

## Assessing the democratic value of civil society engagement in the European Union

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Veröffentlichungsversion / Published Version

Sammelwerksbeitrag / collection article

Zur Verfügung gestellt in Kooperation mit / provided in cooperation with:

SSG Sozialwissenschaften, USB Köln

### Empfohlene Zitierung / Suggested Citation:

Hüller, T., & Kohler-Koch, B. (2008). Assessing the democratic value of civil society engagement in the European Union. In B. Kohler-Koch, D. d. Bièvre, & W. Maloney (Eds.), *EU-governance to civil society: gains and challenges* (pp. 145-181). Mannheim: Universität Mannheim, Mannheimer Zentrum für Europäische Sozialforschung (MZES). <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-195319>

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# Chapter 7

## Assessing the Democratic Value of Civil Society Engagement in the European Union

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In the last decade, various authors as well as the European Commission have ‘rhetorically’ strengthened the idea of fostering democracy and legitimacy by improving civil society involvement (Kohler-Koch/Finke 2007; Smismans 2006). Maybe the involvement of civil society organisations in EU affairs is only one of many options to democratize the European Union (Kohler-Koch/Rittberger 2007) and if this is the case, it is one which can either foster and strengthen European democracy, or favour undisclosed elite negotiations, as it is far from obvious that all kinds of interest groups incorporation automatically have a positive effect on democratic quality.

Since the vigorous critique of the pluralist theory in the 1960s, the scientific discourse about democratic functions of voluntary associations was rather sceptical. This changed only in the face of the political transition of the

Eastern European countries, where strongly normative and affirmative views grew with the concept of civil society (Glenn 2001). Today this democratic optimism is not linked any longer to the upheaval of the people against illegitimate and oppressive government, rather a wide range of functions advancing good democratic governance is attributed to civil society, new social movements and voluntary associations. On the European level this discussion was rather slow on the uptake (see Finke 2007).

Prima facie it might seem puzzling to face such evaluative variance over such a short period of time. But it is the elusive and multifaceted concept both of civil society and democracy which opens up the room for very different understandings. A sound assessment of the (potential) democratic value has to deal with at least three unrelenting basic problems and their specific interrelations. The central problem is the contested notion of the key terms: What do 'democracy', 'civil society', and 'EU' precisely mean? Not enough having to deal with three contested concepts, we have to face three additional inter-relative problems: How can the well-known instruments to measure democratic quality taken from comparative government research be applied to the EU? What are the possible democratic functions or values of civil society engagement and/or involvement? Which functions can be relevant for the EU?

The title indicates an empirical question, but the main problems to solve are of a theoretical nature: Only when this preparatory work is done, we can – with the help of a theoretical model – investigate the democratic quality of civil society engagement in the EU empirically.

So this paper is mostly on 'asking the right questions': First, a normative conception of democracy is outlined, which is in our view appropriate to measure and assess the changing quality of European democratic performance (1). Then the interpretations of civil society and its latent democratic

functions are introduced (2). In a next step, different conceptions of the EU and respective roles of civil society involvement are discussed because the potential democratic function of civil society varies with the conceptions of the EU as polity (3). Based on these deliberations we develop an analytical model of the 'civil society-EU democracy' relation and specify the relevant questions in order to measure its democratic performance (4). Finally, we discuss the implications of our theoretical model for empirical research and try to give some very rough indications concerning the overall democratic performance of the civil society involvement in the European Union (5).

## **On Democracy**

Reviewing the normative conceptions of democracy and the attempts to measure democratic quality empirically, we see many different normative conceptions and analytical designs.<sup>1</sup> In order to capture the differences, it has been suggested to set apart three dimensions of contested values: the relation of the fundamental values of liberty and political equality, the desired extensity and quality of citizen participation, and the normative ideal of will formation.

Along the liberty-equality divide we face roughly three positions: the liberal democratic position, which puts emphasis on personal autonomy by favouring an (iterative) consensus model (Ackerman 1989, Riker 1982), the strong egalitarian position arguing in favour of the position of a median voter or deliberator normally enacted through the application of majority rule (see Dahl 1989 or Waldron 1990 for aggregative views), and the third position

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<sup>1</sup> For a historical account on different conceptions of democracy, see Held (1987). For contemporary normative conceptions, see the broad overview by Cunningham (2002), but also the more systematic debates e.g. by Christiano (1996), Dahl (1989), Shapiro (2003) and Weale (2007).

tries specifically to reconcile individual autonomy and political equality as far as possible (Rawls 2001)<sup>2</sup>.

A second divide in democratic theory concerns the direct participation of citizens. Since Rousseau one camp of theorists argues in favour of extensive and/or intensive participation (Bachrach 1967; Barber 1984), others are more sceptical due to normative and/or empirical considerations (Kornhauser 1959; Sartori 1962).

