2005) and Karlas (2011) find that strong parliaments<sup>3</sup> tend to establish strong scrutiny systems. This effect is stronger in the presence of a eurosceptic<sup>4</sup> public (Raunio 2005). The evidence for the effect of minority governments is mixed. Although Raunio (2005) does not find an effect, others explain the exceptionally strong scrutiny system in Denmark with the presence of minority governments, the stability of governmental coalitions, and the salience that governments attribute to EU politics (Pahre 1997; Bergman 1997; Saalfeld 2005).

Other authors point to the fact that an assessment of formal powers and resources does not suffice to evaluate the role of national parliaments in EU politics (Auel and Benz 2005; Holzhacker 2002). Based on a typology developed by Döring (1995), Holzhacker (2002) highlights the importance of the strategic interaction between party groups and the leading ministers. The leading minister might not pay attention to party groups at all (non-party mode), interact with members of other party groups (inter-party mode), or act across party boundaries (cross-party mode). According to Auel and Benz (2005: 389), parliamentarians find themselves in a dilemma between strictly scrutinising the government and optimising the policy outcome in the Council of Ministers. By tying the hands of the responsible minister too close, MPs from the governing parties risk a worse bargaining outcome (Auel and Benz 2005: 373). To overcome this dilemma they cooperate informally with the responsible

<sup>2</sup> For an overview of the member states, please refer to COSAC 2008: 26; Bergman et al. 2003; and Raunio 2005.

<sup>3</sup> A strong parliament is defined by two criteria in the study of Raunio (2005) for the EU 15: agenda-setting power and attractiveness to lobbyists. Karlas uses an index for participation rights in his study on the new member states.

<sup>4</sup> Euroscepticism is measured by the good-bad-benefit question in the Eurobarometer (Raunio 2005: 332).

ministries, thereby withholding information from the opposition and avoiding formal scrutiny. By contrast, opposition parties can make use of informal contacts to European actors (Auel and Benz 2005: 388). Holzhacker (2002: 470) finds that German and Dutch opposition parties tend to initiate scrutiny over issues that are salient for the public.

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

### III. Parliamentary Scrutiny of EU Proposals in Denmark

In parliamentary democracies, the oversight instruments have long been considered to be less powerful than in presidential systems (Strøm 2000). Nevertheless, numerous studies point towards the existing information asymmetry between the government and parliaments in Europe (e.g. Saalfeld 2000; Müller 2000). In combination with conflicting political interests, information asymmetries may cause ministerial drift. Correspondingly, we find more or less developed “monitoring and reporting requirements” of the leading minister (Kiewit and McCubbins 1991: 31-33; Saalfeld 2000: 362-369). In the majority of EU member states scrutiny systems are “document based” in the sense that the EAC is provided with all official EU documents and selects those documents (usually political initiatives and law proposals) which it intends to refer for further scrutiny to the committees. Committees are composed of policy experts qualified for catching up on any agents’ information advantage (Harfst and Schnapp 2003). Moreover, committees themselves hold broad investigative powers, including the right to schedule hearings, call witnesses, and subpoena relevant documents (Martin and Vanberg 2004; Powell 2000: 32; Strøm 1990: 71). In almost all European parliaments the composition of committees reflects the partisan composition of the plenary. Although in many cases the formal rules of procedure reserve the agenda-setting right for the committee chair, each party group holds powers that guarantee them an informal say over the agenda. For example, in the German Bundestag each MP can interpellate the government and each group can propose motions for resolution in plenary. Accordingly, in most national parliaments party groups are the relevant actors empowered to initiate scrutiny.

In this paper, we deal with a rare type of scrutiny mechanism which provides the EAC with the power to limit governmental bargaining discretion by specifying a negotiation mandate. Please note that mandating systems differ from document-based systems in one key aspect: In document-based systems each party group can refer a document to the EAC for further scrutiny. By contrast, a mandate requires a collective decision which must (implicitly or explicitly) be supported by a majority of MPs. This rule creates obvious challenges for a minority government. The possibility to grant such mandates can be found in eight member states including all three Nordic member states, Austria, Hungary, Slovakia, Estonia, Latvia, Poland (only Sejm) and Lithuania (Open Europe 2010; COSAC 2007). The effectiveness of these mandating systems depends on government’s formal ability to deviate from the mandate granted as well as on the political consequences of such a deviation. In this respect, the literature considers the systems in Austria and the Nordic countries as strong, whereas in the remaining cases government’s incentives to comply with the mandate are rather weak (*ibid.*). The Danish system is widely considered as the strongest mandating

procedure, a peculiarity which supposedly has its roots in the countries tradition of minority governments (*ibid.*; Raunio 2005; Saalfeld 2005)<sup>5</sup>.

