

Chapter 7

Delegation to the EU: Participation *versus* Efficiency in German EU-Policy

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1. Introduction

In the political space of the European Union we can distinguish between the levels of national and EU politics. From the perspective of nation-state governments, domestic preferences or interests need to be first delegated to and then negotiated at the EU level. This process itself represents a considerable challenge of cross-linking several different arenas within the European political system. In some member states, notably in Germany, a federal structure of the nation state adds a further dimension of political action. Against the background of this multi-level-system, the process of delegating domestic demands to the EU level is a particularly complex exercise of steering politics. An enquiry into the ways in which the involved delegation networks respond to societal needs and expectations is therefore able to produce valuable insights into the overall question of this volume, namely how governments seek to generate legitimacy for their policies and for themselves. In this chapter, German EU delegation will be analysed as a case study for legitimacy generation in the EU context. It will be demonstrated that two dominant strategies have evolved to secure legitimacy: actor inclusion and policy effectiveness/efficiency. Yet, contrary to what Dahl's famous dilemma of participation and effectiveness may suggest (Dahl 1994), the two strategies are not mutually exclusive but even seem to imply each other.

In the EU, the character of democracy is peculiar. Nowadays, minimum standards of democracy are firmly established almost all over Europe, and most certainly throughout the EU. Several years ago, when the formula of the 'ever closer Union' dominated not only the preamble of the Maastricht Treaty but also many expectations about the future dynamics of European integration, nation-state democracies seemed to be very close to a

conversion. Dahl (1989) speculated about a 'third transformation' of democracy beyond the nation state. With some blend of idealism, authors like David Held or Ernst-Otto Czempiel proposed models in which national sovereignty was given up in favour of a 'world domestic policy' (Czempiel 1998) or transferred into a 'cosmopolitan model' of democracy (Held 1995). The capacity of nation-state democracy to deal with problems beyond the national territory seemed limited. Thus, national democracy was theoretically expected to be superseded by a model in which regional issues were to be tackled by regional institutions and global issues by global institutions. Yet, as we know after the constitutional process, for the time being even the European Union, the world's most integrated regional organization, stopped short of merging into a new democracy on a higher, transnational level. Because of the limited success of transnational democracy, political actors in the European polity still have to refer to the procedures of the nation state when having to cope with transnational problems.

The EU is not a democracy but consists of nation democracies, and these national political systems need legitimacy in order to survive. Seymour M. Lipset once described legitimacy as a concept closely linked to the ability of a political system to create those institutions which are adequate for a society (Lipset 1960: 64). If we follow the definition, open societies that are ruled democratically link legitimacy to participation, transparency, and accountability. These are elements of democratic regimes which have evolved in a long struggle of parliaments against executives (Friedrich 1953) and of publics against the political sphere as a whole (Habermas 1962). If democracies want to remain stable, their political processes furthermore need to produce outcomes which relate positively to societal expectations and to the resources used. In short, political actors in a democracy have to secure their legitimacy through both participation and effectiveness. Early political system theory (Easton 1965) as well as more recent research (Fuchs 1989; Dalton 2004) tell us that none of the two dimensions may be neglected in the long run without serious consequences for the political regime.

With regard to the EU as a 'political system' (Lindberg and Scheingold 1970; Hix 2005), a specific relationship of politicians' quest for effectiveness and participation has been identified. By distinguishing between the two dimensions of input and output legitimation, Fritz Scharpf has shown that EU level actors are by far more able to seek support through providing output than by including citizens, groups, or parties into the European political process (Scharpf 1999). Efficiency and effectiveness in output delivery can therefore be regarded as major goals of EU political practice.

The strengthening of input legitimation, on the other hand, is confronted with serious obstacles: the lack of a common culture and language, which result in segmented European publics and an altogether weakly developed European identity (Giesen 2002; Kastoryano 2005). If the political actors of

the EU want to secure legitimacy, they have to rely almost exclusively on the output side of the political system. Of course, this does not mean that the dimension of input legitimacy is completely absent from EU politics. But it remains closely tied to one particular level of the system: the nation state. Except for the members of the Commission, almost all important EU political actors are seeking re-election in their national constituencies. Altogether, the EU political system is therefore characterized by a preponderance of the national level with regard to input legitimation, and by a competition of arenas with regard to output legitimation: actors that mainly draw their legitimation from domestic sources have the choice of placing outputs on either the national or the European level.

