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What Deficit? The Real World of EU Accountability

Chapter 1: The EU’s accountability deficit: reality or myth?

Mark Bovens, Deirdre Curtin, and Paul ‘t Hart

EU governance matters – a lot

This book rests on a simple premise: since European governance matters a lot in a growing number of domains, questions about how European governance should, could and is being accounted for, are increasingly salient. The contribution we seek to make is to shed light on how such accountability for European governance is presently organized, how it occurs in practice, and how such practices can be evaluated. Few active observers of contemporary politics and public policy in Europe will need to be convinced of the validity of our premise. But to be on the safe side, let us at least illustrate the scope and significance of European governance in a number of policy areas.

First, let us look at environmental policy. Europe’s nature is protected by two key pieces of legislation, the Birds Directive and the Habitats Directive. The latter obliges member states to maintain a number of designated habitat types and species at favourable
status at selected sites agreed with the Commission. Together with sites from the Birds Directive, these sites form part of Natura 2000, the biggest ecological network in the world. In total, the Natura 2000 network contains over 25,000 sites (Birds and Habitats Directives combined) and covers around 17 per cent of EU territory. The regulation makes it an offence to kill or significantly disturb protected species, or to accidentally damage or destroy their breeding sites and resting places. This applies even if such action is the result of an otherwise lawful activity. For example, if consent is given by the council to manage a tree protected by a tree preservation order, if there are bats in the tree while work was carried out, the person carrying out the work could be guilty of an offence, even though a tree consent had been given. Likewise, if planning permission was given for a site that included a pond containing great crested newts, if the pond was damaged by the building process, even though planning permission had been given, the site manager and person carrying out the work could be guilty of an offence.

The impact of these directives has reverberated throughout the member states, down to the local level. An example of this (in a long line of others) is that the Canary Islands regional government recently stopped the construction of a controversial port in Tenerife in an area protected by the Habitats directive, after a Spanish high court ruled the site could not be declassified to allow the project to go ahead. Moreover, at around the same time, the European Commission sent a final written warning to Spain for failing to comply with a
European court ruling on a Segarra-Garrigues irrigation project in Catalonia, which the court had ruled as being in breach of EU nature protection directives.

Clearly, when it comes to environmental protection, the Commission often takes a hard line in enforcing European policies, and member state governments at all levels cannot afford to ignore it. However, it occasionally also softens it stance – yet selectively so. For example, on 2 July 2009 it issued decisions addressed to nine member states (Austria, Belgium, Denmark, France, Germany, Greece, Hungary, the Slovak Republic, and Spain) concerning their requests for temporary exemptions in 94 zones or agglomerations from the EU's air quality standards for airborne particles (the so-called particular matters, PM 10, standard). Under the 2008 EU air quality Directive (2008/50/EC) member states may, under strict conditions and for specific parts of the country, extend the time for meeting the PM 10 standard until June 2011. The Commission decisions approved the time extensions for nineteen air quality zones in Austria, Germany and Hungary, yet they also contained objections to requested exemptions in all other zones.

We see European legislative and executive power at work here. From an accountability perspective, we want to know how this power is constituted, legitimated, and, above all, how it is being subject to checks and balances. Many questions thus arise. Who designed these directives? Who decided which areas to include and exclude from Natura 2000? To what extent were national governments and parliaments involved in this process? What principles does the Commission follow in policing member state compliance with these
directives? How does it make decisions? On what grounds does it grant exemptions? What, if any, possibilities do local and regional governments (who have to implement these decisions) have to influence or appeal them? To whom is the Commission accountable for its decisions, its exemptions and its formal and informal policing principles?

Let us look at a second area, competition policy. A Commission press release in April 2007 announced the following:

The European Commission has fined the Dutch brewers Heineken, Grolsch and Bavaria a total of €273 783 000 for operating a cartel on the beer market in The Netherlands, in clear violation of EC Treaty rules that outlaw restrictive business practices (Article 81). The Commission's decision names the Heineken group, Grolsch and Bavaria, together with the InBev group which also participated in the cartel. Beer consumption is around 80 litres per capita in The Netherlands. Between at least 1996 and 1999, the four brewers held numerous unofficial meetings, during which they coordinated prices and price increases of beer in The Netherlands. InBev received no fines as they provided decisive information about the cartel under the Commission’s leniency programme ... After the Commission, on its own initiative, uncovered a cartel on the Belgian beer market, InBev provided information under the auspices of the Commission's leniency policy that it was also involved in cartels in other European countries. This led to surprise inspections on brewers in France, Luxembourg, Italy and the Netherlands (European Commission, 2007).

This was just one of a range of high-profile, high-impact enforcement activities undertaken by the Commission. Another example is the long and bitter war fought with Microsoft. In February 2008 it fined Microsoft €899 million for abusing its dominance of the market. Small beer, some would say. But it sent a strong signal: in August 2009 it was announced that Microsoft had agreed to open up Windows to different Internet browsers in order to fend off
further European Union litigation.