Following the “Guidelines for relations between governments and Parliaments on Community issues” adopted by the COSAC and the European Parliament national governments must inform their EACs about all European policy proposals which are either directly applicable or the implementation of which would require the participation of the parliament (COSAC 2011). The seventeen members of the Danish EAC (*Europaudvalegt*) mirror the party composition of the Danish Folketing. The EAC is responsible for the co-ordination of the cooperation between the Folketing and the EU. In doing so, its primary task is to ascertain that the position of the Danish government is supported by a majority of MPs in the Folketing (Folketing 2009a: Section 7 [2]). Obviously, this task is of higher importance for the frequent Danish minority government than for the usual majority governments found in most parliamentary democracies.

The Lisbon Treaty extends the parliamentary early warning system on subsidiarity. Specifically, it empowers two third of all national parliaments to delay European legislation if they share the opinion that the Commission proposal might violate the subsidiarity principle. To fulfil this obligation the Folketing’s EAC can draw up memoranda on proposals handled under the Codecision procedure. Moreover, the Folketing may scrutinize acts proposed by the Commission under any of the three Comitology procedures. However, with respect to these implementing or delegating acts the government holds the sole right to initiate scrutiny (Folketing 2008: 8). Table 1 presents an overview of the scrutiny procedure applicable in the Danish Folketing.

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<sup>5</sup> Since the Danish accession to the European Community in 1973 only two governments (1993 – 1994; since October 2011) had a majority in the Folketing.

**Table 1:** The Consideration of EU proposals by the Folketing

Step	Procedure	
(1)	Policy Proposal by the European Commission or the Council.	
(2)	No later than <b>3 weeks</b> after the proposal has been published.	The EAC forwards proposals for consultation in the relevant sectoral committee(s). The government prioritizes certain proposals for which it sends preliminary basic-cum-subsidiarity memorandum to the relevant sectoral committees and the EAC. This memorandum includes the government's evaluation of the proposals potential effects on the subsidiarity principle. Memoranda are published on the EU Information Centre website.
(3)	No later than <b>5 weeks</b> after the proposal has been published.	The relevant sectoral committees consider the proposal and can submit an opinion to the EAC. These Opinions are published online. COSAC is notified in case the sectoral committee is of the opinion that there are problems in relation to the principle of subsidiarity.
(4)	No later than <b>8 weeks</b> after the proposal has been published.	The EAC considers the proposal on the basis of the sectoral committee's opinion, the government basic-cum-subsidiarity memorandum, any replies to the web consultation and opinions from other parliaments (COSAC).  In case the opinions from the sectoral committee and the EAC differ, a joint meeting is called. If applicable, the EAC's reasoned opinion is signed and published.
(5)	No later than one week <i>prior</i> to the Council meeting	The EAC considers all issues on the agenda of the forthcoming Council meeting in attendance of the minister or a highly level bureaucrat. S/he presents the Council agenda and suggests deciding on a negotiation mandate for the most important proposals.
(6)	Following the Council meeting	The minister reports on the Council meeting. If unsatisfied with his report a majority of EAC members can decide a memorandum, question the government or request for a plenary debate

(Source: based on Folketing 2008)

The outstanding feature of the Danish EAC is its right to limit the leading minister's discretion by issuing a binding negotiation mandate ahead of EU-Council meetings (step 5). As a prerequisite the government must declare a European issue to be of "major significance" (Folketing 2010: 4). In this case, the memorandum drafted by the leading minister includes information about the subject, the legal base, the opinions of the European Parliament and the Commission, the potential impact on national legislation, on public finances and on administration as well as the potential impact on the economy (Folketing 2004). This memorandum must be send to the EAC no later than eight days before the respective

meeting. During the meeting, the responsible minister proposes the negotiating position of the government orally and asks the committee-members for their approval thereof. During the debate the committee members deliberate over potential changes of the Danish negotiation position. In the end, the chairman of the committee closes the debate when he feels that there is no majority (Committee-members whose parties hold more than half of the 179 seats in the Folketing) against the proposed negotiating position. The agreed position is then recorded in a written report, including a description of the leading minister's discretion to deviate from this position. However, this report is not subjected to an explicit vote of approval (Folketing 2009b).

Sectoral committees can scrutinize EU-documents, too (step 3). The list of EU policy proposals as well as all governmental memoranda is distributed to all Committees. Committee members and the government decide whether the issue should be discussed in each respective committee. The EAC members can also decide to delegate proposals for further discussion in other, sectoral committees (Folketing 2008: 5). Sectoral committees transmit their opinion to the EU-committee which decides on the official standpoint of the parliament. In their scrutiny efforts sectoral committees can resort to a broad array of instrument. Apart from expert hearings they can question the government in writing or summon the responsible minister. However, sectoral committees themselves cannot issue a binding negotiation mandate.

