Problems of Democratic Accountability in Network and Multi-level Governance

Yannis Papadopoulos

Introduction

Several studies focusing on different policy sectors, in diverse national and local environments, find broad convergence toward a policy-making style dominated by cooperation among government levels and between public and non-public actors. ‘Governance’ as a particular style of governing refers to ‘sustaining co-ordination and coherence among a wide variety of actors with different purposes and objectives such as political actors and institutions, corporate interests, civil society, and transnational governments’ (Pierre, 2000: 3-4). In its ‘multi-level’ form, it involves ‘a large number of decision-making arenas differentiated along both functional and territorial lines, and interlinked in a non-hierarchical way’ (Eberlein and Kerwer, 2004: 128). It implies the formulation or the implementation of public policies by networks involving public actors (politicians and administrators) belonging to different decisional levels, together with various non-public actors (economic agents, interest representatives and stakeholders, experts). Deliberation, bargaining and compromise-seeking are the rule in governance arenas, which are characterised by cooperative relations between governmental units attached to different territorial levels (sub-national, national, European, etc.), and by collaboration of these units with various non-public bodies (associations, third-sector organisations, firms, etc.) instead of top-down policy making. This chapter exposes the reasons why this – at first glance promising and in all likelihood necessary – shift to less ‘dirigist’ forms of policy making can generate problems with respect to the quality of our democracies. This is a largely neglected issue in a research field which is dominated by managerial concerns about governance performance: based on a survey of about 1,600 projects included in a ‘Connex’ database on EU governance (GOV-

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2 See the definition by Skelcher (2005: 90): ‘Networks engage mainstream state, federal, regional, and local governments in interactions with arm’s length public bodies including quasi-governmental agencies, single-purpose boards, public-private partnerships, and multi-organizational collaborations’.

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DATA), Kohler-Koch (2006: 5) concludes that not more than 17% of them address questions of democracy or legitimacy.

Problems with respect to democracy are caused by a deficit of democratic accountability of governance structures. This deficit mainly stems from four properties of network governance: the weak visibility and uncoupling of networks from the democratic circuit; the weak presence of citizen representatives in networks; the multi-level aspect; and the prevalence of ‘peer’ forms of accountability. After explaining the accountability problems generated by each of these properties, I conclude with a model for decision making that may alleviate the accountability deficits.

Accountability can be defined as ‘a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pose judgment, and the actor may face consequences’ (Bovens, 2007). Stated somewhat differently, ‘A is accountable to B when A is obliged to inform B about A’s (past or future) actions and decisions, to justify them, and to suffer punishment in the case of eventual misconduct’ (Schedler, 1999: 17). One should note that this definition of accountability combines justice by A to B with the availability to B of sanctions vis-à-vis A. What is more, the constraint for justification depends on the availability of effective sanctions (not necessarily the utilisation of sanctions, but their ‘shadow’). Such a resource in the hands of the accountability ‘holder’ means that the actions of the accountability ‘holdee’ (Behn, 2001) will not remain without consequences for him or for her, and that the decision about the positive or negative character of these consequences is in the hands of the accountability holder. However, the two dimensions do not need to be simultaneously present: courts, for instance, are compelled to provide reasons for their decisions, but they cannot be sanctioned for them;3 while MPs can be sanctioned without being (formally) obliged to justify their decisions.

Grant and Keohane (2004: 42) are right in claiming that ‘we should resist the temptation to narrow the issue of accountability to that of democratic control’. They mention several other forms of accountability (administrative, fiscal, legal, etc.). In addition, even political accountability is not necessarily democratic. In eighteenth century England for instance, the parliament claimed that the ministers of the Crown should be accountable to it, even though it was not democratically elected. And even the European Parliament was not (directly) democratically elected until as late as 1979 (although it is true that its role as an accountability holder was weak). A thorough survey of accountability issues would require scrutiny of who is accountable to whom, for what, and through which procedures, what kind of arguments and justifications are provided by the accountability holdee, and what kind of sanctions are available to the accountability holder. Being exhaustive in that respect for complex forms of multi-level governance would go beyond the scope of this article. The chapter also disregards the rhetoric justifications used

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3 Note, however, that in some systems judges may not be re-elected or are even subject to recall.
in the framework of accountability, and focuses on the (arguably limited) role of public and democratic forms of accountability to citizens and parliaments of actors involved in network governance. In other words, it scrutinises the democratic anchorage (Sørensen, 2005: 348) of network forms of governance, that is, the possibility for those affected by collectively binding decisions formulated or implemented by policy networks, and/or for those representing them, to hold participants of these networks accountable by sanctioning them. It is often argued that horizontal and cooperative decision-making procedures operate in the shadow of the hierarchy, i.e. the options taken by actors who cooperate are subject to state approval, which usually takes the form of parliamentary ratification. To what extent do actors participating in policy networks operate in the shadow of democratic control, and in case of limitations to this control, to what kind of factors are they attributable?

Possible deficits in political accountability are not only the object of normative concerns, but can generate political problems too, leading to governability or legitimacy deficits. Such deficits are not only the objects of critical normative assessments, but also become the targets of anti-establishment political ‘entrepreneurs’ (Papadopoulos, 2002). Thus, accountability of decision makers is not only a goal to be achieved by political systems claiming to be democratic, but also a means for their legitimization in environments where democratic values prevail. The availability of effective accountability mechanisms forces policy makers to anticipate the ex post control by policy takers, and to act in the shadow of their sanction, which produces a ‘deterrent’ (or disciplining) effect (Behn, 2001: 14-16).