Controlling competition between companies is an area where the EU is particularly powerful and where its decisions are clearly felt by European citizens. The EU's control over competition policy gives it the power to rule on mergers, takeovers, cartels and the use of state aid. The EU has been able to develop competition regulation into a key area of EU leadership. It has had wide success in imposing its vision of open market competition on member states and has a direct effect on European citizens' daily lives, with actions being taken against big names like Microsoft. Yet, it has also been criticized for going beyond its accepted remit and for pursuing a free market policy that might undermine parts of the social market model that has operated in many European countries. And so again, questions arise about the degree to which the Commission’s powers in this area are counterbalanced effectively by its obligations to account for its use of these powers.

The Commission is the best-known example of an EU institution exercising significant power vis-à-vis other governments and private actors. But it is by no means the only EU body that does. Some of the EU’s lesser known ‘back stages’, such as the comitology committees (Brandsma, 2010), and ‘outposts’, such as the European agencies (Groenleer, 2006, 2009; Busuioc, 2010; Busuioc and Groenleer, 2008) have perhaps less conspicuous but no less significant roles to play in shaping and implementing policies and decisions that bind the governments, businesses, and private citizens of its member states.
Take the comitology committees, who are a critical pivot in approving the implementation of European public policy. By the latest count (Brandsma, 2010) they number 233, covering a huge range of issues areas, and making sometimes momentous decisions. Brandsma (2010) recounts numerous instances, and describes how this decision-making proceeds. Let us look at one:

Two days before a meeting of one of the committees related to the seventh Research Framework Programme [for stimulating cooperation between and involving university and research institutes in member states, eds.], I met Sandra Tol and several of her colleagues – including people from executive agencies – at the Dutch education and science ministry in a pre-meeting. Lots of specific points were raised about the discussion papers that the Commission sent to them, mainly because they were unclear. They resulted in a short list of questions to be asked to the Commission. There were also discussions about a programme budget … that the committee was due to approve. Still everyone agreed that the Dutch could vote in favour of this programme budget anyway.

Sandra was joined to the actual committee meeting by a colleague from another ministry. The meeting consisted mainly of presentations. Two professors who had been contracted by the Commission to do a policy review had been invited to make a speech and there were several points where the Commission gave the member states an update of the latest developments. Finally, there was the official vote. As nobody replied to the question of the chairman ‘Do we have unanimity?’, this was taken as a vote in favour. The committee had just approved 57 billion Euros of public spending.

The example highlights not just the scope of comitology decision-making but also the multi-level nature of comitology committee governance. National public servants prepare for and attend meetings that result in decisions concerning the implementation of European programmes or legislation. National comitology members do not necessarily operate under much scrutiny from their hierarchical superiors, let alone the responsible ministers or the
national legislature. However, the European Parliament, which may have a much bigger interest in scrutinizing comitology processes, has very limited powers in doing so. Does this mean that comitology operates in the ‘grey zone’ of exercising public power without public accountability (Van Schendelen, 2006; Brandsma, 2007, 2010; Brandsma, Curtin, and Meijer, 2008)?

These examples and the questions they raise form part of a much bigger debate. As the EU has grown and size and as the shift of policy making competences from the national level to the level of the European Union has become more poignant in the last twenty years or so, debate about its alleged democratic deficit has become louder and more vehement. This debate has many dimensions and elements – far too many to discuss in one single study. This book focuses, therefore, on one particular aspect of democratic governance: accountability.

Proponents on both sides of the claim that Europe suffers from a democratic deficit do agree that one of the key indicators for the democratic quality of the EU is the extent to which both European and national actors who populate EU institutions can be – and are – held to account by democratic forums.
Aims and scope

Across the globe, accountability has come to be considered a hallmark of democratic governance (Mulgan, 2003). It should therefore come as no surprise that, as the European Union is turning more and more into a genuine polity (Van Gerven, 2005), issues of accountability have increasingly found their way onto the political and academic agendas (Bergman and Damgaard, 2000; Harlow, 2002; Arnell and Wincott, 2002; Curtin, 2004; Fisher, 2004). There is a growing concern that the shift from national, state-based policymaking to transnational and multi-level European governance is not being matched by an equally forceful creation of appropriate accountability regimes (Schmitter, 2000; Fisher, 2004: 496). Accountability deficits are said to be a key cause of the low public visibility and legitimacy of the EU (Scharpf, 1999; Arnell and Wincott, 2002: 1).

In the past years, much discussion has been focused on the relative merits of various proposals to institutionalize accountability in the complex, multilevel web of European governance structures. However, other than a few descriptions of existing formal accountability arrangements, there have been almost no efforts to describe and evaluate how existing accountability mechanisms regarding the major EU institutions actually operate. This study begins to fill that gap. It examines whether there are any accountability mechanisms at all, how they operate in practice, and whether they have the necessary ‘bite’. In shorthand: our aim is to assess if, where, and how, the EU suffers from an accountability deficit.
This book reports the findings of a major empirical study into patterns and practices of accountability in European governance. It is the product of a four-year project involving four senior and three junior scholars all affiliated with the Utrecht School of Governance of Utrecht University. It assesses to what extent and how the people that populate the key arenas where European public policy is made or implemented are held accountable. Using a systematic analytical framework, it examines not just the formal accountability arrangements but also describes and compares how these operate in practice. In doing so, it provides a unique, empirically grounded contribution to the pivotal but often remarkably fact-free debate about democracy and accountability in European governance.