Returning from a Council meeting the responsible minister must submit a written report to the EAC in which he summarizes the discussion, decision and voting during of the meeting. If left unsatisfied by the report, a majority of the EAC can initiate further scrutiny measures (Folketing 2009b). If the law making process is ongoing, a majority of the EAC can formally adopt a memorandum in which they demand adjustments of the minister's position and negotiation strategy. However, this follow-up procedure is rarely used (Cosac 2010: 15).

Besides these explicit scrutiny instruments, the Folketing is characterized by broad distribution of initiative and agenda rights. Each MP can (i) question the government either in writing or orally and (ii) place an EU policy proposal on the agenda of the plenary. In this respect EU proposals are treated like domestic law proposals (Folketing 2009a: § 4 [1]). However, this right is mostly exercised by political groups, not least to increase the acceptance of the President of the Folketing (Nannestad 2008: 146). (iii) One third of the MPs can initiate a referendum. (vi) Finally, a majority of MPs can impeach the government with a vote of no confidence. As a consequence, political groups may find it easy to pressure the minority governments into requesting a negotiation mandate.

Overall, the Danish system of parliamentary scrutiny reflects the broad distribution of agenda and initiative rights in the Folketing, where the government holds no privileges whatsoever (Döring 2001). From an international comparative perspective the right to issue a binding negotiation mandate renders the EAC exceptionally powerful. Yet in contrast to document

based scrutiny systems, where each political group can demand scrutiny, (Finke and Dannwolf 2011), the issuance of a negotiation mandate is a collective decision which requires the consent of a simple majority of MPs. On first view this requirement places Danish minority governments in a very uncomfortable position. Subsequently, we take a closer look on why government or opposition parties may want to request a binding negotiation mandate.

## IV. Who calls for a Negotiation Mandate?

In his interviews with German and Dutch MPs Holzhacker (2002) found evidence that governing parties initiate parliamentary scrutiny to improve their bargaining leverage in the Council of Ministers. The underlying mechanism reflects the so-called “Schelling Conjecture” (Milner 1997): “In international negotiations, the ability of a negotiator to credibly say to his or her counterpart that “anything we sign here has to be ratified by my country’s legislature” provides a bargaining advantage that this person would not otherwise have.” (c.f. Tarar 2001: 320) In contrast to international treaties EU legislation does not require formal ratification by national parliaments to become effective. Even when no direct ratification is necessary, displeased coalition partners have diverse means for ex-post sanctioning the minister such as withdrawing support for the government. Hence, Finke and Dannwolf (2011) conceive of the coalition agreement as a domestic constraint. Thus, a reform skeptic (friendly) minister may credibly shrink his room for bargaining concessions by pointing towards an even more reform-skeptical (friendly) coalition partner.

While this argument is generally true for all coalition governments, the situation is slightly more intricate with respect to Denmark. First of all minority governments depend on the support of third parties to pass the majority threshold necessary for any kind of legislation. This alters the relationship between government and opposition (Strøm 1990). Specifically, parties in office may become prone to blackmailing from third parties whose consent they need to pass important pieces of legislation. As a consequence we argue that leading ministers can point towards a potential conflict with such third parties to credibly limit their room for concessions at the international bargaining table.

The Danish system of parliamentary scrutiny has institutionalized this mechanism by allowing the government to explicitly ask for a negotiation mandate. More precisely, the government can pick the mandate to their liking unless it is opposed by a majority of committee members. Although we cannot know the exact location of the “red line” defined in this mandate, we consider the mere existence of a mandate as a powerful message to international partners. We would expect governmental parties to deploy this mechanism for politically important pieces of legislation in which the “Danish position” is relatively united.

*Hypothesis 1: The likelihood of negotiation mandates increases if the position of the leading minister is closer to the third party supporting the minority government than to the expected outcome in the Council of Ministers.*

Our second hypothesis takes up the argument by Martin and Vanberg (2004) who find that parliamentary scrutiny is also used to reduce information asymmetries among coalition partners. Specifically, they argue that the leading minister holds private information on the law proposals in his jurisdiction. This can cause ministerial drift in the sense that ministers

violate the coalition agreement. The information asymmetry can be mitigated by a number of mechanisms such as the nomination of junior ministers from each coalition partner who function as watchdogs; the cross nomination of committee chairs and the minister in the same jurisdiction; and, most importantly, parliamentary scrutiny. From this perspective, the leading minister is the agent and the coalition partners can be seen as his principals. The adverse effects of ministerial drift increase with intra-coalition dissent (Martin and Vanberg 2004: 20). Accordingly, the authors expect that the likelihood of scrutiny increases with intra-coalition dissent.