For accountability to be enforced in contemporary political systems where the institution of binding mandates is no longer au goût du jour, both mechanisms are necessary. The ‘institutionalisation’ (Schmitter, 2004) of retrospective control by the governed requires publicity of the actions of political elites and justification of their actions by them, in other words their ‘answerability’ (Schedler, 1999), which reduces informational asymmetries between ‘agents’ and ‘principals’ due to delegation. Answerability strongly induces rulers to anticipate the retrospective control by the governed (Koenig-Archibugi, 2004: 237-238). The damoclean sword of control fosters responsiveness to the preferences of the accountability holder: the more de-

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4 Goodin (2003: 364) distinguishes between different forms of arguments likely to be supplied by actors requested to account on their actions, their intentions, the (sometimes unintended) results of their actions, and so on.

5 As Schmitter (2004: 49) puts it, the most accountable leaders are those who have nothing to fear from accountability. Mansbridge (2003: 526) however correctly maintains that, notwithstanding its current diffusion, ‘anticipatory representation’ based on ‘anticipated reactions’ does not involve accountability in its classic form: ‘The representative acts only as entrepreneur, preparing to offer and offering a product to a future buyer’ (emphasis added). Anticipatory representation can fit accountability only in its classic form under the assumptions that voters remain the same and do not modify their preferences from one election to another.

6 ‘Principal-agent’ models are often used to describe accountability problems: for a recent overview, see Bendor et al (2001: 191).
cision makers feel that they act in the shadow of possible sanctions, the more it will be rational for them to endogenise the preferences of their ‘principal’. The idea that the citizenry should be the ultimate ‘principal’ is central to democratic accountability, although in reality the mass public is not the only judge of governmental performance (think about the role of constitutional courts, or of external agents such as the International Monetary Fund for some countries). Political actors are accountable to a number of ‘forums’ which are not their democratic ‘principals’. Also, the ‘harder’ accountability mechanisms are (Bovens, 2005), the more effective we can expect them to be in ensuring responsiveness. In that sense, genuine accountability mechanisms do not rest on a ‘logic of appropriateness’ – rulers behave in a responsive manner because they feel they have to – but on a logic of ‘consequentiality’: rulers behave in a responsive manner because they anticipate the costs of unresponsive behaviour. It should finally be added that accountability and responsiveness must be conceptually distinguished (Bartolini, 1999: 435): Benevolent dictators are responsive to the needs of their followers without being accountable, whereas behaving in a responsible manner and displaying ‘leadership’ qualities in democracies requires politicians to make decisions that may well contradict the preferences of their constituencies.

The Accountability Problem in Network Governance

It is expected that network forms of governance will lead to decisions enjoying strong ‘output’ legitimacy (Scharpf, 1970), because their content is more appropriate, or because they are better accepted by target groups. In other words, network governance is expected to be conducive to technically more adequate and politically more realistic decisions. However, the consequences of network governance for democracy have long been neglected. The literature originally stressed that more ‘horizontal’ forms of policy making are more responsive to the concerns of policy takers, because in governance the latter are integrated into the policy-making process, and thus appear as ‘co-producers’ of the collectively binding decisions that affect them. However, as suggested by Renate Mayntz (1997), and more recently again by Mark Bevir (2006), cooperative governance is not conceived primarily in terms of its potential for democratisation of policy making, but meant as a solution to functional problems, like the management of interdepend-

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7 An example of an allegedly powerful accountability forum today is the media, and it is no accident that contemporary democracies have been defined by Manin (1997), a major theorist of representative democracy, as ‘audience democracies’. However, if the incumbents fail to follow the recommendations formulated by the media this does not entail any automatic sanction, so that we should speak here of a ‘soft’ accountability mechanism.

8 See, for instance, the European Commission’s plea for ‘fostering participatory democracy’. Non-governmental organisations (NGOs) ‘are held in high esteem because it is assumed that they contribute to the formation of European public opinion, they provide feedback so the Commission can adjust its policy, they contribute to managing, monitoring and evaluating EU projects, and their involvement helps to win acceptance’ (Kohler-Koch, 2000: 525).
ence between various collective actors or concerns with compliance by policy takers.9 As several recent works point out (Bache and Flinders, 2004; Benz, 1998; Benz and Papadopoulos, 2006; Papadopoulos, 2003; Papadopoulos, 2005), governance by policy networks in fact generates a number of problems with respect to democratic accountability. In this article, I identify and scrutinise four of them.

The Weak Visibility and Uncoupling of Networks

Lack of visibility impedes accountability in primarily two respects. First, decisional procedures in policy networks are often informal and opaque, as this is deemed to facilitate the achievement of compromise. Second, networks dilute responsibility among a large number of actors. This is the ‘problem of many hands’ or ‘paradox of shared responsibility’ (Bovens, 1998: 45-52), which can be viewed as the negative side of multi-centric decision making, at least as long as guidelines for ‘collaborative’ accountability (Behn, 2001: 72-74) remain ‘fuzzy’ (Flinders, 2005: 230). Even if these problems are attenuated through provisions for access to information and good governance, the latter are no substitute for traditional accountability mechanisms that should give the controllers the opportunity to sanction the controlled (Héritier, 2003). Transparency lacks the element of sanction: it induces the accountability holdee to provide justifications for his or her action, but if these justifications are not considered satisfactory, the accountability holder has no possibility of imposing any sanctions. Publicity is a necessary condition for democratic accountability but not a sufficient one: if exposure to media scrutiny, for instance, induces politicians to behave in a ‘responsive’ (perhaps also populist) manner, this is only because negative reporting by the media can convince voters to sanction unresponsive politicians in forthcoming elections.