A third divide, which has been re-discovered in the last twenty years, concerns the ideal of will-formation: Is democracy about fairly aggregating existing preferences, is it a power game or should it be a matter of deliberation and convincing arguments (Habermas 1996; Macedo 1999; Shapiro 2003).

The three contested normative dimensions of democracy are also mirrored in the literature, which tries to measure democratic quality empirically.<sup>3</sup> It goes without saying that assessing the democratic quality of any political system, including the EU, has to relate to a specific understanding of democracy. To put it differently: What normative kind of democracy provides us with the yardstick for measurement?

Though political theory provides sound reasons for arguing in favour of one or the other normative position, we will not engage in this debate, but rather make a choice from a ‘contextualised’ point of view. It is ‘contextualised’ in

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<sup>2</sup> A prominent version of this third approach is the ideal of “non-domination” (Pettit 1997) or “minimizing domination” (Shapiro 2003).

<sup>3</sup> To point only at a few differences here: With respect to the first divide, most authors restrict their indicators for measuring political equality in the political process, but see e.g. the Polity IV project by Jagers and Gurr (<http://privatewww.essex.ac.uk/~ksg/polity.html>) who focus in addition on constitutional restrictions. Some authors are strongly opposed to the idea of making actual participation a relevant indicator (Lauth 2004: 338ff.), but others are equally strong in favour of it (Vanhanen 1997). And parallel to the mainstream of conceptions measuring aggregative democracy, there is a rapidly growing literature measuring deliberative democracy (e.g. Steenbergen et al. 2003).

two respects: first, we take account of the system properties of the EU and second, we relate it to our research question which is concerned with the involvement of civil society and, thus, with the process of policy making and not with the constitutionalisation of basic rights.<sup>4</sup>

We argue that in the multi-level system of the EU the liberal democratic idea of augmenting the personal autonomy of the individual citizen is best secured at the national and local, and not at the EU level of decision making.<sup>5</sup> The iterative consensus model can only contribute to the enhancement of personal autonomy under conditions of an open public space where individual voices can be heard. Again, the multi-level character of the EU, the diversity and size of the European political arenas run contrary to such ambitions. Furthermore, the EU system is by definition a federal system which gives priority to the representation of collective units. Individual equality is under similar constraints. Due to the federal principle, territorial communities have priority and, consequently, individuals do not enjoy equal political weight in EU decision making. The deliberate overrepresentation of small nations is not an issue when observers deplore biased representation in the EU. This relates to the unequal representation of functional or political interest at the inter-individual level. It is the heavy bias towards the representation of economic interests in EU decision-making, which has always been criticised as violating democratic principles.

With respect to the aggregation–deliberation divide we argue in favour of the deliberative approach. The main reason is again the multi-level character of the EU. When the emphasis is on the aggregation of existing preferences, the

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<sup>4</sup> For a discussion why contextualized answers for the democratic question are necessary, see Abromeit (2004). Even if we assume a general ideal of democracy, the conditions of application make important differences at the practical level desirable.

<sup>5</sup> Human, political and social rights are constitutional rights at member state levels which have been secured for decades by the European Convention for Human Rights. The EU Charta for Human Rights brings little added value. Even more important, to comply with these rights is a pre-condition for becoming a member of the EU, in the first place.

outcome is suboptimal. This can be observed regularly in international, inter-governmental negotiations. We argue that a trans-national discourse will more likely produce a more differentiated view on European problems and a broader range of appropriate and accepted problem-solutions. Irrespective of our preference for the deliberative approach, we intend to measure the participatory quality of civil society involvement both, in relation to interest aggregation and deliberation.

Concerning the participation-representation-divide in democratic theory, we take the view that both extreme positions are rather implausible for empirical as well as normative reasons: There cannot be a proper democracy without a significant degree of citizens' participation, but under conditions of modern societies inclusive and permanent participation is unattainable. But if democracy most basically means 'the people rules', these restrictions cannot abandon the core principle of political equality (see Dahl 2006). So what is needed is a normative conception of political equality for "stand by-citizens" (Amnå 2007), for citizens who sometimes engage more intensively in political affairs, but most of the time and with respect to most issues remain only (and at best) the audience on the gallery. In the stand-by mode they read their newspaper, listen to their friends, neighbours etc. and watch nation-wide TV news, but they normally do not actively participate in politics. To assess if the EU citizens' (can) perform adequately, two issues have to be investigated separately: Firstly, the quality of the information cues via mass media and/or the performance of intermediary institutions, such as political parties, civil society organisations etc.. Since average citizens will not participate directly in the European political process, they have to rely on transmission belts of information in order to learn about relevant political decisions and conflicts. Secondly, the opportunities offered for political participation have to meet the receptiveness and the capacity of citizens. Intermediary institutions have a democratic function in so far as, in the long term perspective, they lower the

activation thresholds and enhance the readiness for active participation and, this way, turn citizens from an ‘off-mode’ to a ‘stand by mode’ in a given situation.