However, similar to Finke and Dannwolf (2011) we argue that any coalition government will try to hide internal disputes in policy areas of particular importance to the domestic party competition. The costs of presenting the public with a cabinet characterized by internal disputes are severe.

*Hypothesis 2: The likelihood of negotiation mandates increases (decreases) with the dissent among the coalition partners in policy areas of little (high) salience to the domestic party competition.*

In sum, existing theories assume that either the opposition initiates parliamentary scrutiny to reduce governmental drift or one of the coalition partners initiates scrutiny to reduce ministerial drift. We apply both arguments to the scrutiny of EU lawmaking by the Danish Folketing. Specifically, we establish two hypotheses: First, we suspect that the political dissent between the minority government and a third, supporting party decreases the leading-ministers likelihood to request a negotiation mandate for politically important law proposals. From this perspective, the minister initiates scrutiny to gain bargaining leverage in the Council. Second, we expect that the intra-coalition dissent increases the likelihood for the coalition partner to request a negotiation mandate. However, the governmental parties refrain from scrutiny over cases characterized by a high salience for the domestic party competition.

## V. Empirics

For an empirical test of our hypotheses we use a dataset that includes all European legislative proposals and the corresponding parliamentary scrutiny activities for the three years from 2006 until 2008<sup>6</sup>. Specifically, we analyze scrutiny activities during the minority coalition between the Danish liberals (Venstre) and the Conservative People's Party (Konservative Folkeparti). At the general elections in November 2005 the Venstre gained 29% and the Conservatives 10.4% of the votes. Together, the two governing parties held only 70 of the 175 seats in the Danish Folketing which for the second time elected Anders Fogh Rasmussen (Venstre) as Prime Minister. The cabinet comprised a total of 20 ministries, 14 of which have been led by the larger of the two parties. The most important offices attained by the Conservatives were the ministry for economics (deputy prime minister), the ministry for justice, the ministry for the environment and the foreign ministry. From the very beginning the minority government was dependent on the support of the right-wing Dansk Folkeparti which held 24 seats in parliament; hence the three parties commanded a majority of MPs. In early 2007 the government began to organize advanced general election to enable campaigning under the leadership of Fogh Rasmussen. The results of the November election left the fundamental distribution of power in the Folketing unchanged, although the Liberals lost 3% of their votes. During our entire period of observation the minority government between Liberals and Conservatives depended on the right-wing Dansk Folkeparti who turned out very influential with respect to reforming the migration and immigration policies. With respect to European integration the Liberals held a moderate position, the Conservatives are slightly integration-skeptical, whereas the Dansk Fokeparti held, rather unsurprising, a very euro-skeptical position (Hooghe et al. 2010).

To construct our dependent variable we resort to the IPEX data base<sup>7</sup> which provides scrutiny information at the level of EU documents such as the Commission's law proposals. For every proposal, IPEX includes an entry indicating the history of scrutiny activities in the lower and upper chamber of all member states. To validate the information provided by the data base, we conducted interviews with the national IPEX representatives stated in the database. In Denmark "scrutiny in progress" indicates that the government requested the issuance of a negotiation mandate. Based on this information, we define a dichotomous variable that is 1 if a mandate has been requested. In total, our data base contains 652 cases, 341 of which had been handled under the Codecision procedure, the remaining 311 under Consultation. Overall the government requested a negotiation mandate for roughly one third of the cases. Figure 1 indicates that the percentage of requested mandates

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<sup>6</sup> The data on the dependent variable has been gathered at the [Ruprecht-Karls](#)—University of Heidelberg between September 2009 and May 2010. The authors gratefully acknowledge the research assistance by Dennis Schnur.

<sup>7</sup> IPEX is an online database provided by COSAC and publicly accessible online: <http://www.ipex.eu/ipex/>.

dropped in 2008. We can only suspect that this drop has its roots in the maintenance of the IPEX data base<sup>8</sup>.

