Chapter 6
Key features of policy processes

The EU's arrangements for making policy – that is, its policy processes – display many distinctive features. This chapter identifies and analyses the most striking and important of these features, grouping them under the following headings: the large and increasing number of policy processes; the complexity of policy processes; the varying mixtures of supranationalism and intergovernmentalism; the ways in which policy processes are constructed and operate so as to ensure that all member states have confidence in the EU system; the dispersal of leadership; the consensual nature of (most) policy processes; the production of policy outputs; and variations in the speed of policy processes. The reader should keep in mind that these key features developed in tandem with the EU's evolution. So, one way of thinking about this chapter is that the EU's policy processes developed to accommodate shifting views of the role the EU should play in Europe in the immediate post-Second World War years, the 'miracle' years of high economic growth in the 1950s–1960s, the stagflation and 'Eurosclerosis' of the 1970s and 1980s, and the drive to compete in a more global world that has informed European leaders since the 1990s.

The large and increasing number of policy processes

The growth in policy processes

Looking at EU policy processes over time, perhaps the most striking feature about them is how they have been subject to continuous evolutionary development and how much of this development has taken the form of increasing the number of policy processes.

Starting with changes to the formal nature of policy processes – that is, to the provisions that are specified in the treaties and, to some extent, in EU legislation and in inter-institutional agreements – these have been affected most obviously via the rounds of treaty reforms that started with the Single European Act (SEA) and have continued through the Maastricht, Amsterdam, Nice and Lisbon treaties. Each of these treaty reform rounds has provided for, in some measure, the creation of new procedures and amendments to existing procedures, clarifications of and amendments to the powers of the EU institutions that are such key policy actors within procedures, and alterations to the ways the institutions can act and interact within the procedures. Regarding the creation of new procedures and changes to existing procedures, examples include the creation of the cooperation and assent procedures by the Single European Act (SEA), the creation of the co-decision procedure and of special procedures for the CFSP and JHA pillars by the Maastricht Treaty, and simplifications to the co-decision procedure and the creation of a procedure to allow for differentiation (the making

of policy without all member states participating) by the Amsterdam Treaty. Regarding clarifications and changes concerning the powers of EU institutions, the assignment by the Maastricht Treaty to the European Council of the task of determining the 'general political guidelines' of the Union provides one example. The widened policy scope of the co-decision procedure specified in the Amsterdam and later treaties provides another. Regarding changes to the ways that institutions can act and interact within procedures, the most obvious examples are the extension by every treaty reform round since the SEA of the scope of qualified majority voting (QMV) in the Council and the increasing elevation of the EP to the role of full co-legislator with the Council.

Turning to the informal nature of policy processes, these consist of features that are specified neither in EU law nor in formal agreements between policy actors. Usually having the promotion of more efficient and effective policymaking as their general purpose, these informal features include mechanisms designed to facilitate inter-institutional cooperation and recognitions of circumstances in which the formal policy process rules should not be fully applied. Like formal features, these informal features have evolved over the years and continue to do so. So, taking mechanisms designed to promote inter-institutional cooperation, since the creation of the co-decision procedure by the Maastricht Treaty there has been a mushrooming of trilogues – informal meetings between representatives of the Commission, the Council and the EP – which have as their main purpose the identification of ways in which the positions of the three institutions can be brought together so that agreements can be reached on legislative proposals. Since the Amsterdam Treaty revised the co-decision procedure to allow final agreements to be made at first- and second-reading stages, trilogues have often become virtually third-reading conciliation meetings. As for acknowledgements of circumstances in which the formal policy process rules should not be applied fully, changing attitudes to the use of QMV in the Council provides an illustration. Until the early 1980s, QMV was rarely used even when it was permitted by the treaties, apart from in a few non-political areas and in cases where timetables were pressing. From the early 1980s, however, the use of QMV gradually came to be recognized as a legitimate way of proceeding in some circumstances, though the preference for first trying to find a consensus continued to prevail. This preference among Council participants for unanimity continues, but the non-voting culture is not as strong as it once was.

Why has there been a growth in the number of policy processes?

Three developments, which in practice have greatly overlapped and intertwined with one another, have been particularly important in stimulating the growth in the number of policy processes since the EC was founded in the 1950s: increased policy responsibilities, an increased number of types of decisions and an increased number of member states.

Increased policy responsibilities

In the early years of European integration, the policy responsibilities of the EC were relatively narrowly restricted – largely to policies that were related directly to the operation of the internal market. As such, it was virtually automatic that policy processes were based on the framework set out for such policies in the treaties. This framework was the Community method (see Chapter 8), which initially involved the Commission proposing, the Parliament advising, the Council deciding and the ECJ adjudicating.

As shown in Chapter 1, however, as the integration process has advanced, so has the EU's policy portfolio broadened far beyond what was originally envisaged in the founding treaties of the 1950s. As there has been movement into new policy areas, and as the extent of policy activity in existing policy areas has expanded, so have new, or revised, policy processes had to be devised to accommodate different views taken by governments as to the nature of the processes that should apply in these areas. So, for example, some member states have come to the view that particular policy areas, or at least aspects of them, infringe excessively on national sovereignty and therefore are too sensitive to 'risk' being based on the Community method.

In the spheres of foreign and defence policy, some governments have increasingly recognized the merits of EU states trying to act together, but most governments have not wished such cooperation to be based on a policy process system in which – as is the case under the Community method – the Commission has exclusive initiating rights, the EP can exert a major influence over decisional outcomes, Council decisions can often be taken by QMV and the Court can make rulings on decisions taken. Accordingly, most governments have preferred to have a looser policy process system – hence the intergovernmental base of EU foreign and defence policy that is set out in Chapter 2 of the TEU.

Taxation is another policy area where the preservation of national sovereignty, and hence an essentially intergovernmental approach, has been seen as being

necessary by most member states. However, as taxation falls under what used to be called the EU's Community pillar, and in the post-Lisbon Treaty is in the TFEU pillar, additional policy process features have had to be used to ensure that a strong element of intergovernmentalism characterizes taxation policy processes. Accordingly, when it comes to making laws on indirect taxation – which can be necessary because value-added taxes (VAT) affect the operation of the internal market – QMV is mostly unavailable in the Council and the EP is restricted to a consultative role. With direct taxation also, an intergovernmentally inclined version of the Community method applies ('intergovernmentally inclined' in that unanimity is necessary in the Council for Commission proposals to be approved), which has resulted in the EU being unable to produce much in the way of legislative outputs, except in limited areas that are concerned mainly with eliminating double taxation.