The aim of this chapter is to shed light on the challenges EU related national policy makers have to confront in trying to secure the different categories of legitimacy. I use the arena of the delegation of German demands to the EU; a process that is sometimes also called EU policy coordination (Kassim et al. 2000; Kassim et al. 2001).¹ It takes place on two levels, namely within national government and in the arena of negotiation in Brussels and other EU capitals. The major finding that will be revealed is that strategies of effectiveness and efficiency achievement have been implemented in addition to steps to improve the inclusion of relevant institutions for the gathering of societal demands.

In the context of the whole volume, a study on the practices of EU delegation represents a special case because of the exceptionally complex nature of decision-making. Three different layers of complexity need to be distinguished (also see the introductory chapter in this volume): complexity with regard to different levels of decision making, i.e. generating legitimacy under conditions of multi-level governance; complexity of institutional structures and organisational procedures within national governments, i.e. distribution of decision making competencies between various government branches; and complexity as a quality of the issues which are being negotiated and implemented. The conclusion will offer a tentative assessment of the extent to which these problems of complexity are the underlying cause of the difficulties of legitimacy generation in a transnational setting.

2. Legitimacy attainment in the EU multi-level system

The concept of legitimacy has been of major concern for the theoretical

¹ Delegation seems the more adequate notion when questions of legitimacy are concerned (as opposed to the organizational focus of the literature on EU policy coordination). Delegation is about the delivery of demands, and the EU-level actors of a national government will be judged by the extent to which domestic demands are eventually fulfilled).

branch of political and social science. However, this is barely reflected in the existing theory of European integration which focuses much more on the foundations, reasons and driving forces of integration than on the relationship between the governing and the governed (see Rosamond 2000; Wiener and Diez 2004). In fact, Rosenau's verdict of 'governance without government' (Rosenau and Czempiel 1992) made it difficult even to distinguish the two entities which are supposed to be interlinked by the concept of legitimacy. Where the distinction has been made, the thesis of the 'third transformation of democracy' led social theory to invocations of a European unity on the societal level that, at least at present, hardly exists in reality (Beck and Grande 2004; Delanty and Rumford 2005). The weak basis of legitimation for European actors translates into a systematic burden on the legitimacy of two regimes: The nation state is losing support because the problems national politicians are facing are hard to cope with, and the EU is facing poor acceptance because its decision making processes seem inaccessible and fail to enable national politicians to deliver the results demanded by their respective publics.

At this point, the differentiation between input and output legitimation can be used instructively. As regards the input side, Dahl (1971; 1994) has described democracy as a matter of participation, with the size of the territory determining the potential for effective participation. Sartori (1987) and Tsebelis (1995) have argued along similar lines when relating the size of representative bodies to their potential to include many group representatives with decision-making capacity. Hence, their variable of reference is inclusion. These considerations show that in the democratic nation state normative elements of *how* to reach decisions are political aims in themselves. Notably participation and inclusion are necessary conditions of acquiring democratic legitimacy.

When turning to a transnational regime, however, things look differently. Transnational regimes pursue aims that are to a much lesser extent linked to the input dimension. NATO, for example, was founded to increase security in Europe and elsewhere, and the European Community aimed at economic prosperity. The governments which founded these transnational organisations allowed for assemblies rather than parliaments, and in the case of the EC/EU the European Parliament had to struggle for decades to play a significant role in European decision-making. Up to the present the EP can only add suggestions on the basis of a Commission proposal; it is designed primarily as a preventive power. On this basis, the EP's legitimation basis has to compete with that of the Council and is therefore both in empirical and normative terms heavily circumscribed. Thus, at the level of EU politics participation and inclusion are much weaker features of democracy than is the case in nation states.