**Figure 1:** Percentage of EU Law Proposals subject to Scrutiny in the Danish Folketing

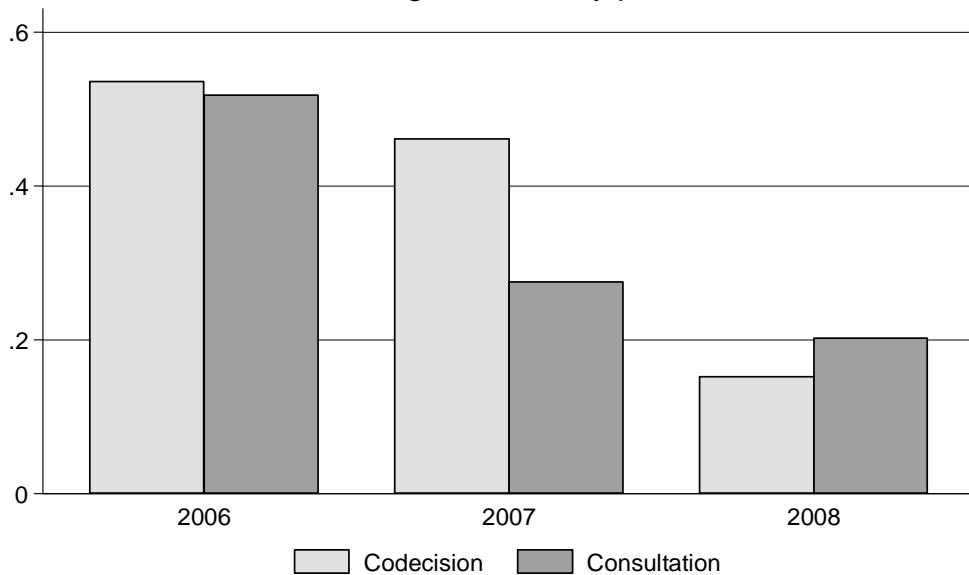
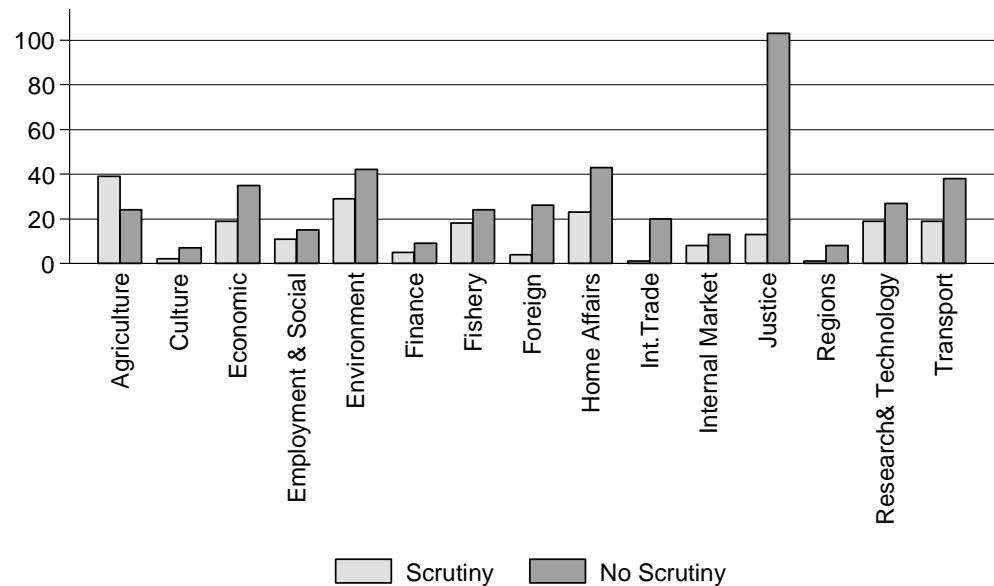


Figure 2 provides an overview of the scrutiny activities by policy areas. We derive our categorization for policy areas from the responsible committees in the European Parliament. Whereas a majority of law proposal fell under the auspice of the Legal Affairs committee, the percentage of scrutiny in this area has been relatively low. By contrast, we find a high percentage of scrutiny for the areas of agriculture, fishery, environment, research and home affairs. Rather low is the percentage of scrutiny in the areas of regional policy, international trade, foreign policy, and culture.

<sup>8</sup> Although the responsible administrators did not explicitly confirm our suspicion, the results of our analysis indicate no systematic bias. We estimated all models separately for each of the three years. Although the estimated effects are stronger in 2006 and 2007, the substantial results do not change.

**Figure 2:** Number of EU Law Proposals under Scrutiny in the Danish Folketing by Policy Area.



## VI. Independent variables

In order to measure the position of the parties as well as the salience of the issue to the governing parties we use ten questions from the Chapel Hill expert survey on party positions carried out in 2006 (Hooghe et al. 2010). We consider the leading EP committee as a proxy for a proposal's policy area. Accordingly, we assign the ten Chapel Hill variables to each of the twenty EP committees (see appendix A). Assigning each of the ministries in Denmark to one of the EP committees allows us to infer the partisan affiliation and *position of the leading minister*. We approximate the *salience* of each policy area for domestic party competition by the percentage of text parties dedicate to this area in their manifestos. For this purpose we resort to the CMP data set and assign suitable quasi-sentences to each of the twenty policy areas (Klingemann et al. 2006, Volkens et al. 2010) (see appendix A).