Also, policy networks are often uncoupled from the official representative bodies, whose capacity to exert effective oversight over such parallel decisional circuits is questionable.10 Analytically, visibility and ‘coupling’ should be distinguished: visibility has to do with the ability of controllers to watch and monitor behaviour, while coupling has to do with their ability to influence ex ante the behaviour of the controlled, or to sanction it ex post (or both). But, of course, effective control is not possible in the absence of visibility, or if networks operate in remoteness from democratic institutions. In network governance, the initiative and control functions of parliaments are then, in all likelihood, weakened, with parliaments possibly confined to the role of ratifying bodies. True, parliaments have the formal right to overrule decisions made by policy networks (Voelzkow, 2000: 273-276). The question, however, is to what extent this is a credible threat. The capacity of representative bodies to nullify decisions prepared in networks

9 According to Wolf (2002: 40), ‘the primary normative guideline for governance is not democracy but legitimacy’.

10 The concept of ‘post-parliamentary’ governance has been coined to depict that phenomenon (Andersen and Burns, 1996).
can be questioned above all for sheer lack of expert knowledge. One should ‘bring the state back in’ into the debate on network governance: the state is not ‘hollowed out’ simply because networks require management and steering, and this is largely done by public actors (Peters, 2006). However, this does not solve the problem of accountability because it can be reasonably hypothesised that ‘meta-governance’ functions (the governance of governance networks) will rather be devolved to bureaucrats rather than be directly operated by elected bodies. In a sense it is rational for parliamentarians to delegate some of their governance or meta-governance competences if the information costs for the exertion of these functions are too high for them. But for parliamentarians to be able to subsequently veto proposals made by their ‘agents’, they again need to have access to information. Thus, the problem remains (except in cases where politicians can credibly argue and decide along strictly ideological lines).

Remoteness from parliaments and voters can be the object of deliberate institutional design (as in the case of autonomous bodies, courts, etc.), in order to make institutions less sensible and less responsive to short-term political concerns. Yet remoteness also produces – most probably unintended – cognitive limits to the capacity to perceive correctly what is happening in policy arenas. MEPs for instance – for their part directly accountable to the electorate – demonstrate a lower accuracy in their perceptions of policy issues than members of national parliaments, including typically European issues, such as the common currency or the abolition of national borders. As regards voters, 40% are not able to identify the policy positions of European transnational parties on unemployment policy, which is closely related to the familiar left-right divide, and the situation is worse for typically European issues (Andeweg, 2005: 13-16), especially as regards ‘the everyday policy-making and implementation’ (Olsson, 2003: 285). In sum, remoteness aggravates informational asymmetries to the detriment of accountability holders, thus causing prejudice to the exercise of accountability.

There is therefore a risk that decisions will be made by actors other than those regarded as legitimate decision makers by ordinary citizens or by members of the affected communities. Mair (2005), for instance, considers that the EU exemplifies this by assigning a limited role to party democracy, and goes so far as to claim that through a socialisation (or habituation) effect this can result in citizens becoming more generally accustomed to the decline of the role of representative institutions in policy making. It has also been argued that a sphere of (problem-solving oriented) ‘politique des problèmes’ – dominated by governance arrangements in ‘backstage’ policy making – is to a large extent disjoined now from the ‘front-stage’ sphere of ‘politique d’opinion’, which is the traditional realm of party com-

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11 This is clearly an empirical issue and of course institutional arrangements are of relevance too. On European matters, the competencies of the European Parliament are not comparable to the competencies of national parliaments on national matters, which depend in turn on the system of government and on parliamentary resources. Also oversight of EU legislation by national parliaments is subject to considerable cross-country variation (Benz, 2004).
petition but seems to play merely a symbolic role (Leca, 1996: 345-246).\textsuperscript{12} The relevant actors are not the same in the two spheres, furthermore, the goals and rules of the game tend to differ. This can raise ‘coupling’ problems between dissimilar logics: for instance, Lehmbuch (1999) when looking at Germany stressed the lack of compatibility between the competitive logic of party politics and the emphasis on negotiation and cooperation within the federal multi-level governance arena. In addition, when the sphere of ‘policies’ is disjointed from the sphere of ‘politics’, the effectiveness of accountability procedures is undermined. The retrospective evaluations of office holders on the grounds of their policy achievements, and the prospective evaluation of candidates (incumbents and members of non-governmental parties) on the grounds of their pledges, are hardly possible. The incumbent parties are held responsible for political decisions whose formulation in fact largely escapes their control. Of course, this is not new: ministerial responsibility implies, for instance, that ministers are considered responsible for problems of ‘maladministration’ even though it is unrealistic to expect them to be aware of all actions undertaken by their subordinates. However, network governance increases the number of actors who are involved in the policy process without being democratically authorised \textit{ex ante}, and without being subject to democratic control \textit{ex post}. It therefore amplifies the fictitious character of political responsibility. In more recent years, governing parties have increasingly been ‘punished’ for their performance in office: electoral losses of incumbent parties are higher than in the past (Strom \textit{et al}, 2003). It may therefore be argued that nowadays elections are at the same time a more drastic and a more symbolic accountability mechanism, and that this is a symptom of the disjunction between the competitive logic of ‘politics’ and the cooperative logic of ‘policy making’.

The Composition of Policy Networks

In response to the criticism that policy networks operate in isolation from democratic institutions (which is, after all, an empirical question), it may be objected that most of their members are authorised by some ‘principal’ to participate, and are thus subject to control regarding their actions. Also, it appears that the role of politicians within policy networks is not as marginal as might be feared, depending to a large extent on institutional configurations (see the empirical studies by Auel, 2006; Taiclet, 2006). Yet, even when politicians play a significant role in policy networks, this is no guarantee of their responsive behaviour, both because of a tendency to instrumentalise networks for own strategic goals, and because of strong executive dominance over the parliament. For instance, according to a comparative study of three policy sectors in seven European democracies (Kriesi

\textsuperscript{12} The EU is particularly emblematic in that respect: ‘\textit{politique d’opinion}’ on European matters is virtually absent, with the recent exception of referendums that are increasingly utilised on issues of European integration.
et al, 2006: 354), state actors remain the most powerful group in policy making. If this strongly qualifies the idea that ‘governance’ means a ‘hollowing out’ of the state, this is not necessarily good news for accountability. Although it is not clear from the study who these state actors are, their influence in the policy-making process is higher than the influence of political parties, which are the democratically legitimate actors for preference aggregation and policy formation.