Box 6.1 summarizes some of the key differences between important policy areas.

An increased number of types of decisions

The increased range of policy responsibilities has not only brought about a direct increase in the number of policy processes, but has also done so indirectly in that the EU has had to use a wider range of types of decisions to enable the policy system to operate acceptably and effectively. Different types of decisions usually require their own decision-making processes, though what form these processes should take has been disputed almost constantly by policy practitioners – with the consequence that the number of processes being employed has periodically had to be increased and those being used have been in almost continuous transition. To give just a few examples: major 'directional' decisions are usually channelled through the European Council; most significant legislative decisions, but not all, require the approval of the EP and the Council of the EU, with variations within both institutions regarding voting rules; and non-legislative acts (which the Commission issues, but usually with differing sorts of Council and EP involvement depending on their precise nature).

Box 6.2 summarizes these relationships between types of decision and types of decision-making process.

An increased number of member states

When the EC was established it had just six member states, all of which were broadly similar in terms of the nature of their political and economic systems. It might be thought that, with such a restricted and comparable membership, relatively simple and stable policy processes would be able to prevail. Initially they did, but an example of the sort of differences between member states that have frequently plagued the EC/EU over the nature of its policy processes quickly emerged when the French President, Charles de Gaulle, resistant to the notion that an international organization should be able to impose decisions on France, opposed the movement that was planned from the mid-1960s to allow Council decisions in a few policy areas to be made by a qualified majority rather than unanimity. De Gaulle's resistance led, after several months of wrangling in 1965 during which France withdrew its representatives from key EC bodies, to the January 1966 Luxembourg Compromise. The Compromise had no legal foundation, being purely a political agreement between the governments of the member states, but it was of immense importance because it came to be interpreted as meaning that even where qualified majority voting in the Council was authorized by treaty, no majority vote would be taken if a member state declared the proposal in question to be against its vital national interests. The spirit of the Luxembourg Compromise subsequently hung heavy in the air, and until the early 1980s, had the effect of preventing almost any majority voting apart from on procedural matters and in a few areas where pressing timetables meant decisions could not wait until everyone was agreed.

So, there were difficulties over policy processes with just six member states. Naturally, therefore, as many more states have acceded to the EC/EU – each with its own political and policy needs, preferences and orientations – there has been an increasing array of views of how policy processes should be constructed and operated. Differing national positions have existed on such key questions as: in what policy areas should QMV be permissible, and when must there be unanimity?; in what policy areas should the EP be a joint decision-maker with the Council, and when should it be restricted to an advisory role?; in what policy areas is the making of EU law undesirable, and in what areas therefore should legislative decision-making processes not apply?; and when legislative processes are not to apply, what processes should be used instead? Given that decisions on such questions may require the unanimous approval of the member states (especially if they are to be given treaty recognition), it follows that an increased number of member states has naturally resulted in increases in the number of policy processes so as to accommodate differing national positions.

Furthermore, states do not necessarily adopt consistent positions along an intergovernmental/supranational spectrum with regard to which types of processes are deemed to be acceptable to them and which are

Box 6.1

Distinctive policy process features in major EU policy areas

Policy area	Main processes	Main policy actors within the processes
Internal market rules	Community method	*Commission* *Council* *EP*
Competition	The Commission, operating on the basis of the treaties and EU legislation, exercises significant independent powers	*Commission* *Council* and *EP* (where legislation is being made)
Employment	Mixture of the Community method and OMC	*Commission* *Council* *EP* (where the Community method is employed)
Economic and Monetary	A wide array of processes are used: the Community method, OMC and centralized decision-making	*European Central Bank* *Ecofin Council* *European Council* (mainly in respect of the making of major 'directional' decisions) *Euro Summits Eurogroup*
Taxation	Mixture of Community method (but with unanimity in the Council) and OMC	*Commission* *Ecofin Council* *EP* (where legislation is being made)
Budget	Separate budgetary processes for: (i) Multi-annual financial frameworks (MFFs); and (ii) Annual budgets	*Commission* *European Council* (for MFFs only) *General Affairs Council* (for MFFs) *Ecofin Council* (for annual budgets) *EP* (power of consent on MFFs and full co-decision powers with the Council on annual budgets)
Foreign and Defence	Intergovernmental cooperation, but some implementing decisions can be taken by QMV	*European Council* and its *President* *High Representative for the CFSP* *Foreign Affairs Council*
External trade	Commission negotiates on behalf of all member states on the basis of Council mandates, with final agreements being subject to Council and usually also EP approval	*Commission* *Council* *EP*
Enlargement	Commission negotiates on behalf of all member states, though on the basis of instructions given to it by the Council and with final agreements being subject to Council and EP approval	*Commission* *General Affairs Council* *European Council* *EP* (power of consent)

Box 6.2

Types of decision and associated decision-making processes

Type of decision	Decision-making process	Main decision-making actors
History-making decisions (decisions that have major implications for the overall direction of the European integration process).	There is no fixed process, but final decisions are almost invariably taken at, or at least are approved at, European Council meetings.	*European Council* The involvement of other actors varies according to the policy areas within which decisions are made. For example, the *Commission* is always heavily involved in the preparation of decisions on enlargement, while the *Ecofin Council* and usually also the *European Central Bank* are involved in major policy decisions on macroeconomic policy.
Legislative decisions	There are three legislative processes: (i) Consultation (ii) Ordinary (iii) Consent	*Commission*: drafts virtually all legislative acts. *Council*: is always the decision-taker or, with the EP, the co-decision-taker. *EP*: consultation rights only under the consultation procedure; full co-decision powers with the Council under the ordinary procedure; approval powers only under the consent procedure.
Non-legislative acts (Administrative law)	Different processes apply to the two types of non-legislative acts: (i) Delegated acts (ii) Implementation acts	*Commission* drafts acts and issues most of them in its name. The *Council* and *EP* exercise overseeing powers.
Non-history-making and non-legislative decisions	This category includes a wide variety of decisions and, consequently, also a wide variety of policy processes. For example: • CFSP and CSDP decisions are taken very much on the basis of intergovernmental processes. • Policy co-ordination decisions (common in such areas as social, employment and environment policy) often use the processes associated with the Open Method of Coordination (OMC) (see Chapter 8).	Varies greatly. For example: • The *High Representative* and the *Foreign Affairs Council* are always important actors in connection with CFSP/CSDP decisions. • The *Commission* and (varying formations of) the *Council* are always important actors in connection with OMC decisions.