In short, the present book does not contain yet another suite of general arguments about ‘democracy in Europe’. Instead, it seeks to make a much needed empirical contribution to these sweeping normative debates. It is the first study to systematically cover:

- how accountability is organized in and around the key institutions where European public policy is made and implemented;
- how these accountability arrangements operate in the day-to-day practices of European governance;
- how the current formal and de facto accountability arrangements can be evaluated.

With four empirical chapters each covering a pivotal EU institution - the Commission, its agencies, the Council, and the comitology committees - it shows that a web of form
accountability arrangements has been woven around most of them. However it also shows that the extent to which the relevant accountability forums actually use the oversight possibilities offered to them varies markedly. Some forums lack the institutional resources, others the willingness, yet others appear to possess both. In those cases where both are on the increase, as in the European Parliament’s efforts vis-à-vis the European Commission, fundamentally healthy accountability relationships are developing. Although ex post accountability is only part of the larger equation determining the democratic quality of European governance, this study suggests that at least in this area, the EU is slowly but surely reducing its ‘democratic deficit’.

Outline of the book

The next chapter situates the study within the ongoing debate about legitimacy and democracy in European governance. Deficits, both in democratic and accountability terms, are not self evident truths, they depend on perspectives. Different perspectives on the nature and purpose of EU governance will produce different deficits and locate them in different places. Chapter 2, therefore, provides us with the necessary lenses to evaluate the nature of the European project.
Chapter 3 sets out a conceptual framework for the systematic description and evaluation of accountability structures and practices in European governance. Few students of public accountability or European governance take the trouble of doing so. Much of the existing literature on accountability is high on big normative vistas, but low on conceptual consistency and empirical rigour. Chapter 3 instead provides a parsimonious framework for the analysis and assessment of accountability mechanisms. The next four chapters use this framework to analyse and assess the accountability regimes that have developed regarding the major institutions of EU governance.

Chapter 4 paints a picture of how political and administrative reforms in the Commission have altered the mechanisms and operation of accountability at the top of the European Commission. Drawing on documentary evidence of Commission accountability politics during the Prodi (1999-2004) and Barroso years (2004-present) and on more than fifty in depth interviews held with senior Commission officials during the Barroso years, the chapter shows how strengthened accountability mechanisms, changed role expectations and a shift in the dominant types of accountability feature the modernization of executive accountability at the apex of the European Commission.

The next chapter focuses on European agencies, the most novel and proliferating institutional entities at the EU level. Given the powers of these agencies and their impact on the implementation of European policies, the extent to which they are accountable becomes an increasingly important issue. The chapter zooms in on two key aspects of agency
accountability: managerial and political accountability. The investigation focuses on five European agencies: the European Aviation Safety Agency (EASA), European Medicines Agency (EMEA), the Office for Harmonisation in the Internal Market (OHIM), Europol, and Eurojust. The extensive insights into the practice of agency accountability are based on both documentary sources as well as over sixty expert interviews with agency practitioners and with members of the relevant forums holding them to account, such as members of the management boards, respondents from the Council structures and members of the European Parliament.

Chapter 6 evaluates the accountability regime for the European Council, the major arena for EU decision-making. The main difficulty for democratic accountability on European affairs is that decision-makers in the European Council wear two hats - they are both European and national leaders - and that there are two types of venues available for accountability - the European Parliament and the national parliaments. As a European leader, the European Council Presidency appears before the European Parliament (EP). As national and European leaders, they might be held to account by the various parliaments of the member states. This chapter reports on a qualitative analysis of parliamentary sessions in which the European Council Presidency appeared before the EP, and the Dutch delegation to the European Council appeared before the Dutch parliament. The selected parliamentary debates took place immediately after a European Summit in which a new Treaty was negotiated or in which the European response to a crisis was discussed.
Chapter 7 focuses on the comitology committees which concern themselves with the implementation of European policies. In total, about two-thirds of all implementation measures first passes through comitology. Several hundreds of these committees exist, and their competences range from juridical aspects of cableways to preventing animal diseases. They are composed of civil servants from the member states who are specialized in the topics under discussion. The chapter analyses who, if anyone, monitors and assesses their performance and to what extent the current accountability regimes and practices in this area of EU governance are appropriate. It uses new survey and interview data collected from Dutch and Danish participants of 225 active committees, and their direct superiors.

The final chapter recapitulates and compares the main findings of the empirical studies reported in chapters 4-7 in light of the analytical frameworks set out in chapters 2 and 3. Based on this analysis, it goes full circle and examines this study’s implications for the ongoing debates about the alleged ‘accountability deficit’ in European governance. It concludes by setting out areas for future research as well proposing areas of institutional development and reform that should be considered as the EU moves towards further integration.