We approximate the *position of the government* and the *position of the opposition* by the mean of the respective party positions weighted by its seat share. The conflict between government and opposition parties is operationalised by taking the absolute difference between these two positions. We measure the length of the legislative reports tabled in the European Parliament by counting the words. This word count is primarily a function of the number of amendments proposed inside the leading and the advisory committees and can therefore be considered a reasonable proxy for a law proposal's politicization and transparency at the EU level.

We calculate the absolute distance between the minister and its coalition partner to measure *intra coalition conflict*. Likewise we calculate the absolute distance between the party of the leading minister and the supporting third party (here: Dansk Folkeparti) to measure the *dissent between government and the crucial opposition*.

Following Achen (2006) we conceive of the *expected bargaining outcome in the Council* as the weighted mean of the positions of all 27 governments (weighted by their respective Nice-vote and issue salience). Accordingly, a government's distance to the expected outcome is simply the distance between the position of the leading minister and this weighted mean of the position of all 27 governments within the respective policy area.

In addition, we include three important control variables. First, we add a dummy variable that indicates whether a law proposal amends existing EU legislation or implements new primary law. Second, we control for the inter-institutional procedures, i.e. consultation or co-decision. Third, we control for the type of legal instrument, i.e. directive, decision or regulation. Table 2 summarizes the descriptive statistics for all dependent and independent variables.

**Table 2:** Summary statistics

<i>Variable</i>	<i>Obs</i>	<i>Mean</i>	<i>S.D.</i>	<i>Min</i>	<i>Max</i>
Scrutiny (negotiation mandate)	578	0.360	0.480	0	1
Politicization log(word count EP report)	578	7.867	1.463	4.262	11.607
Codecision (y/n)	578	0.523	0.499	0	1
Salience (CMP)	578	11.348	7.001	2.310	21.74
Directive (y/n)	578	0.317	0.466	0	1
Minister-Coal.Partner	578	1.167	0.791	0.018	2.010
Minister-Expected Bargaining Outcome	578	1.414	0.727	0.100	2.42
Minister – Dansk Folkeparti	578	1.685	1.186	0.430	3.631

**Table 3:** Regression Models.

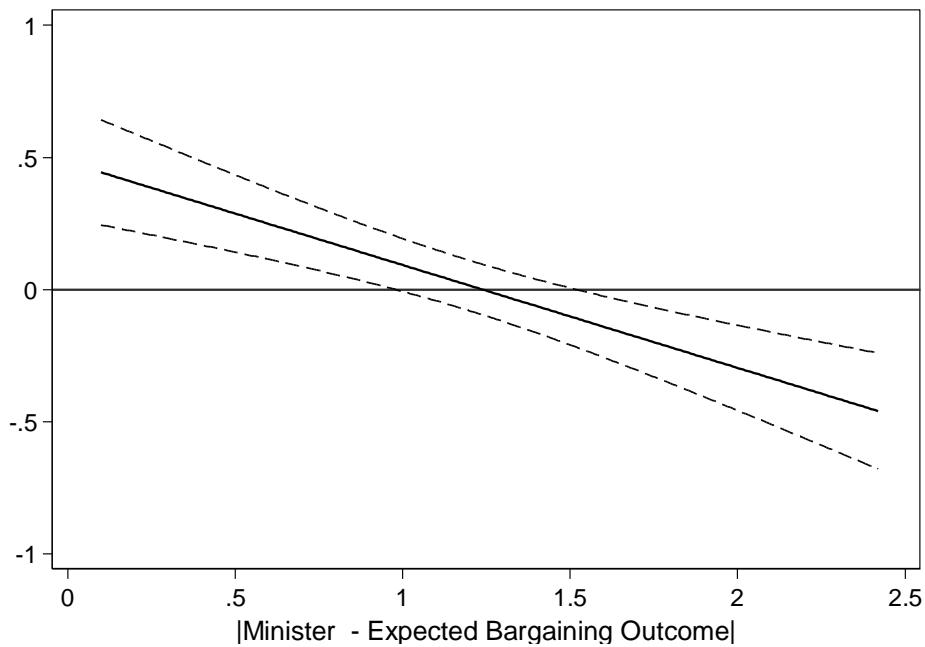
<i>Y= Scrutiny (y/n)</i>	<i>Model 1</i>	<i>Model 2</i>	<i>Model 3</i>
	<i>b(se)</i>	<i>b(se)</i>	<i>b(se)</i>
Wordcount(log)	0.57*** (0.07)	0.54*** (0.08)	0.67*** (0.09)
Codecision(y/n)	-0.26 (0.21)	-0.15 (0.23)	-0.04 (0.25)
Directive (y/n)	-0.57** (0.22)	-0.77** (0.24)	-0.74** (0.25)
Minister-Exp. Outcome		-0.61*** (0.15)	-1.17*** (0.26)
Minister-DanskFolkeparti		0.48*** (0.11)	1.19*** (0.21)
Minister-Exp. Outcome *  Minister-DanskFolkeparti		-0.39*** (0.08)	-1.14*** (0.19)