Anyway, it should be considered that policy networks are largely composed of top-level bureaucrats, policy experts and interest representatives. Some of these actors are only indirectly accountable to the citizenry due to a lengthy ‘chain of delegation’ (administrators), or only to their peers (experts) or to limited constituencies (interest group negotiators). Therefore, several actors taking part in policy networks are not necessarily mandate holders, are not constrained by electoral pledges and do not have to anticipate electoral sanctions. With respect to accountability, their presence, however, raises quite different problems: public administrators and leaders of interest groups are present by virtue of their representational properties (albeit remotely connected to the ‘demos’ in the case of administrators, or connected to a narrow part of it in the case of leaders of interest groups), while the presence of others is justified on quite different grounds (experts on the grounds of knowledge, private firms on the grounds of their blackmailing, i.e. ‘exit’ power). Apart from experts, the individuals participating in policy networks are collective actors in the sense of representing collective interests, be they those of the state, or of various societal segments and sectors (either those who have a reputation to veto policy, or those ‘stakeholders’ who manage to argue convincingly that their preferences must be given weight because of their high intensity). They are delegates accountable to principals, but for none of them are citizens the direct principal.

High rank bureaucrats are accountable to their minister, but this is administrative, not political accountability, lacking the public dimension. Democratic control is much attenuated by the long chain of delegation. Bovens (2005) identifies, in that respect, a series of principal-agent relations: from citizens to parliamentarians, then to the cabinet, then to civil servants (and, in addition, increasingly to independent agencies). Further, new en vogue public management techniques leave more leverage to administrators, so that the democratic ‘answerability’ of their decisions and activities is reduced, and democratic control through citizens’ ‘voice’ is increasingly replaced by ‘customisation’ (i.e. by reliance on feedback by individuals as ‘clients’ or ‘service users’; see also below). True, the problem of administrative discretion is not specific to governance networks. It has been on the research agenda for several decades, since the first influential studies of bureaucracies inspired by organisational sociology. It acquires, however, a new dimension in network governance, where the administration pools considerable external expertise. I do not intend to resuscitate the old and simplistic theories of technocratic power: the influence of experts depends on administrations being receptive (after all science and politics are functionally differentiated spheres), and experts seldom share
the same views (even less on highly controversial issues). But an intriguing issue is that in order to claim credibility, experts have to convince others of their independence. They should not appear as the vehicles of the preferences of any ‘principal’ to which they are accountable. Experts are only credible if they can demonstrate the autonomy of science from politics, and they must demonstrate that their discourse rests on different premises than the discourse of politicians or interest groups.

Experts are of course subject to ‘peer review’ within the scientific community and risk loss of reputation. Control is here internalised by the profession, but again this soft and ‘horizontal’ form of accountability is not political or public accountability. And if experts are in a sense also ‘authorised’ to act (by virtue of their acknowledged intellectual capital), they are not delegated by a ‘principal’ whom they represent, but are usually selected by the administration. Therefore, there is no guarantee that those who are co-opted (perhaps because they are the least critical) are also the most distinguished according to the self-referential criteria of the scientific system. The requirement of expertise combined with independence is very similar to the requirement that increasingly leads national and European policy makers to insulate some decisional spheres from the arena of partisan politics and electoral competition. The delegation of power to various independent bodies and agencies (‘agencification’) has indeed been justified by the need to ensure the credibility of those entrusted with decision making, and this credibility is deemed to be primarily safeguarded through independence and expertise according to the ‘fiduciary’ principle (Majone, 2001; 2002). In the EU system, there are connections between independent regulatory agencies and network governance: regulation by national agencies is influenced by processes of mutual learning and diffusion of policy recipes at European level through informal networks of national regulators (Eberlein and Grande, 2005; Martens, 2005).

Network governance also implies the cooperation of political power holders with non-public actors. One should distinguish between two sorts of the latter: interest groups and non-governmental organisations (NGOs) on the one hand, and private firms on the other. Although it is difficult to distinguish the rationales behind these two forms of cooperation, partnerships with NGOs can mostly be attributed to a ‘community’ orientation of policy making, while partnerships with (and outsourcing of public tasks to) private actors can be attributed to the influence of neo-liberal thought and new public management doctrines. Accountability problems differ accordingly: interest groups and NGOs are accountable to their members (‘internal’ accountability; cf. Koenig-Archibugi, 2004: 236-237) and sometimes also to donors. This can be considered partial accountability, neither to the general public nor to the populations affected by their actions.

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13 This is complicated by the fact that experts’ independence is often unrealistic. Empirical studies tend to show that the most competent in a field are also those who are related to the interests in competition in this field. See Barthe et al (2005: 53).
(‘external’ accountability).\textsuperscript{14} It is also argued that these organisations do not escape problems of elitism (such as in the neo-corporatist model). This is no privilege of NGOs; the same was repeatedly said about parties (‘iron law of oligarchy’, ‘cartelisation’). However, partisan representation is regulated by electoral competition, whereas pressures from public authorities to deal with a small number of interlocutors representing encompassing social segments reinforce monopolistic trends in interest representation (Offe, 1981). Large private corporations for their part are primarily accountable to their shareholders, but even this form of capitalist accountability is not always well developed in corporate governance. More fundamentally, this poses again the problem of partiality and lack of external accountability, as these firms are not accountable to those who may be subject to their externalities (workers, residents in neighbouring areas, etc.), except through the market (NGOs, for instance, threaten to boycott firms that are reluctant to apply social and environmental standards). But, again, this is not political accountability.

