



INFORMAL GOVERNANCE IN THE EUROPEAN UNION

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Informal Governance in the European Union

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Abbreviations

BCC	Biotechnology Coordination Committee
BEPG	Broad Economic Policy Guidelines
BRIC	Biotechnology Regulation Inter-service Committee
BSC	Biotechnology Steering Committee
BSE	bovine spongiform encephalopathy
CAP	Common Agricultural Policy
CEEC	Central and Eastern European countries
CEER	Council of European Energy Regulators
CIE	Committee of Independent Experts
CIS	Commonwealth of Independent States
Comagri	European Parliament Agriculture Committee
CNJA	Centre National des Jeunes Agriculteurs
COPA	Comité des Organizations Professionnelles Agricoles
COREPER	Committee of Permanent Representatives
CUBE	Concertation Unit for Biotechnology in Europe
DEFRA	Department for Environment, Food and Rural Affairs (France)
DETR	Department for Environment, Transport and Regions (UK)
DG	Directorate-General (of the European Commission)
DoE	Department of the Environment (UK)
EBRD	European Bank for Reconstruction and Development
EC	European Commission
ECB	European Central Bank
ECFIN	Economic and Financial Affairs
ECJ	European Court of Justice
ECPR	European Consortium for Political Research
EEC	European Economic Community
EEIG	European Economic Interest Groups
EFC	European Farmers' Coordination
EMBO	European Molecular Biotechnology Organization
EMU	Economic and Monetary Union
EP	European Parliament
EPC	European Political Cooperation
ESCB	European System of Central Banks
ESF	European Science Foundation
EU	European Union

EUI	European University Institute
EURATOM	European Atomic Energy Community
FNSEA	Fédération Nationale des Syndicats d'Exploitants Agricoles
IAEA	International Atomic Energy Agency
IG	informal governance
IGC	intergovernmental conference
ILO	International Labour Organization
IMF	International Monetary Fund
MEP	Member of the European Parliament
NOW	New Opportunities for Women
NGO	non-governmental organization
OECD	Organization for Economic Cooperation and Development
OLAF	Organisation de la Lutte Anti-Fraude
OMC	open method of coordination
PHARE	Poland and Hungary Aid for the Reconstruction of Economies
R&D	research and development
RAMG	Regulatory Assistance Management Group
RSPB	Royal Society for the Protection of Birds
SAGB	Senior Advisory Group for Biotechnology
SEA	Single European Act
SGP	Stability and Growth Pact
TACIS	Technical Assistance for the Commonwealth of Independent States
TE	Telecom Eireann
TEU	Treaty of the European Union
TPEG	Twinning Programme Engineering Group
TSOG	Technical Safety Organization Group
UCLAF	Unité Coordinatif de la Lutte Anti-Fraude
UK	United Kingdom
UN	United Nations
WANO	World Association of Nuclear Operators
WENRA	West European Nuclear Regulators
WTO	World Trade Organization
WWF	World Wide Fund for Nature

Preface

This book originates from two impulses: the first analytical, the other normative. On the one hand is the difficulty of defining ‘governance’ (despite its widespread use) and of determining which phenomena are necessarily encompassed within it and which lie at or outside its boundaries. Our shared view was that some of the phenomena that can be frequently observed in connection with governance are not entirely accounted for by the current literature; hence the wish to fill this gap. On the other hand is the feeling that some of the phenomena frequently observed in connection with governance are somehow ‘disturbing’ – that they represent more than just an extension of the activities and relations that we would legitimately associate with the act of governing. This double impulse prompted prolonged conversations among the contributors of these chapters which resulted in the reflections contained in this book.

European Union (EU)-level policy decisions crucially depend on interaction among the institutions, individuals and groups which take part – at whatever stage – in the decision-making process. Yet which groups or individuals should be in or out is not determined by general criteria of competence, right, need or concern as would be those established by formalized systems of negotiation; nor is it entirely left to the interplay of interest groups in the ‘political market’ for lobby and pressure. Participation is rather determined by a haphazard mix of the above criteria, some reflecting the process through which representative forums are normally established, some corresponding to the mechanisms through which groups and individuals try to shape policy decisions, some again resembling the ways in which expert advice is sought in technically or politically sensitive matters, and some simply manifesting co-optation among closed circles of friends. While each of these mechanisms is at work (within established limits) also in national democracies, at the EU level they coexist in unknown proportions and perhaps within inappropriate arenas.

