Participatory Approaches in Multi-level Governance of Biodiversity in the European Union

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Extended Summary

1. Introduction

The PATH project aims at taking a critical look at advances in participation in policy deliberation with an emphasis on issues of scale and representation. This is an extended summary of a draft paper which was presented during the PATH Conference in Edinburgh in June 2006. It addresses one of the three study areas of the PATH project: biodiversity loss.

In the following, we frame questions pertaining to participation in the context of multi-level governance. Over the years, participation has emerged as one of the key principles of environmental governance (van den Hove 2000). As a consequence, a general normative stance towards participation is encompassed in the institutionalisation of governance; for example in Principle 10 of Rio Declaration, the EC White Paper on Governance, or the Aarhus Convention. We define participatory approaches as institutional settings where the public and/or stakeholders of different types are brought together to participate more or less directly, and more or less formally, in some stage of the decision-making process. Stakeholders are deemed to be of different types if, for a given issue, they hold different worldviews, and act on the basis of different rationales. Hence, participation refers to the implication in the decision-making process of persons external to the formal politico-administrative circle (van den Hove 2006).

Biodiversity loss is a complex issue and both, drivers of biodiversity loss and response mechanisms are of inherently global dimension and at the same time deeply rooted in the local context. Such complexity places the issue in a multi-level governance framework, crossing both local and global dimensions of both, the issue at hand and the institutions addressing it. The case of EU biodiversity policy provides a good setting studying participation in a context of multi-level governance for two main reasons. First, EU biodiversity policy development reaches back as far as the 1970s and has been –and remains– highly controversial. As such, it provides a broad range of positive as well as negative examples related to theory and practice of participatory approaches. Second, EU environmental policies, and in particular biodiversity policies, mirror the wider EU evolution towards a multilevel polity and the inherent contradictions accompanying this evolution. “These contradictions include the maintenance of unity in diversity, the competition between national priorities and supranational imperatives, and the distribution of powers between actors at different spatial levels of government” (Jordan 2002, 321). Moreover, the European Union remains the most established example of an institutionalised multi-level governance system.

We explore how participation has been theorised and practiced in this multi-level governance framework. We focus mainly on the political scale[1] rather than the many other scales that are also relevant to the question of participation (e.g., power, formality, space, time, etc.).

Three main conclusions emerged from our analysis of case studies: the need to take historical developments into account; the context-specific nature of participatory approaches, and the slow translation into practice of the three major rhetorical shifts in biodiversity governance which we used as guiding threads in our exploration. These shifts are presented in the following section.

2. Three shifts in EU biodiversity governance

Participation has been present to some degree in European biodiversity policy since the 1970s. However, the ways in which 'participation' has been theorised and put into practice have changed considerably over the years.

Among the many intertwined trends and processes taking place in multi-level biodiversity governance, we identified three major shifts of particular relevance to our analysis as they all potentially lead to intensifying participatory processes. The first shift corresponds to the progressive change of policy-making processes in general – and environmental policy processes in particular – from a top-down state-centred strictly administrative understanding of policy-making towards more flexible, and to some degree bottom-up, approaches. This first shift has the potential to increase participation by opening up the policy process to other actors moving towards more local-level participation and/or more public participation.

The second shift relates to the changing role and perception of science. In the early phases of environmental politics, under the dominance of the technocratic expert model, science has been regarded as the unchallenged provider of knowledge both on issues and on potential solutions. There is now an increased recognition of the need to move towards a more democratic, 'post-normal' type of science which leads to an enlargement of the peer community for quality assurance as well as for an extension of facts, and which "encompasses the management of irreducible uncertainties in knowledge and in ethics and the recognition of different legitimate perspectives and ways of knowing" (Funtowicz & Ravetz 1993, 754). Post-normal science brings to the forefront the recognition that facts are debatable in an uncertain world. This shift implies a move towards more participation in both the provision of knowledge and the assessment of knowledge quality (including its relevance, legitimacy, credibility, etc) – that is, participation in the very debate about facts.