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not. National positions on which policy processes should apply and in which policy areas often vary according to specific national circumstances and choices. Germany, for example, is usually thought of as being towards the supranational end of the spectrum, but since the 1990s, this has not been the case for proposed extensions to QMV in several areas, including aspects of justice and home affairs.

Enlargement increased the prospect of member states being outvoted in the Council when QMV applies, because the more member states there are, then the more member states are normally necessary to constitute a blocking minority. With the prospects of the 2004 and 2007 enlargements looming, this became a major concern for the large members in the early 2000s because, whereas previously

they could be, and sometimes were, outvoted in the Council, normally they could use their status and their assigned voting weights (which, prior to 2014, were based on only very loose approximations to population size in a manner that under-represented large states and over-represented small states) to resist any proposals to which they were particularly strongly opposed. Hence their (ultimately successful) resolve in the Constitutional Convention deliberations of the 2000s (which led to the Lisbon Treaty) to replace the previous system of assigned voting weights under QMV with the more straightforward (and beneficial to them) system of national voting weights being based on size of population (for example, Germany's percentage share of Council voting strength increased from 8.2 per cent to 15.6 per cent). However, because enlargements since 2004 have still meant that more allies than previously have usually been necessary if qualified majorities are to be denied, the prospect of being unable to resist unwanted decisions under QMV remains even for large member states. In consequence, policy processes other than the Community method with QMV are attractive to many member states – especially in nationally important and/or sensitive – policy areas.

In addition to the impact arising from an ever-increasing number of differing national policy priorities, positions and concerns, enlargement has also impacted on policy processes in a more general way: by raising questions relating to the appropriateness and efficiency of existing policy processes in a larger Union. Clearly, the more participants there are in any decision-making situation, the more difficult decision-making is likely to be unless the decision-making rules are flexible and designed to prevent minorities from being particularly obstructive. This consideration has promoted new EU policy processes as well as changes in the nature of existing processes. This is why differentiation, detailed in Chapter 1, has become a permanent feature of EU governance, and a defining characteristic of stable federal systems.

How many EU policy processes are there?

All advanced democratic political systems have several differing policy process arrangements. So, for example, in the making of major legislation, political executives customarily take the lead in initiation and formulation and then legislatures scrutinize and vote on the proposals. Political executives and legislatures are usually less actively involved in administrative legislation, with their roles tending to be confined to oversight. And in respect of many non-legislative processes, such as much of foreign and defence policymaking, political executives, or sometimes even just the heads of political executives, tend to dominate.

So, to note that the EU has a number of differing policy processes does not say anything very distinctive about it. But what is distinctive about the EU is the very large number of its processes. The precise number of processes that can be identified naturally depends on the criteria used for counting them. A figure of well over 100 formal policy processes can be identified if account is taken of what may be thought of as important but not necessarily 'first-rank' variations, such as whether or not the EESC and the CoR must be consulted on a policy proposal. If attention is narrowed to first-rank variations the figure naturally drops but still remains, by comparison with policy processes in national political systems, very high. An indication of this is seen in the figure given by the Constitutional Convention – the body that in 2003–4 prepared and undertook much of the drafting of the Constitutional Treaty and which as part of its work looked closely at the EU's processes. After controlling for significant varying involvements and powers of the major EU institutions, and whether or not QMV was available in the Council of Ministers, the Convention identified no less than 28 significantly different procedures.

Another indication of the EU's large number of policy processes can be given by narrowing 'the catchment area' to legislation-making procedures alone. Three significantly different procedures exist: ordinary, consultation and consent. However, if variations within these procedures are counted, the number rises well into double figures, with the most significant variations being according to the availability or not of QMV in the Council, the powers of the EP, and the consultation rights, if any, of the EESC and the CoR. (The nature of these legislative procedures is described in Chapter 8.)

The large number of EU policy processes is not, it should be emphasized, merely a dry observational point. The large number of EU policy processes is extremely important in practical terms, since each process has different implications for such key matters as the number and nature of policy actors involved, their powers, the relations between them, and the duration of policymaking deliberations and negotiations.

The complexity of policy processes

Many of the EU's policy processes are quite complex. The most obvious reason for this is the nature of many of the EU's formal decision-making rules. The formal

rules EU policy- and decision-makers must follow are laid down in several places, of which the treaties are the most important. As in most policy and decision-making systems, the formally laid-down EU rules do, however, tell only part of the story of what happens in practice. A host of less formal factors – most of them arising from a mixture of logistical necessities and political pressures and requirements – also play a part in shaping how policy processes operate. An example of semi-informal dimensions of EU policy processes is the number of inter-institutional agreements between the main policy institutions. There are several such agreements between, in varying combinations, the Commission, the Council and the EP. Some of these agreements are designed to clarify insufficiently detailed treaty-based rules, while others have the purpose of strengthening an institution's position (usually that of the EP) compared to its treaty-bestowed powers and responsibilities. Prominent among these informal rules are the EP-Council trilogues detailed in Chapter 4.

The varying mixtures of supranationalism and intergovernmentalism

EU policy processes vary enormously – both between and within policy areas – regarding the extent to which they incorporate supranational and intergovernmental characteristics. Essentially, the more policy processes are dominated either by policy actors who are not fully controllable by member state governments – which means primarily the Commission, the EP, and the Court – or by decision-making arrangements in which member state governments are involved but which they cannot fully control – which means where European Council or Council decisions can be taken by QMV – then the more the processes are supranational in character. By contrast, the more the policy input of the supranational actors is limited and the more member state governments individually control policy processes – most obviously by having recourse to a veto over proposed decisions if necessary – then the more policy processes are intergovernmental.