When there is a public debate on the criteria according to which participants in the decision-making process at the EU level should be selected, it often concludes that the key issue is that a compromise is achieved and the decisions thus reached are effective. The effectiveness of policy decisions thus produced is then inferred from the lack of overt challenge, and the legitimacy of the participants who produce such decisions is attributed to their contributing expert knowledge to the decision-making process. Even though one ought

to ask 'effective for whom?' and 'knowledge of what?', this is in fact the justification provided by much of the literature for the current system of European governance. Governance is thus often opaque, non-codified and, consequently, not publicly sanctioned – it is 'informal'.

The goal of this book, then, is to expose as systematically as possible the significance of informality in EU policy-making process. It aims at placing emphasis and drawing attention to the non-codified and non-publicly sanctioned aspects of contemporary European governance with the hope of stimulating a normative and positive debate on the ways in which we are governed.

The sustained conversations which led to this volume began in 2000, in Copenhagen, at the European Consortium for Political Research (ECPR) Joint Sessions. Simona Piattoni and Carolyn Warner had co-directed a workshop on 'Clientelism, Informal Networks and Political Entrepreneurship in the European Union' which attracted a number of highly provocative papers and prompted a stimulating debate. Participants expressed a desire to keep the conversation going – and so it was. During the year 2000/2001 the presence of several workshop participants at the European University Institute (EUI) in San Domenico di Fiesole helped to move the project forward. Over lunch in the canteen of the Badia, the decision was made to try to translate these conversations into an edited book. A successful application for further funding was made to the European Union's Fifth Framework Programme (Key Action 'Improving the Human Potential'), and the resultant grant no. HPSP-CT-200160018 from the European Commission facilitated a number of editorial meetings and the organization of a conference, once again at the EUI in June 2002, where draft chapters of the book were presented and discussed.

We would like to thank Yves Mény and Helen Wallace at the EUI for facilitating our stay at the Institute, Kathinka Espana, Monique Cavallari and Serena Scarselli at the EUI for their role in the organization of the conference, Susanne Kempe at the Jean Monnet Centre in Aberystwyth for editorial assistance and Aris Apollonatos at the European Commission for his support and assistance throughout the course of the project. Finally we thank all the contributors for their cooperation, submitting drafts and final chapters on schedule, responding quickly and thoroughly to any questions and requests for revisions, and for accepting on occasion intrusions into their texts from the editors. We hope that the final product will stimulate further normative debate and empirical research into those informal aspects of European governance that are ever-present but frequently lost from academic analyses.

*The Editors,
Aberystwyth and Trento, March 2003*

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1. Informal governance in the European Union: an introduction

**Thomas Christiansen, Andreas Føllesdal and
Simona Piattoni**

INTRODUCTION

The study of European integration tends to focus on formal aspects of the integration process: formal decision-making procedures, the role and functioning of institutions, the provisions contained in the treaties, the operation of regulatory regimes in the various policy areas. This is hardly surprising: what is distinctive about the integration process in Europe – what distinguishes integration in Europe from international cooperation in other parts of the world – is the creation and growth of a unique institutional and legal framework structuring the relations between the participating states.¹ An early and still important contribution to the understanding of the integration process has been the ‘integration through law’ school which regarded the development of a supranational legal order as the key factor in the explanation of the integration process (Cappoletti et al. 1986).

If the formalization of interstate relations is regarded as the essence of the integration process, it is hardly surprising that scholars should concentrate on the formal procedures and the institutionalized arenas for decision-making. However, as has become increasingly evident in the course of recent developments in the European Union, there is an important undercurrent to the formal integration process. This concerns the operation of informal networks which link policy-makers to client groups as well as actors across EU, national and sub-national institutions, and influence (or at least seek to influence) decision-making in the EU. This practice of informal governance is, of course, not a recent phenomenon, but a long-standing dimension of EU politics. This is a recognition that has been reflected by some approaches to European integration: in particular the literature on policy networks and the new institutionalism writing of the 1990s have picked up on the less formal aspects of the EU policy process.² Nevertheless, informal governance has never been systematically studied and assessed: this is the void that this volume seeks to fill.³