The ‘Multi-level’ Aspect of Governance

In addition, network governance can be ‘multi-level’, consisting of complex structures cutting across decisional levels. This is exemplified by policy-making in federal states, but more centralised states are affected too: from ‘below’, social differentiation renders policy implementation contingent on compliance by policy addressees, and from ‘above’, internationalisation (think about World Trade Organisation regulations) and Europeanisation require multi-level cooperation. Accountability is further inhibited by this multi-level aspect of governance.

Multi-level governance entails cooperative intergovernmental relations between sub-national and national authorities, or between national and supranational organs: multi-level government. The interdependence of decisional levels requires their cooperation, notwithstanding the formal division of competencies between them (that may be accompanied by vertical accountability of lower to upper levels), and this cooperation often takes place in weakly visible policy-making structures. Federal or quasi-federal systems like the EU (for a recent discussion, see Thorlakson, 2006) are characterised by a formal division of decisional competencies across levels, often justified on the grounds of subsidiarity. But problems of scale caused by the need to produce efficient decisions, or the fragmentation of power resources between actors, have led to a ‘competence mix’ and to cooperation schemes even in pure systems of dual federalism (Thorlakson, 2003). This occurs, for instance, in the phase of policy implementation when the central level is highly dependent on the resources of the constituent units (leading to a dialogue in

\textsuperscript{14} The distinction between internal and external accountability partly overlaps with the distinction between what Gutmann and Thompson (2004: 39) call respectively ‘electoral’ and ‘moral’ constituents.
the EU between the Commission services, national and possibly also regional administrations). Formal verticality becomes thus ‘Politikverflechtung’, generating several accountability problems.

First, negotiations across levels are often deemed to be more successful if they take place under conditions of informality which impede accountability. Second, as ‘Politikverflechtung’ rests on mechanisms operating along the intergovernmentalist logic and implicating sometimes multiparty executives, it can exacerbate problems of dilution of responsibility (‘many hands’). Decisions are taken by representatives of collective bodies in processes involving a multitude of them. The problem of shared responsibility is amplified in cases such as that of EU structural funds policy, where cooperation between public actors across levels is paralleled by cooperation with non-public actors in partnership forms.\textsuperscript{15} Besides, even actors that are democratically accountable in principle are only fictitiously accountable because of a lack of information on their positions on the side of principals. The accountability problem has to do with the lengthy ‘chain of delegation’, making the policy processes visible only to those principals who are closer to network members. In addition, multi-level negotiations tend to involve actors who are subject to administrative rather than democratic accountability, such as national and sub-national bureaucracies who can enjoy considerable discretion.\textsuperscript{16} Accountability problems are even more acute in the case of the EU administration: the Commission is itself more weakly accountable than national governments, and individual Commissioners do not have the same hierarchical relation to the administration as national ministers (Verhey, 2006: 19-20). Moreover, even actors who are directly subject to the control of their electorates are faced with the problem of ‘two-level’ accountability: they are accountable for their actions not only to their constituencies, but also to their negotiation partners. Such ‘two-level’ games have usually been perceived as opening strategic windows of opportunity for those participating in them. It is instead the constraints posed by such games that need to be emphasised here, because participants have to satisfy, in a sense, multiple ‘forums’.\textsuperscript{17} The same is true in a context of ‘deliberative supranationalism’ (Joerges and Neyer, 1997: 274), where network participants are also constrained by ‘two-level arguing’ (Risse, 2006). ‘Comitology’ committees in the EU are examples of multi-level governance in its technocratic version, being composed of experts and of administrators attached to

\textsuperscript{15} Empirical scrutiny tends however to disconfirm the openness of partnerships. Schmidt (2006: 680) maintains that ‘EU-mandated pluralist consultation in regional policy – which expected “horizontal co-operation” or “partnership” with civil society in the structural funds process – produced little more than statist forms of consultation in French and in German regions as well as in the UK’.

\textsuperscript{16} On the influence of European and national bureaucracies upon the Council, see Curtin (2005).

\textsuperscript{17} For reasons of trust building, accounts must be given to negotiation partners even though the latter have not mandated those who must give account to them (see also above on professional, and below on ‘peer’ accountability).
different levels and subject to this kind of ‘two-level’ accountability (Pollack, 2003).

‘Peer’ Accountability in Networks

Relations between participants in networks pose different problems with respect to public accountability, depending on the status of the actors involved. However, all forms of network governance generate a favourable climate for the development of ‘peer’ accountability (Benner et al, 2004: 199). This is a form of accountability working through embeddedness. According to Goodin, it is typical for third-sector organisations, but may apply more generally to network forms of governance: it is ‘based on mutual monitoring of one another’s performance within a network of groups, public and private, sharing common concerns’ (Goodin, 2003: 378). Participants are then deemed to be also (and perhaps primarily) accountable to their negotiation partners, usually in a ‘soft’ sense.18 Durable cooperative interactions between partners are expected to generate self-limitation, empathy and mutual trust. This assumption is made both by rationalist research on cooperation and discourse-oriented research on deliberation. Peer accountability is part of a more general trend where ‘principles of informal role/control have risen in importance in comparison to formal accountability (principles)’ (Saward, 2005: 13). The open method of coordination in the EU is a good case in point (see Benz, 2007). This form of accountability is sustained by mutual interdependence that, in a sense, derives (even though this may sound too cynical), above all, from mutual blackmailing capabilities. The sheer fear of ‘naming and shaming’ is deemed to yield disciplining effects because ‘free riders’ or unreliable actors risk loss of reputation on behalf of their partners, who will consider them as untrustworthy in the future and, in a sense, will no longer agree to ‘invest’ in them.19 The standardising effects produced by the threat of losing credit present some similarities with the effects expected from ‘horizontal’ systems of checks and balances. In parliamentary bicameralism, for instance, institutional actors involved in ‘nested games’ are induced to anticipate each others’ reactions, possibly to deliberate together, and thus to reach agreement more easily. Yet soft accountability mechanisms within networks are distinctive through the lack of