The extent to which individual policy processes are more or less supranational or intergovernmental is a consequence of decisions made by the governments of the member states over the years. For, it is the governments that ultimately determine the policy activities in which the EU will be involved and how decisions relating to those activities will be made. In making such

determinations, many factors come into play. Broadly speaking, supranationality is most likely to be seen as being an acceptable, or even a desirable, component of a policy process when at least one of the following characteristics applies in a policy area: the policy is not viewed as being overly politically sensitive and may even be regarded as being in large part essentially technical in nature. By contrast, intergovernmentalism features strongly in policy processes that are politically sensitive and/or where the governments of at least some member states have particular reasons for wanting to maintain control. These reasons include sovereignty and/or national identity considerations (which are often especially important in respect of foreign and defence policies) and reasons arising from concerns that cessation of control could result in the imposition of unwelcome policies (especially with regard to revenue-raising and expenditure matters).

Very few policy areas do not contain some supranational and some intergovernmental features, but the nature of the balance varies considerably.

Policy processes are designed to ensure that member states have confidence in the EU system

The essential purpose of the EU is to enable member states to pursue policy goals more effectively than if they were left to their own devices. The states seek to achieve this greater effectiveness through various forms of policy cooperation and integration.

But policy cooperation and integration come at a price. They may be necessary in an ever more interdependent Europe (even non-member states have to work very closely with the EU), but they mean that the identification, and even more so the pursuit, of national policy preferences are no longer solely a matter for national actors. They have become part of a federal system of policymaking in which the national has, in important respects, had to give way to the collective. Like all such arrangements with dispersed centres of power, it is necessary that the EU retains the confidence of its members if it is to be an organization that functions efficiently and without too much internal dissension. Federal and quasi-federal systems can only survive if the constituent units believe the benefits of membership outweigh the costs. If an EU member state were to become very disillusioned with the balance between these benefits and costs, it could, as the UK increasingly did, become a highly disruptive

member that ultimately questioned the value of its membership.

It is therefore necessary that EU policy processes are constructed and operate in such a way as to ensure that all member states – not least the smaller member states, which are at obvious risk of being dominated by larger ones – have confidence in the system.

There are three main ways in which the EU seeks, and for the most part succeeds, in achieving this:

- *legal protections and guarantees*
  EU law provides many arrangements for member states to be able to protect themselves within, and to input directly into, policy processes. The most obvious such ways are via the EU's institutions which, as was shown in Chapters 4 and 5, are based on varying forms of national representation. Another very important legally based assurance that member states have is the continuance of the unanimity requirement in the Council on certain sensitive policy issues. While most legislative decisions can now be taken by QMV, the veto is still available in several key policy areas, including taxation and aspects of AFSJ. As well as providing for direct input into EU policy processes, EU law also empowers the EU's member states to be able to exercise a certain amount of direct control over the most supranational of the EU's institutions, namely the Commission and the Court by the appointment process detailed in Chapter 4.
- *informal aspects of policy processes*
  The governments of the member states are sensitive to one another's political situations and requirements. So, even if QMV is available, member state governments prefer, if possible, to avoid approving legislative proposals to which one or more other member state governments are known to be strongly opposed. This preference for consistency is boosted by the fact that while a member state government may be in a majority on one issue, it is likely to find itself in a minority position at a later date on another issue, and then it will want a sympathetic view taken of its predicament. So, there are normally attempts to temper the proposed policies to allay some of the national concerns by consensus voting, which is a key reason QMV is used explicitly in only around 15 per cent of the cases where it could be, and only after extensive deliberations.
- *building on the nature of interstate cleavages*
  Salient cleavages between the EU member states are, for the most part, cross-cutting rather than cumulative. Cross-cutting cleavages promote a flexible and ever-changing internal alliance system between the member states. Federal systems depend for their survival on such shifting alliances, not least because they ensure that no constituent unit (member state in the EU's case) is in a semi-permanent minority. In the EU, there are no permanent and fixed alliances or blocs grouped around big/small, rich/poor or north/south. Rather, the cleavage system results in member states coming together in an alliance system in which there are different combinations on different issues, which ensure that the system is characterized by relatively harmonious interstate relations.

The dispersal of leadership

Compared with the way in which political leadership exists and operates at national levels, there is a leadership deficit at the EU level. At national levels, the precise nature of political leadership varies, according largely to how constitutional stipulations and electoral outcomes combine, but governments, no matter what precise form they may take, provide the main source of leadership.

In the EU, where there is a system of governance but no government, there is no such central focus. A key reason for this is that the EU's system of governance contains no clear separation of powers – either of a horizontal nature (with executive, legislative and judicial powers divided between institutions) or of a vertical nature (with policy responsibilities divided between the EU and its member states). Rather, responsibilities are shared and interwoven in a manner that can at times make it difficult to identify precisely who is responsible for what.

Sources of leadership

An important aspect of this power sharing is that there are several potential sources of policy leadership. The most important of these are the Commission, the European Council and its President, the Council Presidency and groups of member states. Each of these potential sources of policy leadership has resources which can in certain circumstances be used to enable leadership to be exercised. Among the most important of the power resources that are available are treaty provisions, political weight and information and expertise.

The Commission has near-exclusive power to make legislative proposals. The European Council provides 'the Union with the necessary impetus for its development and [to] define the general political directions

and priorities guidelines thereof' (Article 15, TEU). The High Representative of the task to 'conduct the Union's common foreign and security policy' (Article 18, TEU).

The European Council has strong treaty powers. But the principal basis of its ability to act and pronounce on almost anything it wishes is the status of its members, which gives it a very considerable political weight. Given that the European Council is largely beyond the reach of the CJEU, the extent to which any authority figures or institutions can rein in the heads of government is very limited.

The Commission can use its position as a non-partisan policy actor with its proposals likely to be viewed with much less suspicion than they would if they had come from national actors.

In most policy areas, the Commission – as with all government bureaucrats – has 'in-house' knowledge and expertise of the EU's policy activities and the ability to marshal the knowledge and expertise it does not itself have through making use of advisory and expert groups, contracting for research to be conducted on its behalf and establishing high-level working bodies to examine particularly important matters.

The dispersed and shifting nature of leadership

Leadership resources in the EU are thus dispersed, with the consequence that so also is the exercise of leadership. Indeed, not only is leadership dispersed, but it also shifts according to context. This dispersed and shifting nature of EU leadership manifests itself in at least three ways in policy processes.