Salience			0.64*** (0.17)
Minister-Coal.Partner			2.03** (0.62)
Salience*  Minister-Coal.Partner			-0.27** (0.08)
_cons	-4.77*** (0.55)	-3.72*** (0.64)	-9.00*** (1.53)
Number of Cases	611	578	578
Pseudo R^2	0.10	0.15	0.18
Log-Likelihood -359.01	-359.01	-317.24	-305.15

We run a series of three logistic regression models (see table 3). The first model is limited to control variables. Most of the results turn out unsurprising. The degree of politicization in the EP (measured by the report's wordcount) has a very strong and positive effect on the likelihood for requesting a negotiation mandate. Moreover, directives are less likely to be scrutinized than regulations and decisions which might be due to fact that parliamentary approval is necessary at the upcoming transposition of the directive into national law. Finally, the insignificant effect of the Codecision dummy reveals that the legislative involvement of the European Parliament has little impact on the likelihood of a negotiation mandate being requested.

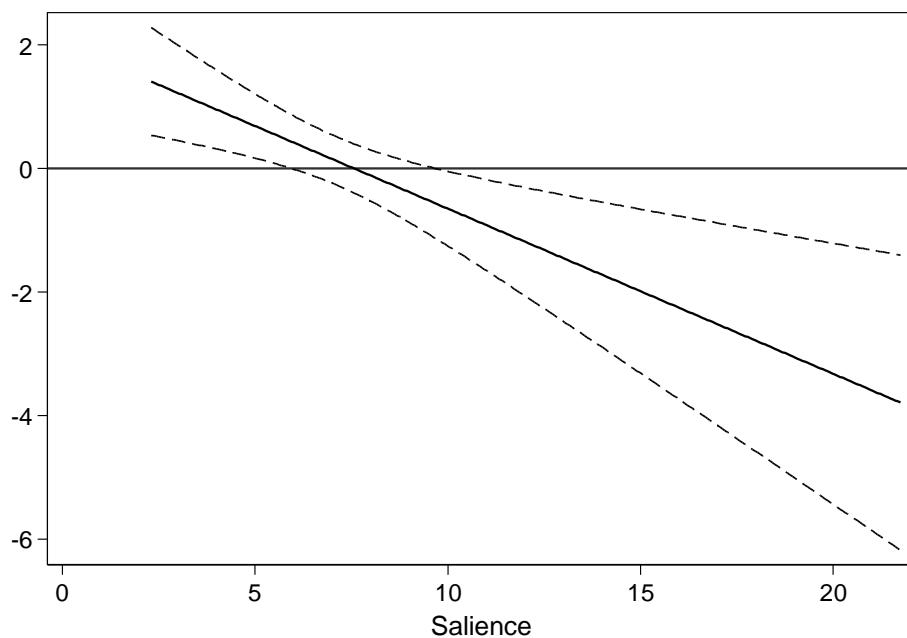
The second model tests our first hypothesis which expects that the leading minister has a higher likelihood to demand a negotiation mandate if the Danish position is relatively united vis-à-vis the majority position in the Council of ministers. The marginal effect depicted in Figure 3 supports this expectation: If the position of the minister is far away from the majority position of the Council, scrutiny becomes more likely the closer the less dissent between Dansk Folkeparti and leading minister. However, the results suggest that the underlying causality goes both ways: Whereas the minister is more likely to demand a negotiation mandate in case of "national unity", the Dansk Folkeparti has a incentive to request a mandate if its own position differs from the one of the government and the government is located close to the majority position in the Council. In this constellation, the Dansk Folkeparti tries to avoid collusion between the government and its international partners by issuing a negotiation mandate.

**Figure 3:** Marginal Effect of the dissent between Leading Minister and Dansk Folkeparti on the Likelihood for Scrutiny.



The third model tests the argument suggested by Martin and Vanberg (2004) according to which parliamentary scrutiny provides one means for the coalition partner to control the leading minister. Here, we follow Finke and Dannwolf (2011) who find that intra-coalition dissent has a positive impact on the likelihood for scrutiny unless the issue at hands is of high importance for the domestic party competition and therefore the revelation of intra-coalition dissent would have a negative bearing on the government's public support. Figure 4 provides the corresponding marginal effect plot which supports our second hypothesis.