The third shift is more specific to biodiversity and perhaps less obvious than the previous shifts. It corresponds to a shift from a conservation focus in biodiversity discourses and policies towards a more anthropocentric ecosystems goods and services approach framed in a general normative context of sustainable development. It reflects a change in perception of the issue itself. While at first, policy measures were driven by a merely protectionist rationality, there has been a gradual change towards a combination of biodiversity conservation and its sustainable use. An important example of this shift is the Millennium Ecosystem Assessment, an exercise to assess the status and trends of ecosystems, but more

[1] A scale is a spatial, temporal, quantitative or analytical dimension used to describe a phenomenon. (Gibson et al. 2000)

particularly of ecosystem services. More than 1300 actors on global and sub-global scales agreed on this utilitarian approach, focussing on the changes in ecosystem services used for human well-being (Millennium Ecosystem Assessment 2005). Such an approach can be identified as well in the so-called 'ecosystem approach'. This is in effect a shift from a mono-dimensional (conservation based) to a multi-dimensional (conservation and sustainable use) framing of the issue. Hence it may be regarded as a shift towards taking into account different value systems (relating for example to environmental, economic, social and cultural dimensions of ecosystems). As such it creates the potential for participatory processes to articulate these different value systems. For instance, the ecosystem approach as defined by the Convention on Biological Diversity includes provisions for broad participation of all stakeholders (CBD COP Decision V/6). While this third shift is becoming obvious at least in the discourses on, and general argumentation in favour of, biodiversity (see e.g. MEA, Ecosystem Approach in the CBD), it is still unclear to what extent such shift actually takes place in policy practices.

We stressed that each of these shifts could potentially lead to more participation. But it is important to note that the influence can go both ways, as more participation may actually act as a driver for such shifts, hence creating positive feed-back loops. More participation may imply a shift towards more bottom-up decision processes, it can lead to more post-normal types of scientific activity and constitute an incentive for framing issues in more than one dimension.

In our study, we use these three shifts as beacons to explore changes in the theory and practice of participatory approaches in biodiversity politics. We analyse EU biodiversity governance and its evolution to identify whether and how these shifts have taken or are taking place and what that implies for participatory decision processes. While doing this, we pay particular attention to the political levels (i.e., local, national, European) and the phases of the policy processes under consideration. The argument focuses on the Birds and Habitat Directives and the corresponding Natura 2000 process and on the implementation of these directives at national or sub-national level in France and Germany, although other elements of EU biodiversity policy are also briefly addressed to put the Natura 2000 process into context. The main questions explored are (i) did these shifts happen in practice in EU biodiversity governance? (ii) did participation emerge as a “necessary” process as a result of these shifts? (iii) to what extent did participation itself lead to these shifts? And (iv) if participatory approaches were indeed implemented, what were the successes and failures and what were the reasons for them?

3. Participation in European biodiversity policy

Designing the Birds & Habitats Directives

During the period leading up to the establishment of the Birds Directive in 1979, participation to the decision-making process took place only in the form of consultation of national scientific experts. Although the emergence of the issue on the agenda was to a certain extent bottom-up, as it was the result of NGO and public pressure, the subsequent policy process was very much a top-down, expertise driven, species-based, conservation-oriented process. The next major development in EU biodiversity policy was the drafting of the Habitats Directive. Again, participation was limited to the phase of putting the issue on the agenda, in the form of NGO and public pressure. The public and stakeholders had a limited influence on the definition of fundamental principles of the legislation and on its design.

Overall, both the Habitats Directive and the Birds Directive are based on ecological criteria and reflect a general 'top-down' administrative, expert-based and protectionist approach. The Directives represent a considerable broadening of the competencies of the European Union in the field of environmental policy, extending its influence onto regional and local conservation policy. As such, there is little evidence of a shift towards bottom-up, post-normal science, or ecosystems approach at the time of the design of the Birds and the Habitats Directives.

National level designation of Natura 2000 sites

Apart from the clear conservation criteria that determine the selection of sites, neither the Birds nor the Habitats Directive provides guidance for the procedure of site designation and their management. In particular, in accordance with the subsidiarity principle of the European Union, it is left to Member States to decide whether public and/or stakeholder participation is appropriate in the designation and site management processes. In practice, the aim of defining at least 10% of each national territory as sites within the natura-2000 network, combined with the focus on ecologically motivated site selection criteria and a tight time schedule, left little room for participation of stakeholders other than scientific experts during the designation phase. From that phase on, recurrent conflicts have emerged between landowners, users and their representatives, conservation administration and environmental NGOs. These conflicts run through all levels of the politico-administrative system and have considerably delayed the designation of sites (Sauer et al. 2005).

For the purposes of this paper, we went a step down the political level and looked at two case studies, France and Germany to explore if and how the three governance shifts materialise at the national and sub-national implementation level and the implications for participation.