First, because of the differing resources at their disposal, the potential of policy actors to exercise leadership varies between stages of the policymaking cycle. So, for example, member states that have a strong record of achievement, and therefore considerable status in a policy area, are well placed to be able to play a leading role in framing public discourse and setting policy agendas – as, for example, has been the case with the Scandinavian states and environmental policy. States that also have considerable leadership potential during policy framing and agenda-setting include ones that possess material resources that the policy area needs if it is to be successful – as with France in respect of the CSDP. When it comes to another policy stage – policy proposing – the Commission has a particular advantage.

Second, the leadership exercised by specific policy actors can vary over time. One obvious illustration of this point involves the variation in the leadership offered by the Commission, which is commonly agreed to have been highly effective during some periods in

its history and much less effective during other periods. The most effective periods were the first few years after the EC came into existence, when Walter Hallstein was Commission President, and the early years of the Jacques Delors Presidency – from 1985 until about 1991. Nevertheless, both were in office at favourable times: in Hallstein's case, when policy foundations were being laid down and before the Luxembourg Compromise slowed down decision-making; and in Delors' case, when there was general support from all member states for the consolidation of the internal market.

A rather different example of leadership potential and practice varying over time is provided by the Franco-German motor. From the early days of the EC until well into the 1990s, much of the driving force behind the European integration process was provided by France and Germany working in close cooperation. A number of factors facilitated their working relationship and the considerable influence it was able to exert on EU policy development: the historical legacy of the European integration process, which was in large part initiated as a way of bringing these two traditional enemies together; their position for many years as not just two of the large member states but as the perceived two strongest states; and the close personal relations that were established for much of period between the national leaders – De Gaulle and Adenauer in the 1960s, D'Estaing and Schmidt in the 1970s, Mitterrand and Kohl in the second half of the 1980s and first half of the 1990s, and again with Macron and Merkel, symbolized by the signing in 2019 of the Aachen Treaty. The Franco-German duo proved crucial in the marathon European Council summit in July 2021 tasked with agreeing the next MFF, when German Chancellor Angela Merkel and French President Emmanuel Macron threw their collective weight behind the unprecedented Eurobond scheme to fund the 'Next Generation EU' package for post-Covid 19 economic recovery.

An example of a policy area where the Commission – working in this case in close collaboration with the European Council – has been the main driving force is enlargement. EU enlargement policy processes place the Commission in a central position, most particularly by charging it with drawing up the reports that provide the guidelines for key European Council decisions on whether negotiations should be opened with an applicant, whether they are proceeding satisfactorily, whether they have been concluded successfully, and when applicants with which negotiations have been concluded should be permitted to accede. In the 2004/07 enlargement round, the Commission was

ahead of the field in that it moved enlargement processes along much more quickly than the governments of many member states would ideally have preferred. An important factor in explaining why the Commission was able to do this was that there was no consensus between the existing member state governments on the key enlargement questions, with those in the 'slow stream' on enlargement risking considerable awkwardness if they were seen to be resisting Commission 'conscience calls' to be open and welcoming to new democracies and liberal economies.

A need for stronger leadership?

Looking at the leadership issue as whole, the dispersal of policy leadership, both between EU institutions and between member states, is functional in helping to promote confidence in the EU system. The fact that policy leadership is not over-concentrated, but rather is spread around – an integral feature of federal systems – helps to promote inclusion in that many policy actors have either the duty or the opportunity to offer leadership, and few policy actors have felt that they are consistently being led by other actors towards unwanted or unacceptable policy positions. To be sure, there have been increasing notes of national dissonance and dissatisfaction in the early years of the twenty-first century, led most obviously by the UK but also with some echoes in Mediterranean states (notably Greece and Italy) and CEECs (notably Poland and Hungary), but in most EU states, as *Eurobarometer* public opinion surveys show, feelings of inclusion far outweigh those of exclusion.

That said, however, there is a view that if the EU is to operate effectively and efficiently, it needs stronger leadership structures and arrangements. As the EU has grown in size and come to embrace not just more member states but also a much greater variety, each with its own national policy needs and preferences, then so has it become necessary, in the eyes of many EU practitioners and observers, for EU leadership to be more focused and streamlined. This line of thinking provided much of the rationale behind the designing of the Constitutional Treaty and, when this treaty could not be ratified, the successor Lisbon Treaty. The most important new provisions on leadership provided for in both treaties were the creation of a semi-permanent President of the European Council (to replace the existing rotating presidency) and the merging of the posts of EU High Representative for the Foreign and Security Policy and of Commissioner for External Relations into one post: the 'High Representative of the Union for the Common Foreign and Security Policy'. We identify and examine the

leadership question in our policy content chapters, particularly in Chapters 14 (EMU) and 19 (foreign and defence policies).

The consensual nature of (most) policy processes

Despite, as has just been shown, there being little shortage of leadership in the EU, albeit of a dispersed kind, EU policy processes are highly consensual in nature and is a central feature of the policymaking culture of the EU. With the exception of those policy areas where differentiation applies, it is all but impossible for policy initiatives to be carried through all policymaking stages unless they command widespread initial support and are adapted during their transitions to final decisions to bring doubters on board. As Hix (2006, p. 145) observes, EU policymaking is 'at the extreme end of the majoritarian-consensus spectrum, and is perhaps more consensus orientated in its design than any polity in the history of democratic government'. Hix (2008, pp. 31–49) has also observed that a number of treaty reforms since the SEA – such as the greater provision for QMV in the Council, the possibility of the Commission President-designate being nominated by QMV and the need for the Commission-designate to be approved by the EP – have all served to edge the EU in a more majoritarian direction. But, it has only been an edging, for while formal and informal voting has increased in the Council, the preference is still for consensual decision-making, QMV has not yet been formally used to appoint a Commission President, and it remains the case that finding majorities in the Council and the EP invariably requires bringing together a wide range of political actors and views. It is true that the existence since 2004 of a centre-right majority in the main political institutions – the European Council and the Council, the Commission and the EP – has brought the EU closer to majoritarianism than ever before, but, as will be shown below, it has not in practice been majoritarianism as that word is commonly understood. A more liberal economic agenda has been pursued, but it has still not been possible to take decisions on key issues without bringing the most important political actors 'on board'.