**Figure 4:** Marginal Effect of Intra-Coalition Dissent on the Likelihood for Scrutiny.



## VII. Conclusions

In this paper we explain why the Danish EAC issues negotiation mandates on some EU law proposals whereas the government can freely choose its negotiation position on other proposals. We consider the issuance of negotiation mandates as a collective scrutiny decision, in contrast to other scrutiny measures which can be initiated by single party groups (Finke and Dannwolf 2011). In doing so, the paper claims two contributions to the existing literature. First, we contribute to the literature on the democratic deficit in the EU by assessing and explaining the empirical extent of parliamentary scrutiny (e.g. Rittberger 2005; Follesdal and Hix 2006). In this literature, the Danish scrutiny system is often recommended because it supposedly empowers parliaments more effectively than other systems. Second, given the increasing amount and importance of EU legislation, the theoretical and empirical advances made in the paper foster a better understanding of the relationship between governments and the opposition as well as the relationship among coalition partners in minority governments (e.g. Martin and Vanberg 2011).

On the empirical side, the paper analyses the issuance of negotiation mandates during the Danish minority government between Venstre and the Konservative Folkeparti from 2006 to 2008 which has been supported by the right-wing Dansk Folkeparti. On the theoretical side, the paper adapts party-centred explanations that had been developed for domestic-level scrutiny to the bicameral and two-level nature of EU lawmaking. Our empirical results can be summarized as follows:

First, the most prominent argument suggests that the opposition scrutinizes law proposals characterised by a high degree of conflict between the government and the opposition. We adapt this argument to EU politics under the Danish minority government. Here, the issuance of a negotiation mandate requires the consent of EAC members who represent a majority in the Danish Folketing. Therefore, a minority government must find a third party supporting its position. During our period of observation this third party was the right-wing Dansk Folkeparti. Accordingly, the implicit majority rule causes two classes of opposition parties: Those parties which are needed by the government to pass the majority threshold and those parties which are unnecessary (and therefore powerless) in this respect.

Second, following, the literature on two-level games, governments that are represented in the Council of Ministers can improve their international bargaining power by strategically revealing a credible domestic constraint. The credibility depends on the costs implied by violating the constraint. Coalition agreements are one possible constraint because violating coalition agreements implies political costs (Finke and Dannwolf 2011). The Danish scrutiny mechanism allows for issue-specific coalition agreements in the form of negotiation mandates. Therefore, we argue that the relevant coalition agreement is not restricted to the parties who are members of the minority government but has to include a third party. Most of

the time, the Danish minority government has been supported by the Dansk Folkeparti. Our empirical results suggest that the leading minister is more likely to request a negotiation mandate if his party is close to the Dansk Folkeparti.

Third, as a result the Dansk Folkeparti itself can pressure the government into requesting a negotiation mandate and does so whenever a) its position is far away from the government and b) it perceives the danger that the government might collude with its European partners. Accordingly, we find that if the leading minister is close to the majority in the Council, the likelihood for a negotiation mandate increases in the distance between the party of the leading minister and the Dansk Folkeparti.

Fourth, the Danish case lends support for the Martin-Vanberg-argument according to which parliamentary scrutiny is one instrument by which the coalition partner can control the leading minister. However, our findings suggest that his effect depends on the issue's importance for the domestic party competition. For low-salience issues, the likelihood for a negotiation mandate increases in the intra-coalition dissent. By contrast, the Danish coalition partners refrain from revealing their internal conflict in case the issue is highly salient for the domestic party competition.

Political scientists have been concerned about the loss of power of national parliaments through the shift of competences to the supranational level. In this respect the Danish system of parliamentary scrutiny has been recommended as being most effective. We try to qualify this general statement by distinguishing between the powers of the governing parties, the supporting third party and the opposition parties. Undoubtedly, the supporting party (here the Dansk Folkeparti) benefits most because its consent is often necessary to issue a negotiation mandate. Please note that this qualification is not meant to downgrade the Danish system in international comparison. In addition to the negotiation mandate, the members of the Folketing enjoy similar scrutiny instruments which we find in most other national parliaments. Finally, our results for the Danish case indicate that the two most powerful explanations for domestic-level scrutiny can be successfully adapted to EU politics. Most importantly, scrutiny provides a means for third, opposition parties to control the government. Yet, it also provides a means for the coalition partner to exert control over the leading minister.

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## IX. Appendix

### Appendix A: Operationalization of Party Positions and Issue Salience

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



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