
POLICY-MAKING AND DIVERSITY IN EUROPE

Escaping Deadlock

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Escaping deadlock: policy-making in Europe

Looking at the European polity and European policy developments, one is struck by the contrast between obstacle-ridden decision-making processes, often ending in deadlock, on the one hand, and institutional change and rapid policy movement, on the other. Thus, since the mid-1980s, we have witnessed significant changes, notably in ‘constitution-building, politicisation, mobilisation and enlargement’ (Laffan 1997: 6), and a steady expansion of the European policy agenda (Peters 1996), alongside stalled negotiation processes and incremental policy changes. How can one explain this apparently paradoxical co-existence of stalling and swift development? In this book I contend that gridlock and growth are intimately linked, and that this linkage is derived from two central properties of the European polity – its diversity and its consensual decision-making practices.

In European policy-making, the diversity of actors’ interests, the consensus-forcing nature of European institutions and the redistributive elements present in most Community policies would inevitably lead to a stalemate or ‘joint decision trap’ (Scharpf 1991), were it not for the widespread and ubiquitous use of informal strategies and process patterns that circumvent political impasses, referred to collectively as subterfuge or escape routes.¹ Subterfuge then consists of policy strategies and patterns that ‘make Europe work’ against the odds of the given institutional conditions and the enormous diversity of interests. It not only comprises deliberate strategies, such as the creative use of institutional channels, windows of opportunity, elements of surprise and ‘a policy of

¹ For the analysis of subterfuge or escape routes from decision-making traps in sub-state negotiations among the German *Länder*, see Benz (1992).

stealth' (W. Wallace 1996) to accommodate diversity and bring about policy change in the face of a probable decision-making deadlock, but also evolves from the overall structure of the European polity. It is this 'logic of diversity' (Hoffmann 1974) which initiates a spontaneous acceleration of policy-making by regulatory competition and mutual learning. I claim that the emergence of such escape routes has indeed become second nature to European policy-making in all its interlinked arenas, and examine the reasons why such patterns emerge in specific policy domains, and how they contribute to the three crucial functions of a polity: the accommodation of diverse interests; policy innovations; and democratic legitimation.²

First, how are the wide variety of interests, regulatory modes and cultures in Europe accommodated in the formulation of policy? European policy-making is heavily conditioned by this fundamental variance of political, geographical, cultural, institutional and economic features. And it is this diversity that must always be taken into account when policies are shaped, making the reconciliation of unity with diversity and competition with co-operation the greatest challenges currently facing European policy-making (Majone 1995). Given this striking degree of divergence and consensual decision-making practices, how are potential policy-making deadlocks avoided, and what policy solutions are being used to cope with diverse sectoral, regional and local circumstances?

Second, how can policy innovations be brought about in a rapidly changing environment alongside the need to make compromises between conflicting goals?³ The institutional conditions of European policy-making – consensual decision-making despite the existence of the Qualified Majority Rule (QMR)⁴ – would seem to favour the *status quo*

² The central functions carried out by political systems are the aggregation and accommodation of diverse societal demands addressed to decision-makers, policy formulation and the production of democratically legitimised decisions by a legally responsible and democratically accountable government.

³ Policy innovation is defined as the establishment of: (a) a new European policy area; and (b) the introduction of a new problem-solving approach linked to new instruments in an existing European policy and/or the significant widening of the latter.

⁴ Although decisions may be taken on the basis of a qualified majority in the Council in many policy areas, it is interesting to note how seldom this rule is actually used. Of the 233 decisions regarding the integrated market taken by the Council of Ministers over a period of five years, only ninety-one were enacted against opposition from one or two member states (*Financial Times*, 13 September 1994). One can argue that the very existence of QMR, as a 'shadow of hierarchy', will speed up the decision-making process (Scharpf 1997a), but this factor alone does not explain the frequent recourse to subterfuge.

and decisions based on the lowest common denominator.⁵ Yet European policy activities have expanded steadily, and, at times, innovatively, over the years. One should not forget that the Community which emerged from the Treaty of Rome set out to resolve *precisely* those problems of interdependence that could not be dealt with by member states on their own. The question therefore arises as to which factors, process patterns and actor strategies promote policy innovation.

Finally, with the expansion of the scope of European policy-making, what attempts are being made – within the tight institutional boundaries of unanimity – to find new forms of democratic legitimation? First, parallel to the discussion on how to strengthen the role of the European Parliament and to enhance traditional forms of democratic legitimation which have been taking place in the last Intergovernmental Conferences (IGC), another development has gone largely unnoticed. Given the stalled institutional reform process, the Commission has taken a number of small – yet important – steps to expand public support for existing European policies. Moreover, an increase in accountability may actually be derived from Europe's very diversity and the watchfulness among member-state actors (Héritier 1999).