In itself, this does not represent a normative problem as long as the

democratic legitimation of the remaining actors in the game is upheld. However, this is exactly one of the dimensions where the democratic deficit of the EU is rooted. The input functions which are not fulfilled by the EP and the European public are absorbed by the executives of national governments who, mainly in the Council, negotiate the output of the EU. In practical terms many of the elements of nation-state democracy like control, transparency, or openness therefore suffer from an executive overweight in EU decision-making. The inclusion of national interests or demands into the EU political system in fact marginalises exactly those institutions which are responsible for the inclusion of societal interests into national politics, namely parties and (national) parliaments. All this makes the inclusion of societal interests into EU politics extremely complex and in many respects unable to meet democratic standards.

Legitimacy is, of course, also attained through output legitimation. In the EU system, however, the delivery of demanded outputs is not only constrained by limited resources, a factor which political actors in any regime have to live with. Furthermore, the complexity of the multi-level system limits the potential for efficient policy-making. In public policy, the politics of efficiency has been defined as 'the process by which diffuse, ill-organized, broadly encompassing interests sometimes succeed in overcoming particularistic and well-organized interests' (Majone 1996: 620). The definition puts efficient policy-making into a context of a specific set of policies, namely those with an 'aim (...) to improve (with respect to the status quo) the position of all, or almost all, individuals or groups in society' (ibid.: 612). Efficient policy-making in this way is a 'key criterion of public policy making (...) Administrators should combine ethical discourse and policy analysis to make decisions that are substantively correct as well as democratically legitimated' (ibid: 613).

While efficiency therefore stands for the relationship between resources used and the public good achieved, the term needs to be distinguished from the notion of effectiveness (see Blühdorn 2007). The latter has a stronger focus on pre-defined goals of actors – the more goals one achieves, the higher the level of effectiveness. Effective policy-making presumes an institutionally determined political space in which decisions are undertaken (and their implementation assured) in order to reach goals which have to exist as a necessary condition. Wright (1996: 165) has reminded us that looking merely at the 'machinery' of a delegation process is not enough for judging its efficiency; at the same time policy objectives have to be taken into consideration.

In the output dimension, policy actors aiming to gain legitimacy have to take account of both efficiency and effectiveness. This needs to be done against a background of complex interests and demands. Interest settings in the EU vary from policy field to policy field and from institution to

institution. The differing goals in the system make the same procedure appear efficient or inefficient depending on the point of view. Proposals by the Commission are often linked to national or sub-national interests that inform the proposition or at least the negotiated changes which are the subject of EU policy coordination. Goal attainment in EU delegation thus bears a competitive element: what may be effective for German officials may not be efficient for British officials at all.

However, regardless of the issues discussed all actors in the game do usually have a common interest in saving time and other resources. Therefore, attaining efficiency and effectiveness in EU delegation inevitably bears a target conflict. Goals usually bear a pan-EU dimension – otherwise a policy area would not have been incorporated into EU policy making but would have remained under national auspices. Where transnational goals have been achieved, they can be translated into measurable legitimacy only on the nation level. This makes the transnational level very dependent on the national one. If no sufficient output is achieved, the EU level's legitimacy is damaged. If output is satisfactory with regard to demand, it is the national level which controls how much legitimacy is ascribed to transnational actors. Of course, there will always be a tendency that national actors – seeking for re-election – will claim as much legitimacy as possible for themselves.

Are there formal or informal rules for the allocation of legitimacy in the EU? From the beginning of EU integration, member state governments opted for a double strategy of routing legitimation. On the one hand, the Commission and the Court of Justice were equipped with autonomous sources of legitimation. They were given the function of 'guardians of the treaties', and as institutions they were able to monitor and enforce the member states' compliance with the general rules of the treaties. Also, the growth of European parliamentarism – the first direct elections in 1979 as well as the continuous upgrading of the co-decision procedure – can be seen in this line. On the other hand, national governments were keen to keep the final power of decision to themselves. The deepening of integration was pushed forward on intergovernmental conferences, mostly without any participation from societal groups or parties. Despite the growth of majority voting, consensual decision-making survived in the form of the Luxembourg compromise.

There are two kinds of problems with this structure. The first has been picked up by Fritz Scharpf: the over-reliance on output-legitimation. The second has been dealt with to a lesser extent (see, however, Wessels et al. 2003). It is the shift of legitimacy generation at the national level from the legislative towards the executive. National parliaments only come into the process of European decision-making at a stage where the capacity to induce substantive changes to pre-drafted legislation is heavily restricted. According to the Nice Treaty, national parliaments possess competencies in three areas:

Kommentar [TB1]: Dieser Satz steht jetzt etwas verloren im Raum und ist für die Argumentation nicht sehr wichtig. Weg damit!

ratification of treaty revisions and accession decisions, the conversion of directives into national law, and the adaptation of national orders as a consequence of regulations.² All three forms of authority have reactive character.