The consensual nature of policymaking stems from a number of factors, which were discussed in some detail in Chapters 4 and 5, including the large number of policy actors with significant power resources at their disposal; the many political and economic views in the policymaking institutions; the high voting thresholds within the Commission and the Council;

the large number of access points for non-institutional actors both to have their say and to wield influence.

Of course, the existence of many different views on most policies means that compromise is usually crucial to achieve consensus. Compromise is necessary both within the main policy process actors and between them.

Within the institutions, both the College of Commissioners and the Council are reluctant to take decisions by voting (though the latter less so than it used to be). Each tries to operate on the basis of consensus whenever possible, which means that Commissioners and ministers often have to shift from preferred positions. There are only occasionally votes in the College, and these are usually only of an indicative nature. Voting – of both a formal and informal nature – is certainly used in the Council but, as we have seen, it is not preferred. Indeed, as Jonathan Aus (2008, p. 100) has observed, 'Avoiding isolation, accommodating differences, and reaching agreements along the lines proposed by the permanently involved Commission and rotating Council presidency are dominant features of the Council's political culture.'

As for the EP, the existence of several political groups, the absence of a majority political group, and the requirement in some important votes for majorities to consist not just of nominal majorities but a majority of the EU's membership, combine to mean that the negotiation of deals between the political groups is an ongoing and everyday part of how the EP operates. As Ripoll Servent (2018, p. 246) states, 'the Council's long-standing culture of compromise and secrecy has made its way into the EP … As a result, many consider that policy outcomes have been affected by the culture of consensus, since only solutions situated at the centre of the political spectrum have a chance of success.'

Between the institutions, institutional interdependency means that the main policymaking institutions have no option but to be sensitive and accommodating to the others. So, for example, it is not in the interests of the Commission to bring forward legislative proposals that have little chance of being approved by the Council and/or the EP. The Commission therefore anticipates Council and EP reactions, which may lead to it adjusting preferred positions when drafting legislation. More 'open' compromise is seen when legislative processes formally begin, with the Commission, Council and EP searching constantly for accommodations that will enable legislative proposals to become EU law. In most cases, this proves possible, even if the process is sometimes long and difficult. Within EU legislative processes there is what may be termed 'a culture of negotiating leading to compromise' between the three institutions. The legislative wheels are oiled by an array of informal contacts and exchanges between the three – including trilogues and conciliation meetings (see Chapter 4).

The 2006 Services Directive, which has a good claim to be the most contested directive in the EU's history, illustrates the many sorts of compromises that may be required for policy processes to be concluded with a positive outcome. As shown in Chapter 9, when the Directive was launched by the Commission in 2004, it was based on the mutual recognition principle (which essentially means that the regulations to be applied to products traded in the internal market are based on home country standards) and was wide-ranging in its coverage of service areas. By the time, the Directive was eventually adopted in 2006, varying sorts of opposition from member state governments, from MEPs and from policy interests opposed to core aspects of the perceived distributional consequences of the Commission's draft proposal, had resulted in all policy actors having to make concessions. The adopted Directive was radically changed from the Commission's initial proposal, with home country standards having been largely replaced by those of the host country (though this was not stated formally) and with a number of very important service areas – including health services, public transport and utilities – having been placed outside of the scope of the Directive (on the 'story' of the Services Directive, see S. Schmidt, 2008).

Consensus and the compromises between key policy actors that consensus so often requires, are thus core features of EU policy processes. Compromises are vital in unblocking processes when stalemate is the alternative, while consensus serves to promote confidence in the system, both in that nothing too distasteful is imposed on a reluctant minority and in that also there is usually 'something for everybody'. But, inevitably, consensus also comes with a price, or rather a number of prices. One is that where policy differences between key policy actors on an issue are deep, no general agreement may be possible, with the consequence that either no decision is made or is so only on a differentiated basis. A second is that disproportionate power may be placed in the hands of small dissenting minorities. And a third is, as Wurzel and Hayward (2012) have put it, that giving priority to reaching consensual agreements is usually 'at the cost of policy expedition and effectiveness'. In consequence, decisional outcomes may be neither as strong nor as clear as is ideally desirable. These are, of course, recognizable features of federal systems as opposed to the majority-based unitary systems characterizing most EU member states.

ompromise often produces vaguely worded legisla-
tion, putting off the day for clarification, which often
falls to the federal courts – in this case, the CJEU.

The production of policy outputs

This chapter has emphasized, both directly and indi-
rectly, the seemingly unsatisfactory nature of many
aspects of EU policy processes. It has shown that not
only are there a great many processes, but also that they
are very diverse and often highly complex in nature,
with leadership within them being dispersed, shifting
and often contested. In terms of their outputs, the pro-
cesses produce too many policies that are permeated
not by strong and clear decisions but rather by com-
promises in which there is something for everyone.

EU policy processes also have been criticized for not
producing sufficiently holistic policies. Too often there
is what Scharpf (2002) has called a 'problem solving
gap' in which EU solutions are precluded by the het-
erogeneity and political saliency of national interests
and preferences, while national solutions are impeded
by an array of EU laws and constraints. Scharpf sees
social welfare policies as a case in point, with EU poli-
cies on liberalization and competition restricting what
member states can do on the one hand, but with the
diversity of national welfare traditions and systems
preventing the adoption of strong EU social welfare
policies on the other.

Lack of robustness and clarity in policy outputs is
often cited as a fundamental weakness in federal sys-
tems, especially ones that are similar to the EU in that
there are divided governmental systems (or, at least,
patterns of disconnectedness of executives from legis-
latures) and strong pluralistic elements. The weakness
is further exacerbated when, as can be the case in fed-
eral systems, and is certainly the case in the EU, federal
identity is weak. So, the absence of a clear European
(federal) identity among the European citizenry adds
to the difficulties that have just been noted in develop-
ing strong EU social welfare policies, because incorpo-
rating strong redistributive elements into the policy
portfolio would damage the EU's legitimacy among
the European public. Indeed, the outrage expressed by
Europeans from many EU states – particularly
Germany – when the EU, and more particularly the
eurozone, led the first financial 'bail-out' of Greece
from 2010 suggests an absence of solidarity among
wide swathes of the European electorate.