INSTITUTIONS AND NETWORKS IN THE EU POLICY PROCESS

Informal governance may have been a long-lasting feature of the European integration process, but only recently has this had major repercussions for political debate in the European Union. In 2001, the European Commission published a White Paper on European Governance in which it made the case, *inter alia*, for a more structured relationship with civil society. The desire of the Commission to formalize its relations with interest groups and non-governmental organizations (NGOs) was in part a response to the allegations of nepotism that had arisen in previous years and ultimately led to the fall of the Santer Commission in 1999.⁴ Before looking at these allegations, and the consequences they have had for informal governance in more detail, we need to look at the broader picture of the Commission's relations with interest groups, the role of networks in the EU policy process and the implications these features have had for European governance. The Commission's ability to relate directly to interest groups has always been an important feature of EU politics, in particular the Commission's close cooperation with business leaders and trade unions, but over time these direct relations have involved an ever-wider range of non-governmental organizations populating the Brussels scene. This direct relationship between the Commission and interest groups has had great benefits for either side. The European Commission, as a comparatively small public administration, required technical expertise on the many policy areas in which it was active, and which it could not find in-house and did not want to rely on from national governments. The creation of policy networks linking Commission officials with representatives of interest groups and NGOs also aided the Commission in gauging the likely reception of future EU policies 'on the ground' – an important knowledge in a system of decentralized implementation where much of the success of EU policies would depend on voluntary acceptance and compliance rather than enforcement. Finally, policy networks of this kind tended to put the Commission in a central position – like the hub of the wheel – in the EU policy process. Interest groups, in turn, gained direct, often preferential access to the centre of European policy-making and could feed important information, which could shape policy decisions. Interest groups, too, acquired greater legitimacy and were sometimes helped by Commission money to survive and institutionalize. In other words, the Commission's proactive engagement with policy networks in the many area in which it has been charged with initiating EU policies has served both itself and its clients well.

More recently, however, a certain sobriety has set in. Observers have pointed to the potentially self-defeating competition between rival interest groups to gain access to, and be heard by, the Commission official(s) in charge

of their 'dossier'. Clearly, if everyone has equal access, the ultimate effort in representing a distinct interest may be wasted. At the receiving end, the Commission has found it increasingly difficult to manage the logistics of ever-growing numbers of lobbyists and in particular to reconcile the policy of open access with the principle of equal opportunity. As lobbying in Brussels has come of age, so the differences in resources of the various groups and organizations have become more evident. And, with the weakening of the Commission after the 'Santer affair', there has been a realization among interest groups that influential national governments as well as the European Parliament may well be more promising targets of the lobbying effort. Nevertheless, while the activity of policy networks centred on the European Commission may not any longer be seen as all-powerful in bypassing national governments in the design of EU policies, they still occupy a central place in the EU policy-making system.

Therefore, while the Commission, as the EU at large, continues to suffer from the lack of legitimacy that comes with the perception of distance between itself and the general public, it did actually achieve a high degree of closeness with those in the first line of dealing with EU policies on the ground. Whether, in terms of the wider issue of legitimacy, this closeness to interest groups has been a virtue or a vice is a matter of debate. On the one hand, one can argue that while the EU may not reach the individual citizen, it actually involves those most immediately affected by EU policies, or at least their representatives (or self-proclaimed ones), in the deliberation and design of policy initiatives. On the other hand, one may criticize the very closeness (or cosiness?) of the relationship between policy-makers and interest groups as a violation of the principles of representative democracy, such as 'one person one vote' and political equality. In terms of this critique, the precise nature of the relationship between Commission officials and interest groups then takes centre stage.

One key aspect of this relationship has been its informality. Unlike the formal democratic process, with its basis in highly regulated electoral and parliamentary arrangements, lobbying in the EU has been largely unregulated. During the 1980s there was an attempt by the European Commission to license, as it were, 'European Economic Interest Groups' (EEIG). The idea was that by registering the groups who required access to the Commission, equal status could be bestowed upon them, and thus a semblance of equality of opportunity be achieved. At the same time, this could be seen as an attempt by the European Commission to enlist interest groups for its own purposes, whether these be specific policy agendas or a more general search for legitimacy. While the EEIG scheme may in certain cases have contributed to the development of policy networks, it neither explained the growth and significance of policy networks in the EU in the late 1980s and 1990s, nor did it properly address the normative issues arising from the operation of such networks.