This means that acquiring legitimation is quite difficult for parliamentary actors. In the nation-state model, political parties, interest groups and national parliaments contribute to input legitimation to a great extent. Due to the structure of EU policy-making, in the EU regime this function is largely transferred to the main actors of the EU policy cycle: the Commission and the Council. On the input side, these two institutions may open up to group pressure in the pluralist sense that voicing particular interests in the end helps rationalise decision-making as a whole. Their nature however barely allows for making interest articulation or aggregation transparent. As bureaucracies, their main intent continues to be to produce effective decisions regardless of the way in which these decisions have been generated (as is well known from the sociology of organisations, see Crozier and Friedberg 1977; Weber 1980; Michels 1989 (1908)).

Altogether therefore, participation/inclusiveness and efficiency/effectiveness become issues in EU delegation in ways that differ from national regimes. The input dimension of EU regime legitimation is for contextual and institutional reasons underdeveloped. National delegators can do little but to make sure that technical processes are running smoothly in order to affiliate group or sectoral interests with those parts of the European executive (Council and Commission) which are ready to include them in one way or another. The output dimension of EU regime legitimation is not as underdeveloped but suffers from imbalances as well. In comparison to transnational organisations less sophisticated than the EU, actors need to pay much more attention to the internal structure, i.e. the parliamentary institutions which possess autonomous legitimation sources. The legitimacy of the EU regime thus rests to a considerable degree on the management of the procedures leading to outputs on the EU level. Legitimacy is attained through output legitimation, and high levels of output legitimation depend highly on the efficiency and effectiveness with which national interests or demands are collected, catalyzed, and transposed into EU decisions.

2 The ratification of treaty revisions follows from the international law character of the TEU and the TEC but are also put down in art. 48 TEU. Accession ratification is regulated by art. 49 TEU. The rules concerning directives and regulations are in art. 249 TEC.

3. Case study: EU delegation in Germany

The principle inherent to German government organization is departmental responsibility (*Ressortprinzip*) which usually leaves much independence to the ministry in charge of any particular piece of legislation. The role of the administrative delegation units therefore is to ensure a smooth transmission of departmental positions and instructions to the Brussels arena and to the relevant German actors there. When trying to reach solutions by taking over the function of interest aggregation, EU delegators in the German system have to deal with three structural domestic conflicts:

- *Political* conflicts including not only disagreements between government and opposition forces in the Bundestag but also conflicts within coalition governments which appear at times even more severe;
- *Societal* conflicts which evolve between interest groups or between one interest group and non-organized interests of society;
- *Federal* conflicts which emerge between the Länder and federal government in the many policy areas where both levels share competence.

This conflict structure which is more complex than in other big member states like France or Great Britain (Kassim 2000; Menon 2000), is dealt with in the 'iron triangle' of the Foreign Office (Auswärtiges Amt, AA), the Ministry for Economic Affairs (Bundesministerium für Wirtschaft und Technologie, BMWi) and the Chancellor's Office (Bundeskanzleramt, BK). Within this triangle, the AA is responsible for preparation of the more political and 'general' committee COREPER II which does the preliminary work for the General Affairs and External Relations Council and therefore also for the European Council. The BMWi deals with the more economic and 'technical' COREPER I.³ The BK only gets involved in situations where the Chancellor has to use his/her guideline competency (*Richtlinienkompetenz*) to avoid conflicts getting out of hand or to make political use of his/her capacity to intervene. However, as domestic political issues in German politics often interfere with coalition politics, involvement of the Chancellor is a sensitive task and therefore not used very frequently.