France: more bottom-up, more dimensions

In the French case, conflicts resulted in a perceptible shift towards bottom-up and participatory approach, but participatory rule-setting remained firmly with the authorities, hence top-down. A shift towards a pluri-dimensional framing of the issue, integrating socio-economic aspects in particular was also perceptible. But no shift towards a more post-normal type of science can be detected. Interestingly, it seems that increased participation of stakeholders at different levels resulted in a strong decline of scientific participation, in particular in the definition of management objectives. This *de facto* exclusion of science seems to have stemmed from a clash between two sources of legitimacy, science and public participation, which the resulting process failed to reconcile. this failure may be explaines as follows: whereas the process legitimacy of the first top-down designation phase was more contestable (expert-based, mono-criteria), the protest crystallised as a contestation of the legitimacy of science itself, which, in turn, made it more difficult to include scientists as a legitimate category of actors in the following developments. A lesson can be learned here about the difficulty of designing participatory processes which genuinely allow for all different types of knowledges to be brought in, including scientific knowledge.

Germany: Little formal, but effective informal participation?

The German case, where nature policy is under Länder authority as opposed to federal authority gives an unclear picture and deserves to be explored more extensively. The general trend during the designation phase seems to have been very top-down, based on a technocratic understanding of scientific expertise and a mono-dimensional framing of the issue in terms of conservation. Some limited and informal forms of participation have at times been observed. At the local level for instance, stakeholders could in certain cases have a say on site boundaries (e.g. exclusion of potential industrial sites). At the national level, the informal creation of shadow lists of sites by environmental NGOs, which have since been accepted by the Commission, is an interesting example of actors participating in the decision process by by-passing political levels. This model of shadow lists has been practiced as well in many new EU member states.

Recent developments in EU Biodiversity Policy

On the EU level, and looking at more recent developments in biodiversity policy, one can observe a significant shift in rhetoric, whereby participation is more and more present. This is likely to have an impact in practice in terms of our three shifts in the future. In 1998, the EU Biodiversity Strategy was adopted, under the 5th Environmental Action Programme. The text contains no mention of participation. For its review under the 6th Environmental Action Programme in 2004, a wide stakeholder process was organised – the 'Malahide Process' – and the resulting 2006 EC Communication entitled "Halting the loss of Biodiversity for 2010 and beyond" fully integrates a participation discourse. Two of the four so-called 'supporting measures' for the Action Plan in this Communication relate to building partnerships on the one hand and building public education, awareness and participation on the other. As far as management of Natura 2000 sites is concerned, the EC promotes intensive public participation for the establishment of management plans.

Participation in EU biodiversity policy stems from a double movement. On the one hand one witnesses the emergence of governance principles calling for more participation. These calls are based on normative, substantive or instrumental reasons, as well as on the recognition of the physical and societal complexity of the issues at hand. As a result, participation appears in discourses but not necessarily in practice. The other movement leading to more participation in EU biodiversity policy was the discontent amongst actors who distrust and refuse the top-down, expertise driven, mono-dimensional way of policy-making. This led to significant conflicts at various policy levels, which constituted a powerful driver towards implementation of more participatory approaches. This double movement brings to light the existing gap between top-down rhetoric on participation and the bottom-up perceptions of that rhetoric.

4. Preliminary Conclusions

This initial exploration of participatory approaches in multi-level governance of biodiversity in the European Union in light of the three rhetorical shifts in EU biodiversity governance indicates that those shifts are only beginning to take place in the practice of EU biodiversity governance.

As far as the first shift is concerned, no clear or significant shift from top-down to bottom-up approaches can be observed. When there is a shift towards more

participation at the local level, conflict – and not normative choices embedded in governance rhetoric – appears to be the dominant driver. In those cases, the rules defining and governing participation are dictated by a higher level. It can be argued that this is to a certain extent unavoidable if the objective of the participatory approach is to contribute to decisions taken at that higher level. Regarding the shift towards post-normal practices of science, we noted the difficulty of designing participatory processes, which genuinely allow for all types of knowledges to be brought in, including scientific knowledge. In the third shift, towards ecosystem-related approaches and a pluri-dimensional framing of the issue, the mono-dimensional conservation framing is a result of history; that is the way in which biodiversity loss was constructed as a societal issue and brought on the political agenda. Actors in biodiversity polity progressively recognised that the conservation discourse was not sufficient to maintain the issue on the agenda, let alone to ensure that governments and people would act upon it. The shift towards an ecosystems approach discourse took place in parallel to – and sometimes in confusion with – a utilitarian ecosystems goods and service approach. This could have serious repercussions since it may lead to a framing of biodiversity in purely utilitarian terms. Such a reductionist approach ultimately comes down to another mono-dimensional framing of the issue, hence replacing one mono-dimensional framing (purely ecological) with another (purely economic).

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