In key respects, EU policy processes are sometimes
viewed as less than satisfactory, not least in that they
produce too many policies that are less than optimal.
But despite this criticism, there clearly have been
very considerable EU-level policy achievements and
advances since the mid-1990s (see Chapter 1), which
will be covered in Chapters 9–19.

This success of EU policy processes can be judged
not only in qualitative terms but also quantitatively,
with the EU producing a very considerable volume
and wide range of policy outputs each year. A useful
way of distinguishing between these outputs is via the
classificatory system suggested by Peterson (1995) and
Peterson and Bomberg (1999), in which three types of
decision are identified: history-making decisions,
which are decisions that shape the very nature of the
EU (such as enlargements); policy-setting decisions
(decisions that determine the direction of policy in
particular policy sectors, such as permitting the prin-
ciple of government subsidies to be given to industrial
enterprises in areas of high unemployment); and
policy-shaping (which cover policy details, such as
what levels of government subsidies can be given, to
what sorts of enterprises, and for how long). Naturally,
history-making decisions are only for occasional use,
but policy-setting, and even more so, policy-shaping,
decisions are part of everyday EU policymaking. (On
these three types of decisions, see also Lelieveldt &
Princen, 2011, pp. 229–51.)

Most policy-setting and policy-shaping decisions
take the form of EU legislative acts, the volume of
which is now much lower than it was in the late 1980s
and the first half of the 1990s. Whereas the number of
directives (which tend to deal with policy principles
and frameworks) adopted in an average year used
often to be over 100, the number can now struggle to
be in double figures. As for the numbers of regulations
and decisions (both of which deal mainly with detailed
and technical matters), these have fallen from about
4,000 and 2,000 respectively to around 500 each (Com-
Lex, 2018). There are a number of reasons why, despite
the policy portfolio being broader than ever, the num-
ber of legislative acts has declined:

- The particular circumstances of the late 1980s and
  early 1990s, when a very high volume of legislation
  was required as the EU sought to meet its deadline
  of completing the internal market by December
  1992, no longer apply.
- As Hix (2008, ch. 3) has noted, the nature of the
  EU's policy agenda has shifted in the direction of
  more contested and divisive issues. There was a
  broad consensus among policy actors about the
  principle of creating the internal market, but once
  the essential foundations of the market were largely

in place and the political debate moved on to such questions as the extent to which, and the ways in which, the market should be social, environmentally clean and economically liberal in character, consensus became less easy to find and legislative decisions harder to make. (This is hardly surprising, given that the extent to which governments should intervene in the private market to level out incomes and redistribute wealth continues to be the principal basis for party competition in Western democracies.)

- Since the early 1990s, it has become logistically more difficult for the Commission to bring forward legislative proposals. It must now produce impact assessments for any new legislation of significance and must be able to justify new legislative proposals in terms of the principles of subsidiarity (EU actions must be more likely to advance policy goals than national actions) and proportionality (EU actions must not exceed what is necessary to achieve the objectives of the treaties). The working assumption has thus become that new EU-level legislative activity must be seen to be fully justified. Inevitably, this has made the Commission more cautious than it used to be about bringing forward legislative proposals.

- As the EU has moved into more difficult and sensitive policy areas – both of a socio-economic nature, such as with the Lisbon Strategy/Europe 2020-related policies, and of a non-economic nature, such as with security-related policies – then so has much of its policy action, become focused on using non-legislative policy instruments. In such policy areas, the member states accept that there is a need for EU policy activity but are not necessarily persuaded that this need take the form of enacting binding legislation. (This trend in the direction of making increasing use of non-legislative policy instruments is examined in detail in Chapter 8.)

- Under the REFIT and Better Law-Making programmes (see Chapter 7), a reduction in the total number of legislative outputs has been encouraged. It has been so as part of the Commission's drive to emphasize that EU legislation is promulgated only when it is demonstrably necessary.

Variations in the speed of policy processes

EU policy processes are subject to great variations in terms of how quickly they proceed. Whereas at the national level a government with a working majority in the legislature can normally be confident of making reasonably rapid progress with a policy initiative, at the EU level no such assumption can be made – especially if the policy issue in question is controversial and/or is strongly contested.

There are two, in practice interrelated and overlapping, main reasons why EU policy progress can be very slow. The first is that, unlike the situation at national levels, policy proposals do not emanate from a government – be it a majority or multi-party government – elected to office on the basis of policy promises on which it can expect political support from the legislature. So, the EU is unlike the Westminster model of governance but rather shares features of the Madisonian compound republic model with multiple centres of power (Ostrom, 1987). The second reason is that the EU's main decision-making bodies – the Council and the EP – contain a wide range of significantly different perspectives and views on most policy issues.

Examples of *very slow* and in some cases *no* policy progress in seemingly important policy areas are consequently not difficult to find. Corporate taxation policy is an example of the latter, with the Commission having first made the case for some harmonization of corporate tax rates and for some shifting of responsibility for corporate taxes from the national to the European level, as long ago as the early 1960s. But nothing much beyond the 1997 voluntary Tax Code and the European Corporate Statute has been achieved. In consequence, since the early 2000s, the Commission's attention has focused not so much on legislation covering corporate tax rates (which are scrutinized in any event under competition policy rules covering state aid) and has increasingly been focused on the need for legislation on a common consolidated corporate tax base (CCCTB). But stiff resistance from some member states has resulted in the scope of its potential application increasingly being considered as possible only under the enhanced cooperation procedure applicable to larger corporations operating in the eurozone.

Another example of very slow policymaking is provided by the EP and Council regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). Proposed by the Commission in October 2003 – with the aim of reducing health risks and protecting the environment through the required registration and authorization over an eleven-year period of some 30,000 substances – the regulation was not passed until December 2006, by which time its contents had been much diluted. The protraction of the policy process was caused by the complexity of the legislation (it was some 1,000 pages in length) and by fierce disagreements in the Council and EP – which

were partly fuelled by intense lobbying from environmental, consumer and business interests – about where the balance should lie between environmental and consumer protection on the one hand and competitiveness on the other.

Yet another example of a highly protracted policy process occurred with the so-called 'Blue Card Directive' (covering the conditions and residence of third-country nationals entering the EU for economic reasons), which was initially proposed by the Commission in 2001 but was not finally adopted until 2009. Moreover, it was adopted only after being greatly considerably watered down by the Council (Paris, 2017).