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18 This also presents similarities with mechanisms of ‘légitimation croisée’ (cross-legitimation) between representatives of the central state and local notables at the periphery that have been observed by works of the Centre de sociologie des organisations in France. For a theoretical synthesis of this research tradition, see Crozier and Friedberg (1981).

19 Offe (1992) speaks about a ‘Gesetz des Wiedersehens’. ‘Naming and shaming’ is also expected to be an efficient mechanism of mutual adjustment in ‘soft’ law. However, as in the case of the growth and stability pact, the most powerful countries do not seem to be strongly embarrassed by such naming and shaming, confirming that power is ‘the ability to talk instead of listen, the ability to afford not to learn’ (Deutsch, 1963: 11).
formal sanctions, the focalisation of accountability on individuals and the frequently missing democratic or even simply ‘bottom-up’ legitimation of participants.

It can indeed be expected from policy networks that they will produce, through deliberation or bargaining and by virtue of peer accountability, Pareto-optimal outcomes. They can even prove to be more respectful of criteria of social justice than majoritarian decision making (Papadopoulos, 2003: 492-493). For peer accountability to function effectively, however, networks must be sufficiently representative and pluralist, i.e. not exclude weaker interests or actors whose preferences do not coincide with the network’s ‘mainstream’ orientation. Whether this is always the case seems debatable. And even if the network is pluralistic, the diversity of perspectives does not guarantee that these perspectives are representative of society at large. In order to be included in networks, actors must possess resources that are unevenly distributed (expertise, blackmailing capacity, preferences considered as intense, etc.). In addition, interest selectivity is not only caused by inequalities, but also by the imperatives of governability: there can be reluctance to include actors who are themselves not willing to ‘play the game’. Not only have deliberative modes of governance been criticised by radical theorists for requiring superior argumentative skills from their participants (Sanders, 1997: 349; Young, 2000: 37-40), but anecdotal evidence suggests that self-governing networks tend, in addition, to reduce associative pluralism and intra-organisational diversity by imposing an official paradigm and by failing to co-opt actors who do not comply with this paradigm (Wälti and Kübler, 2003). This is not only a loss of social pluralism, but can also undermine policy efficiency. The lack of ‘requisite variety’ in policy networks can lead to the formation of ‘group-think’ or to what Sunstein (2001) calls ‘enclave deliberation’. This impedes critical reflection, which is necessary for accountability. It is also detrimental to problem solving because this kind of deliberation favours conformity with convictions that may rest on erroneous causal hypotheses. For ideological pluralism to be preserved, an exit option must be available to network actors (‘opting-out clauses’). On the other hand, it is well known that such clauses favour a bargaining game with threats based on each one’s blackmailing power and also inhibit problem-solving deliberation (it is no accident that corporatist devices rely on a design that increases the costs of exit). A lack of pluralism may also limit the optimality of resource allocation. This may be due to deliberate strategic behaviour on the part of ‘insiders’, but it may also simply result from the necessity for mutual trust building, which may end up in collusion. Lord (2004: 114) stresses the danger ‘that instead of balancing and checking one another, networks or their members may collude to suspend competitiveness between themselves, to reduce prospects of challenge from the constituencies to which they are supposedly accountable and to freeze new entrants out of access to the benefits of engagement with the political system’. For instance, rational choice approaches inspired by the Olsonian paradigm, but also critical neo-marxist approaches of corporatism, tend to emphasise the risk of rent seeking within weakly pluralist networks (‘iron
triangles’) at the expense of third parties. ‘There is a very real risk that they [mutual accountability networks] will degenerate into a complacent “old boy network”, their accountability function blunted by mutual interest’, write Harlow and Rawlings (2007).

In addition, the requirements of mutual accountability within peer groups can weaken public accountability. There is a trade-off related to the presence of multiple ‘controllers’ with different demands:20 peers on the one hand; reference groups on the other. The necessity to build mutual trust discredits actors who are prone to making strategic use of ‘two-level games’ and who are likely to ‘free ride’. In case of ‘group-think’, it may however also marginalise those who simply manifest their scepticism about some of the network’s common goals. One has to prove one’s loyalty to the network by demonstrating that one is a credible and committed interlocutor. This kind of ‘peer’ accountability can hardly be achieved without some loss of accountability ‘at home’. The ‘logic of influence’ tending to prevail among elites involved in mutual deliberation and negotiation seldom coincides with the ‘logic of membership’ consisting of mirroring the preferences of their constituencies (Schmitter and Streeck, 1999). The narrowing of the preference gap between collective actors in ‘summit’ negotiations and deliberations implies (at least if no vertical learning processes occur) the widening of the preference gap between the leadership and the rank-and-file within the represented organisations. In supranational governance, such a loosening of control by ‘principals’ is amplified by the lengthy chain of delegation. We also noticed that for ‘peer’ monitoring to work effectively some degree of intra-network variety is necessary. However, it then becomes more difficult for the external public to identify who is at the origin of network outputs, especially when they result from compromise. In addition, compromise seeking and problem solving may require ‘legitimate confidentiality’ (Schedler, 1999: 21), while democratic accountability may prevent solutions that cannot be ‘sold’ with populist justifications. Consequently, increased accountability can also lead to ‘subterfuge’ as blame-avoidance behaviour. Marcinkowski (2001), for instance, maintains that ‘informalisation’ strategies are employed in policy-making processes in order to avoid media scrutiny; Bovens (2005) stresses risk-avoiding behaviour from actors perceiving to be the objects of ‘excess accountability’;21 and Philip (2005: 21) asserts that accountability often generates only an appearance of conformity. Self-presentation strategies of politicians enacted with the help of marketing consultants (‘spin doctors’) in the context of a political system increasingly developing into an ‘audience’ democracy point in this direction. Therefore, there are good reasons –