In view of this at times confusing structure, many judgements on the country's EU delegation mechanisms have been rather dismissing in the past. Several authors have pointed to the great extent of fragmentation and over-hierarchisation of German EU coordination, leading to imprecise inputs,

3 COREPER = Committee of Permanent Representatives. COREPER I deals with questions of the Internal Market; COREPER II covers institutional, financial, and trade policy as well as matters traditionally related to the second and third pillar, that is Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA).

tardy proposals and incoherent position taking (Regelsberger and Wessels 1984; Wessels and Rometsch 1996; Bulmer et al. 2001; Sturm and Pehle 2006). Some judgements are more benevolent in stating that many problems of coordination have to be attributed to Germany's complex internal structure rather than to the delegation procedure itself (Maurer 2003). In other words, while there is agreement on the existence of efficiency problems, these are sometimes excused by the requirement to include many different demands into the delegation process.

In recent years, however, the German EU delegation process has undergone steps of considerable efficiency enhancement (Beichelt 2007a; Beichelt 2007b).⁴ Within the delegation system, two important institutional reforms have been implemented in recent years in order to enhance effectiveness and overcome the shortcomings of a system which for cultural and constitutional reasons has been rather fragmented: firstly, the creation of a dedicated coordination unit and, secondly, the establishment of a Parliamentary State Secretary with coordinating function. As regards the first reform, policy makers in the Foreign Office separated in 1999 the two tasks of providing general guidelines for European policy and of organizing the delegation process. The coordination unit (named 'E-KR', 'E' standing for the European Affairs division, 'KR' for *Koordinierung*) is directly responsible to the head of the European Division who in turn is one of the highest-ranking officials in the ministry. This affiliation equips E-KR with considerable trouble-shooting potential and makes the unit an active player, whereas the related unit in the Economics ministry is more restricted to a relay and information function.

As regards the second reform, the coordinating Parliamentary State Secretary was established in 2002. Since then, the most important Committee of European Affairs State Secretaries (EStS) has been coordinated by a Parliamentary State Secretary, a position that is called *Staatsminister* in the Foreign Office. When the reform was first implemented, Chancellor Gerhard Schröder gave further significance to the process by nominating Hans Martin Bury, former Parliamentary State Secretary of his own Chancellor's Office, to this new position. As a result, Germany did much better in implementing EU legislation in the years that followed. Despite the complexity of the process, the goal of timely preparation, deliberation and decision-making was most generally achieved.

Beyond enhancing effectiveness and efficiency, a further aim of the reform was to bring parliament – especially the lower chamber, the

4 The findings of these two texts are quite different from those of most other recent literature on the topic (e.g. Bauer et al. 2007; Große Hüttmann 2007). Whilst the latter rely on the study of secondary literature (including some fairly old sources), my own results are based on an extended period of research within the Auswärtiges Amt during 2005/06 (participant observation and interviews).

Bundestag – closer to EU affairs. Martin Bury had been a parliamentarian since 1990, with intermediary leading positions within the SPD faction of the Bundestag. Bringing such a person into the ‘administrative’ delegation process was intended to make the inclusion of the parliamentary arena into the core of EU delegation possible. This objective, however, was not really achieved. While a strong chair of the EStS Committee is good for internal coordination, it makes the body a competitor to long-established decision-making centres within both the leading and the coordinating ministries. In doubt, the delegation bodies would lean towards these regular structures – for example, regular State secretaries – to whom they will be nominally responsible if serious conflicts emerge. Moreover, if conflicts between parliament and government arise, these are more likely to be brought to the Cabinet via the leaders of the parliamentary party factions than through a medium-level Committee. Therefore, the head of the EStS can only secure his power when he aligns with the executive, which means upholding parliament’s distance to EU matters.

Still, in other fields parliament has been more effective in securing its interests. The German constitution (articles 23 and 45) grants consultative and participating functions (*mitwirken*, Art. 23) to both chambers of parliament. For many years, this right existed exclusively on paper, partly because of a limited cooperation attitude by the government, partly because of the self-understanding of many national parliamentarians (Hölscheidt 2001; Töller 2004; Auel 2006). In 2005 and 2006, however, with the EStS experiment not producing the expected results, further reform steps have been taken to empower the Bundestag: An inter-institutional agreement between the Bundestag and the government ensures that the parliament is informed on all government initiatives at the EU level (Schäfer et al. 2007). Moreover, the Bundestag has established an own office in Brussels, enabling the parliamentary party factions to formulate their particular positions on EU issues at a much earlier stage (Hölscheidt 2008). The office does not aim to feed Bundestag positions into pre-council decision-making in Brussels. Nevertheless, its mere presence is a signal to all EU institutions that a transposition of any EU directive will be linked to the preferences of the German Bundestag. In that sense, the Bundestag has managed to enhance its inclusion into the EU delegation process at least to some degree.