More recently, the Commission launched a new campaign to organize its relationship with client groups. The White Paper on European Governance, published in 2001, sought to address wider issues of reforming decision-making procedures in the European Union, in particular with a view to addressing the issue of democratic accountability of European governance. Links between EU policy-makers and interest groups here became part of a wider agenda of structuring the access of 'civil society' to the decision-making centre in Brussels. The White Paper had a difficult gestation period and has not yet led to an immediate flow of specific proposals to implement the very general notions contained in it. Still, it constituted an important contribution to the wider debate about EU reform which has begun after the Nice European Council of December 2000.⁵

Beyond this well-known phenomenon of policy networks, there are other kinds of informal politics at work in the EU system. One of these is the presence of networks growing not around a particular policy, but based on a shared identity among its members and cutting across policy issues. In reality, the notion of policy networks and related concepts such as advocacy coalitions and epistemic communities (see below), already imply a departure from the notion of interest-based politics, and a recognition of the significance of social processes among participants in the policy process. But beyond politics revolving around particular interests or policies there is the presence of identities which unites some actors and distinguishes them from others.

It may appear counter-intuitive to look for identity politics at the heart of the EU – an institutional construct that is frequently seen to be committed to a pan-European ideal, or else is regarded as committed to a technocratic, economic rationale. Yet, European integration has done little to extinguish national identity, and nationality provides in fact a fertile base for informal networks in Brussels. Not all actors may feel compelled to cooperate within such nationality-based networks, but there is, at the very least, the potential that national identity will provide the foundation for networking and thus offer opportunities to policy-makers and interest groups to overcome institutional boundaries in their pursuit of a particular outcome. And beyond nationality there are other identities – regional, social, gender – which have the same potential and may be invoked by those seeking to conduct informal politics.

It would also be mistaken to think that informal governance takes place only at the point of contact between European institutions and European society. There are other areas of European governance which are regulated by informal agreements or in which informal procedures and codes of conduct explain decisions and behaviours better than formal procedures and norms. Inter-institutional relations – between the Commission, Council, Parliament, member states and even the Court of Justice – often involve informal agreements which arise at times to smooth and at times to bypass the formal procedures.⁶

Looking at the EU in the light of these observations is to recognize the propensity of the system to engender informal relations. The clash between, on the one hand, highly formalized routines for decision-making and, on the other hand, the need for continuous negotiation of policies in order to achieve successful outcomes, creates ample opportunity for networking and other forms of informal dealings. In many ways, informal governance can be seen as the glue that holds the cumbersome and contradictory system of EU governance together. However, such a view has to confront the frequent criticism that EU policy-making is in fact dominated by preferential – potentially clientelistic and nepotistic – arrangements linking EU and national officials to interest groups and other actors.

Take, for example, the informal relations that exist among official representatives of different member states or among the officials of national and EU bureaucracies. These relations are often crucial for the smooth functioning and efficiency of the Council and the Commission, because they allow for the convergence towards common views and positions and for the creation of common normative standards and codes of conduct. Yet they also work to lock in particular political visions and administrative practices, which may not be shared equally by all. For efficiency's sake, appointments may be made among a close circle of known friends whose loyalty and other professional capacities may be well known to the appointee, or consulting jobs may be given to well-tested companies whose services were revealed to be precious in the past. However, such selective choices may also end up ossifying the system and privileging the insiders *vis-à-vis* the outsiders. This goes to show that the issue of informal governance in the EU is normatively more difficult to assess than it appears to be at first sight.

The role of informal networks in the EU policy process is now high on the agenda of the European Union. Whether the public and political debate will actually lead to the far-reaching changes demanded by some – and promised by the Commission itself – remains to be seen. But it is also evident that this important issue now receives the attention it deserves. However, it would be misleading to present this development as deriving solely from the problems of, and proposed solutions offered by, the European Commission. The significance of informal networks in the EU policy process – the operation of informal governance in the EU – derives from structural conditions of the European integration process as well as from the agency of a wide range of actors.

STUDYING INFORMAL GOVERNANCE IN THE EUROPEAN UNION

The literature on governance proposes both positive and negative definitions