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20 This trade-off should be distinguished from ‘redundancy accountability’ described by Scott (2000: 52). The latter refers to the tendency to supplement traditional mechanisms of accountability by the horizontal mechanisms of the market, in which overlapping (and superfluous) accountability mechanisms reduce the centrality of any one of them (see also Vos, 2005: 14). Instead of a redundant extension we observe here a partial substitution of accountability mechanisms.

21 Not to mention the propensity of ‘watchdogs’ to focus sometimes on ‘scandals’ rather than on ‘normal’ behaviour.
at least in policy makers’ minds – not to favour genuine accountability in strongly mediatised public spaces.

**Conclusion and Prospects for Accountability**

This chapter suggests that network forms of governance entail a number of accountability problems. ‘Shared responsibility’ and lack of visibility are aggravated by the frequent ‘multi-level’ aspect of these forms of governance. The relations between actors involved in networks are weakly exposed to public scrutiny, or to the scrutiny of the legitimate, democratic and representative bodies. This is not to say that actors involved in governance networks are not accountable at all. They are subject to ‘peer’ or professional accountability, to reputational and market accountability, to fiscal/financial, administrative or legal accountability (Benner *et al.*, 2004: 199-200). There is no guarantee, however, that such ‘diffuse’ or ‘composite’ control mechanisms (Costa *et al.*, 2003; Héritier, 2003: note 29) can be effective, as they operate in a fragmentary and uncoordinated way without forming a coherent system. In addition, the problem of a lack of political and democratic accountability remains: only some network actors are subject to it, and control over them can be merely indirect or partial. In sum, the following points should be stressed:

- In network and multi-level forms of governance the direct democratic accountability of policy makers is weakened.
- On the other hand, there is a ‘multiplication of control mechanisms’ (Costa *et al.*, 2003: 670).
- Actors in such accountability ‘forums’ may have a distinct agenda from democratic ‘principals’ with whom policy makers are in a relationship of delegation and representation.
- Those who control *ex post* are thus not necessarily the same as those who formulate mandates *ex ante*.
- The accountability forums are dispersed and do not form a coherent accountability system, so that the picture of a ‘patchwork’ might be an adequate description here.
- Part of the accountability mechanisms at work are of the ‘light’ or ‘soft’ type (indirect, not institutionalised, through moral commitments and social pressure, exposure to the public sphere, etc.), with the risk of being ‘toothless’ (Schedler, 1999: 16-17).
- As a result, the efficiency of a (syncretic) ‘marble cake’ of accountability mechanisms including (perhaps too) ‘many eyes’ that operate in a ‘soft’ manner is debatable.
- Finally, in network and multi-level forms of governance, there may not only be a trade-off between democratic accountability and policy efficiency (the
‘input-output’ dilemma), but also a trade-off between democratic accountability and other ‘peer’ forms of accountability.

Some would argue that, given the increased complexity of contemporary decision-making procedures, democratic accountability has become illusive. Regarding the issue of transparency in transnational private governance, for instance, Scholte (2002: 292) critically concludes that ‘most people (including many democratically elected representatives) have not even heard of private sites of global governance’. However, there is no sufficient reason why multi-level governance networks should not be accountable to democratic institutions at different levels, which should be able to exert effective oversight over their operation. It may thus be argued that there is a need for a ‘parliamentarisation’ of multi-level governance systems. However, such a (in principle welcome) reform strategy also faces limits and should by no means be seen as sufficient to enhance accountability. This is particularly true for the EU multi-level governance system by contrast to national settings, where governance can be conceived of as ‘government plus’ (networks of experts, non-governmental groups, civil society actors, etc.), governance in the EU is best described as ‘government minus’ (Sbragia, 2002: 6). Even if the European Parliament continues, for instance, to gain influence over EU policy making, this will not automatically solve other problems that weaken the influence of party representatives in the exercise of their role as accountability holders (think about the relative weakness of European party federations), or that weaken their legitimacy to act in that respect (think about the ‘second-order’ character of European elections). Considering these limits, I conclude by suggesting a model to improve democratic accountability in multi-level systems, borrowed from work done together with Arthur Benz (Benz and Papadopoulos, 2006). This should be seen as a complement to better accountability using institutions such as courts or ombudsmen.

We envisage a decisional pattern characterised by a functional separation of power between policy formulation in networks, and by constituent and veto power dedicated to institutions that are authorised and accountable to citizens. Formally authorised institutions should first set the ‘meta-governance’ procedural rules for fair participation and for accountability in network forms of governance. Although sometimes the formalisation of networks (provisions about selection of participants, mode of operation, etc.) becomes an open political issue, it would be innovative to assign explicitly the design function to the democratically authorised institutions (as we noticed, such a function is often delegated to members of

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22 See, for instance, Van Gerwen (2005: 344-368) and the proposals made by Holzinger and Knill (2000) for the EU.