In seeking answers to these questions regarding interest accommodation, innovation and legitimation I hope to gain new insights into the dynamics of European policy-making to complement the existing explanatory approaches of European politics. Thus, while the formal institutional rules – which have been amply described – form the context in which these policy patterns develop, they do not entirely account for them. Although existing theories of European integration, such as neo-functionalism (Haas 1990), and liberal intergovernmentalism (Moravcsik 1993), go some way toward discerning the important features of European policy-making and point respectively to 'spill-over' processes and the weight of member-state bargaining, they only offer partial insights into the dynamics of decision-making in specific policy areas.

In order to examine patterns of policy-making I have selected policy areas,⁶ grouped according to specific analytically meaningful problem-types that offer initial clues to policy-field-specific processes. The policy

⁵ The 'race to the bottom' is not a dominant result of European regulatory policy, such as in the field of environment. What is more common is a tendency to a medium level of environmental standard-setting (Golub 1996).

⁶ The analysis is based on the author's empirical research in the fields of environmental policy (Héritier, Knill and Mingers 1996), and transport policy (Héritier, Kerwer, Knill, Lehmkühl, Teutsch and Douillet forthcoming, research project funded by the German Science Foundation). For the other policy areas examined here, the secondary analysis of empirical research has been used.

problems dealt with here are *market-making* in the sense of market creation such as the elimination of trade barriers (transport and telecommunications policy), the provision of *collective goods* by reducing negative externalities (environmental policy), and market-correcting *redistribution* (regional and social policy) and *distribution* (research and technology policy).⁷ This schema allows us to relate problem-types to different strategic interest constellations (Scharpf 1997a), and provides an initial indication as to the 'why' of deadlock situations. For, depending on whether an actor anticipates gains or losses from a given policy, he or she will support or oppose those same measures. But beyond the immediate material gains and benefits, two other aspects come to bear on the political decision-making process. First, the institutional implications of a policy proposal affect the *position* of actors concerned. The latter will ask themselves: 'Will I gain or lose decision-making powers if a specific policy is adopted?' Furthermore, in a diverse polity, conflicts are shaped by the possible costs of instrumental adjustment generated by a decisional proposal, so that policy issues entailing substantial administrative adjustments because of the need to fit new instruments into the traditional toolkit will tend to produce a negative reaction on the part of national actors.

Thus, the four basic problem-types, which provide significant information about the stakes of the actors in the policy areas examined, constitute a point of departure in analysing the plausible cleavage structure. These cleavages interact with two additional conflict lines – the maintenance of decisional powers, and the avoidance of instrumental adjustment – which also play a role in the policy formulation process at the European level. The different dividing lines are interwoven, so that, for example, a change in institutional decision-making rules may be sought to increase specific economic gains (Tsebelis 1990), or the use of a particular instrument may serve specific economic interests.

The first of the two central claims made in this analysis is that – under the given institutional conditions, and taking into account European diversity – redistributive conflicts along the three conflict levels –

⁷ An aspect which complicates the analysis of policy areas is that many policies do not have a single problem property, but combine aspects of market-making, the provision of collective goods by reducing negative externalities, or market-correcting redistribution and distribution. Thus, market-making problems also imply redistributive elements when it comes to the distribution of the large-scale gains obtained by market integration. The same holds for collective good problems that involve a redistribution of costs when the negative external effects of an activity are sanctioned. Consequently, in analysing empirical policy fields, there may be a need to focus more narrowly on the dominance of a specific cleavage at a particular point of time within the policy field.

economic, decisional and instrumental – abound in European policy-making and will tend to stall the decision-making process. Frequently, the prospect of conceding economic resources or decision-making powers, or incurring the costs of instrumental adjustment, will induce European policy actors to reject new policy measures. The second central claim is that, were it not for the existence of formal and informal strategies and policy-making patterns triggered by the dynamics of diversity, a decisional deadlock between promoters and opponents would almost always ensue.

The argument is developed in the following steps: Chapter 2 examines the wider context of policy-making by escape routes in the European Union;⁸ in Chapter 3 the analytical approach and theoretical background underlying the analysis are outlined; Chapters 4 to 7 analyse the patterns of interest accommodation, policy innovation and substitute democratic legitimation in market-making policies, the provision of collective goods, and market-correcting redistributive and distributive policies respectively; and the final chapter draws comparative conclusions and raises the question of the overall implications of subterfuge for the European polity.

⁸ The term 'European Union' or simply 'EU' has generally been used in place of 'European Community' or 'EC' throughout the book, except when referring explicitly to the pre-Maastricht era.