* * *

It might have been expected that by increasing the number of EU member states, the post-2004 enlargements would have decreased the EU's decision-making capacities and thereby have reduced its decision-making speeds. In a few highly sensitive policy areas, such as migration, they have indeed done so. However, migration policy aside, decision-making speeds have not been significantly affected by enlargements. There are three main reasons why this is so. The first is that policy actors from the accession states have adapted quickly to the EU's prevailing decision-making norms and mores, and especially to coalition dynamics. The second reason is that, within legislative processes, the pre-2004 trend of increasingly using explicit and implicit QMV and settling matters as early as possible (notably by reaching agreement at first or second reading under the ordinary legislative procedure), which speed up decision-making, has continued. And the third reason is that the post-2004 enlargement has further stimulated the already developing movement away from the use of tight legislation towards the use of policy instruments that give more room for adjustments to suit local circumstances. This is most obviously the case with the increasing use of non-legislative instruments, but even where legislative instruments are used they are often now looser and more flexible in form than formerly. As such, they are more likely to be politically acceptable.

* * *

What, then, are decision-making speeds? Taking legislative proposals that are subject to the ordinary procedure (which account for about 95 per cent of legislative proposals) the average length of time from the Commission issuing a proposal to the EP and Council reaching agreement on individual legislative texts is 17 months for proposals that are adopted at first reading (which accounted for 71 per cent of legislative texts in 2016 and 92 per cent in 2017) and 39 months for those adopted at second reading (which accounted for 29 per cent of legislative texts in 2016 and eight per cent in 2017) (European Parliament, 2018, p. 9; Ripoll Servent, 2018, ch. 11). Proposals (of which there are very few) that are adopted after conciliation meetings (no legislative texts were adopted under conciliation from 2012 to 2017) can take several months longer). The average lengths of legislative processes can thus be somewhat protracted. This is essentially because of the enormous number and diversity of institutional and non-institutional policy actors and interests involved in EU decision-making processes. Taking just institutional actors, an indication of the number of legislation-making activities in which they are involved is seen in the fact that during the 2009–14 Parliament there were no less than 1,577 Commission–Council–EP trilogue meetings on legislative texts and 683 meetings in the first two-and-a-half years of the 2014–19 Parliament (European Parliament, 2018, p. 10).

But slow though EU policy processes can be, they are not necessarily so. Several factors can make for a relatively speedy legislative process. The extent to which a proposal is or is not controversial is, of course, one factor. Another is the availability of QMV in the Council. While, as was explained in Chapter 4 and earlier in this chapter, member state governments usually prefer to find a consensus and do not necessarily rush to vote when QMV is available, votes nevertheless are increasingly held or 'threatened' (hence the importance of 'the shadow of the vote') to enable progress to be made. And, yet another factor that might be expected to make for a relatively speedy legislative process is the procedure applying, with proposals that are subject to the single-stage consultation or consent procedures naturally having an in-built bias to proceed more quickly than those that are subject to the potentially three-stage ordinary procedure. But, although consultation and (even more so) consent procedures can also be relatively quick, and can even be accelerated by being subject to pressing timetables, they often are in disputed policy areas, which can slow them down.

How are decisions reached with so many differences between policy actors?

A question that has underlain much of this chapter has been how is the EU able to make decisions when there are not only so many (often competing) policy actors but also so many (often clashing) policy differences between the member states? One answer to this

question is, of course that the EU is not always able to make decisions, as witnessed, for example, by its inability to make much progress with such high-profile and recurring Commission calls for EMU to be significantly strengthened and post-migration crisis revision of the EU-wide system dealing with irregular migrants and asylum seekers.

But, notwithstanding policy differences even in highly disputed and contentious areas, the EU normally can make at least some sort of decisions in areas where they are deemed to be necessary and/or required. The decisions taken may sometimes be much-delayed, over-general in their phrasing, and hedged with provisions that give implementing room for manoeuvre to states with reservations, but decisions they nonetheless are.

Why then is the EU able to make such policy advancements in the face of so many possible veto points? The answer is that the EU has, acting through a long series of formal and informal incremental adjustments to its policy processes, created a number of devices that have been explicitly designed to facilitate EU policy- and decision-making outputs. Some of these devices were described earlier in the chapter, whilst others are examined in other chapters.

Conclusions

An underlying theme of this chapter has been that, in important ways, EU policy processes are both similar to and different from policy processes in the member states.

The similarities stem from the core fact that the EU is a political system which, like all open political systems, translates needs and demands for policies into policy outputs. This translation is brought about through policymaking mechanisms. These mechanisms are more numerous and complex than their counterparts in member states, but they serve much the same purposes by sorting out policy priorities requirements and preferences, and moving policy ideas from conception and formulation through to adoption and implementation.

The differences between EU and national policy processes are not restricted to the greater number and complexity of the former, but also cover many other matters. EU processes are, for example, characterized more by compromise, by dispersal of leadership and usually also by being less explicitly ideological in nature. These traits contribute to producing an EU policy process system in which, as Vivien Schmidt (2009) has put it, there is not much *real* politics in the sense that politics is understood at national level; specifically, there is little open competition between actors over policy options, with citizens making choices as to which they prefer of the sets of options on offer. Of course, in the policymaking systems of the EU's member states, it is also the case that there are few active policymakers and work largely behind closed doors. But, unlike the EU's policymakers, national policymakers work within a more clearly politically partisan framework and are ultimately directly responsible to citizens.

Guide to Further Reading

This is an eclectic chapter, which examines European integration from the perspective of the policy processes that have been developed to support supranationalism and intergovernmentalism. One of the best ways to come to terms with the shifting nature of policy processes, ideology and leadership – the key themes of this chapter – is to read a history of the European Union, or more broadly, of Europe. Some recommendations follow.

Dinan, D. (2014) *Europe Recast: A History of the European Union*, (2nd edn) (Boulder: Lynn Rienner Publishers).

Judt, T. (2005) *Postwar: A History of Europe Since 1945*, (New York: Penguin Books)

Leonard, D. and Leonard, M. (eds) (2002) *The Pro-European Reader*, (Basingstoke: Palgrave). This is a collection of speeches and writings by European writers and politicians in which they make the case for a united Europe.