23 Interestingly, Majone (2006: 621) who does not consider the democratic deficit of the EU as really problematic (given the nature of European integration), by contrast finds the ‘accountability deficit’ to be a ‘real problem’ for the EU.
the bureaucracy). These institutions should also have the final say on policy outputs, by being an effective locus of critical scrutiny over proposals formulated by governance networks, which have for their part the advantage of pooling expertise and of facilitating acceptance by ‘stake-holders’. This is no institutional innovation per se: formally things do work according to this pattern in national settings, and increasingly so at EU level too. Yet, in order to perform their constituent and veto functions effectively, democratically authorised institutions should acquire additional resources in terms of legal instruments, and also in terms of time, information, intelligence, professionalism or organisation. In national, regional, international and multi-level governance, citizens (by referendum), national parliaments or elected governments should fulfil the constituent and veto functions, even though delegation to governments would play a stronger role at the supranational and international levels. Actors in networks should then have to convince, in communicative processes, the legitimised veto players about their policy proposals, while veto players would be forced to supervise participation and policy making in governance effectively. At the same time, learning mechanisms should be developed in order to prevent policy blockages by veto players: to give an example, parliamentary committees should base their proposals more frequently on hearings of experts and interest representatives (that could be public and mediatised).

Such a pattern of decision making can serve as a benchmark to be approximated for all network governance situations, in order to increase the chances for improving their democratic accountability, and thereby their legitimacy. It should replace the current uncoupling of network governance from legitimate representative structures not by a tight coupling, which might lead to vetoing and policy blockages, but by loose coupling, creating interfaces that can be beneficial for mutual learning (Benz, 1998). The creation of such interfaces would require institutional innovation. For instance, particularly in a context where representative politics are also increasingly delegitimised, it does not suffice to redress the imbalance between network and parliamentary governance. A further step is required, which is a closer familiarity on the part of the mass public with the realities of complex decision-making processes, and thereby an increase in its evaluative competence that would permit the reduction of informational asymmetries. ‘Deliberative opinion polls’ (Fishkin, 1995), for instance, on some major policy choices formulated by networks can be instrumental for such an empowerment, under the condition that they are not confined to the role of mere participatory experiments, as is the case today. They should be combined, for instance, with petition rights such as those

24 Some scholars (Sørensen, 2005; Schmitter, 2006) have reflected on principles for ‘chartering’ governance arrangements that meet the requirement of ‘democratic anchorage’.

25 We leave aside here the issue of the implementation of decisions, which can again be delegated to policy networks, but also requires oversight by formally authorised bodies.

26 Other forms of loose coupling can be found in the linkages between ‘governance councils’, administrative agencies, parliaments and the judiciary in the framework of ‘democratic experimentalism’ (Dorf and Sabel, 1998). See also Eberlein and Kerwer (2004: 132-133) for an application to the OMC.

27 See, for instance, an evaluation of the Danish deliberative opinion poll on the Euro (Andersen and Hansen, 2007).
that were foreseen in Article I-47.4 of the Constitutional Treaty. In sum, models of decision making should be proposed and discussed that:

- redress the imbalance between network and parliamentary governance by making the former more accountable to the latter;
- empower not only representatives but also ordinary citizens on complex issues;
- avoid stalemates produced by the lack of mechanisms of mutual learning between network members, political representatives and voters.

As a matter of fact, introducing a higher dose of public, democratic and popular accountability without setting up, at the same time, mechanisms of mutual learning by the involved actors can yield unintended negative outcomes, such as a lack of policy efficiency, and therefore also problems of governability that may ultimately lead to a decrease of (output) legitimacy. Institutional design should be cautiously carried out so as to avoid such ‘perverse’ or ‘boomerang’ effects.

References


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How to Achieve Governability in Multi-Level Policymaking: Lessons from the EU Structural Funds and EU Environment Policy

Hubert Heinelt

This chapter examines the characteristics of multi-level policymaking in respect of the EU structural funds and EU environment policy in order to draw some general conclusions about opportunities and constraints – or conditions – of achieving governability in a multi-level system. This endeavour is challenging in at least two respects. First, given the restricted scope of a single chapter, it is the case that the characteristics of multi-level policymaking in these two examples cannot be described in detail. However, these characteristics can be found in research findings published elsewhere.1 Second, the notion of governability used in this endeavour has not only to be clarified but also has to be justified, because governability, as used in this chapter, reflects a particular way of understanding how to govern public affairs effectively as well as legitimately. In addition, because these governing activities are seen as embedded in a multi-level system, the notion of the latter has also to be considered.

The chapter starts with the clarification of the use of the terms ‘governability’ and ‘multi-level system’ in Section I. The following section reflects on the characteristics of the two EU policy areas under consideration (Section II). Finally, some general conclusions about the conditions required to achieve governability in the EU multi-level system are highlighted in Section III.

What Does Governability in the EU Multi-Level System Mean?

From the perspective of political science reflections on governability should not be restricted to the question of whether or not certain policy objectives – like ‘cohesion’ (the decrease of regional and social disparities) or ‘sustainability’ (reduction in energy consumption, emissions etc) – laid down in programmes or other policy documents are achieved (see Knill and Liefferink 2007: 145-155 for general reflections on the effectiveness of implementation). This may be sufficient for applied policy studies or for an efficiency-oriented analysis of (financial) inputs and outputs (see Beugelsdijk and Eijffinger, 2005; Cappelen et al., 2003; Castells and Espasa Quer-

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1 See apart from the contributions in Parts II and III of this volume, Hooghe, 1996; Heinelt and Smith, 1996; Bache, 1998; Bailey and Propris, 2002; Heinelt et al., 2005 on the EU structural funds; and Heinelt et al., 2001; McCormick, 2001; Heinelt and Smith, 1996; Jordan, 2005 on EU environment policy, as well as contributions in Kohler-Koch (2003) and Bache and Flinders (2004).