4. Lessons from German EU delegation reform: The compatibility of inclusion and efficiency strategies

In his 1994 article Robert Dahl hypothesized an inverse relationship between ‘system effectiveness’ and ‘citizen participation’ in transnational regimes

(Dahl 1994). Dahl's theoretical expectation was that the enhancement of effectiveness would inevitably impair inclusion; the two aims were essentially regarded as irreconcilable. In a way modifying Dahl, the terminology of Fritz Scharpf (1999) puts a weaker focus on the incompatibility of both targets. In his writings, input and output legitimation constitute different focal points of actor attention. In a context of limited resources, it may be difficult to enhance both; there is however no categorical reason why reaching input and output legitimation at the same time should be impossible.

The example of German EU delegation has shown that strategies of increasing both efficiency/effectiveness and participation/inclusion are not only reconcilable, but follow a logic of appropriateness of the institutions involved in the EU political system. On the domestic level, national parliaments are the most important legislative decision-making institution. There is no reason to expect that in the multi-level system they willingly surrender that role. Nominally, big parts of EU legislation go to the Council of Ministers, and therefore to national governments. Still, these governments depend on domestic parliaments who exert a control function regardless of the number of levels involved. Therefore, governmental strategies of enhancing efficiency and/or effectiveness will sooner or later trigger a response by parliament which has to keep an eye on input legitimation – which in a transnational regime is the only dimension a national parliament is able to keep control of.

What results is an interesting division of labour. The German government has tried to generate output legitimacy by adapting, institutionally, to the complexity of decision making in the multi-level system. On the one hand, the structure of German EU delegation shows that governments reach out to fulfil a core function of parliament, namely the aggregation of territorial interest. On the other, the Bundestag – more by trial-and-error than by proactive planning – has been keen to maintain its position as a major player in decision making in general. As is typical of legislative institutions, this concerns both input and output legitimation. Whereas the Bundestag cannot do much about outputs on the EU level, it evolves as an aggregation institution that potentially competes with the government. The change is in the relationship between government and parliament in affairs that are not exclusively domestic. Usually, parliament is expected not to challenge its own government in external affairs. Yet, the more parliaments define EU affairs as internal politics, the more likely are they to use their power to actively control government.

All this does not mean, however, that the quality of democracy as a whole is automatically upheld in a transnational regime. Two different institutions are formally responsible for decision-making on the different system levels: government on the EU level, parliament on the domestic level.

Even if the threats to system legitimacy emanating from this bifurcation have been detected, there is still no effective institutional mechanism for resolving conflicts between these competing legislative bodies. While some prominent EU issues – e.g. the directives for a European arrest warrant, for the service sector, or for the usage of chemicals (REACH) – have been discussed in German parliament and in public political debate, the transparency of the delegation system remains altogether limited. Most decisions are still prepared, taken and implemented by the executive which does not regard broad interest inclusion as a major goal. The control function of the legislative does exist but is curbed by the logic of coalition government and the Chancellor's guideline competency. Effectiveness is assured by a mechanism that favours administrative coordination to public deliberation. Due to the complexity of the system, inclusion often takes place on informal channels.

In sum then, the case study reveals that there is no necessarily negative correlation in transnational regimes between complexity and legitimacy. EU delegation stands in a paradigmatic way for the legitimation choices of political actors in a transnational arena. The institutions of the national and the EU level are closely interlinked, but European publics have only to a limited extent switched their attention to the new centre of political decision-making. This makes it possible for both the executive and the legislative to act within their traditional lines of action: government is responsible for the output, whereas parliament serves, beyond this, as an arena of interest aggregation and representative decision making. However, the problems of very long chains of legitimation remain, and so does the issue that the different forms of complexity which were distinguished in the introduction can negatively affect the representativeness of power. While the system has worked for the last two decades of deepening European integration, it has not yet proven its stability in situations of serious conflict in European political life.

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