So what is an appropriate *normative notion of democracy* for the EU, which is open for deliberative processes and which respects political equality without assuming full citizens’ participation? Our suggestion is the following: *A political system is democratic if the essential decisions in the system are generated in public and if mechanisms exist which link these decisions in an egalitarian (or: reciprocal) way, effectively to their members.*

A few explications are in place here. A political system is defined as a societal association which makes and implements collectively binding decisions for their members who have no real individual exit-option. And the normative criteria which qualify a system as ‘democratic’ have to be specified further. In our approach we will refer to the principles of reciprocity, publicity, and accountability.<sup>6</sup>

Political Equality as Reciprocity. Democracy necessitates citizens being treated as (political) equals (Dahl 2006, Saward 1998). But what precisely should be treated equally? Empirical preferences, individually enlightened preferences or morally justified preferences? And based on which criteria do we decide on the quality of preferences? An elegant way out is to ask for reciprocity as the core principle in a process of will-formation.

Reciprocity demands an ‘other-regarding’ behaviour and the justification of political claims with ‘good reasons’, which means that they are accepted as being rational and legitimate. The process and output should be “mutually acceptable” (Gutmann/Thompson 1996: 55).

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<sup>6</sup> For a more comprehensive defence of these normative principles and a discussion of alternative normative conceptions of deliberative democracy, see Hüller (2005: chapter 3).

How do we know reciprocity when we see it? First, all relevant political claims must reach the political forum. Second, priority will be given to considerations supported by collectively shared fundamental substantive standards, whereas arguments based on status and power and emotional appeals will be devalued. If there is a moral disagreement, in which several fundamental standards are contested, there should be procedures at place to morally reconcile or accommodate these different norms as far as possible. Conflicts about the validity of empirical statements should be resolved by relying on uncontested methods of producing evidence. The idea behind this principle of reciprocity is to approximate a 'justificatory ideal', where the actors rely on the 'force of sufficiently justifiable arguments' (Gutmann/Thompson 1996: cp. 2; Rawls 1999).

The idea of reciprocity (just as the idea of justice) is inseparably linked to the principle of political equality (see e.g. Dworkin 1978, Gosepath 2004) and it can be equally applied to a representative and a participatory approach. What is necessary is that everybody's (justified) claims and positions are taken into fair consideration. Whether affected citizens should present and defend their claims themselves or not is not a matter of principle, but a matter of pragmatism. It is an open empirical question if representation or direct participation will foster deliberative political equality more successfully – and the answer might change depending on the context.<sup>7</sup>

Political equality (and for deliberative democrats more precisely: reciprocity) is the core normative principle. Publicity and accountability have a more instrumental character since their importance is closely linked to the empirical conditions of modern societies.

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<sup>7</sup> It seems to be fair to expect that both extremes of the participatory and the representative ideal are not attainable in modern societies. Whereas the participatory ideal is (and has always been) naïve from a sociological point of view, the pure representative ideal underestimates the functional need for citizen activities, such as popular instruction and control via elections and referenda, public deliberations, demonstrations etc. (for a prominent diagnosis, see Barber 1984: part I), and it overestimates the good-will of the political elite, or both.

Publicity. When can political actions, policies or politics be regarded as public? In a decision making process we could think of publicity in a weak sense, meaning that political actions, documents and decisions are published and accessible at low costs. If these conditions are met, we speak of publicity in the sense of *transparency*.<sup>8</sup> A stronger conception of publicity would take transparency as a necessary but not sufficient condition. Here, an action, policy or political process only counts as public if it is an issue in public debate: everybody knows it and everybody knows that everybody knows it (Luban 1996: 170). In that sense, publicity means *common public knowledge*. This kind of publicity we find in various aspects of Rawls' "idea of public use of reason" and "public justification" (Rawls 2001: § 9, §26; 1999).

Now what is the appropriate normative principle for a democratic theory for generally attentive, but with respect to most actual (routine) political processes absent 'stand by-citizens'? Our answer is – very roughly – a combination of both. Without transparency of the political process, even intermediary organisations would not be able to exert a reliable political 'control'.<sup>9</sup> Transparency is the necessary condition to subject politically contested issues to a wider public debate. The important democratic function of civil society organisations is the monitoring of a basically transparent policy process and in stimulating the awareness of the general public of relevant political issues.

The need for publicity concerns, first of all, what Rawls (1993: Lecture 6, § 5, 2001: § 9) has called "constitutional essentials". Beyond certain substantial rights, fundamental procedural rights and competences are a core element of this idea: If citizens do not know how the political system works, what their

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<sup>8</sup> For a normative conception of "weak publicity", see Christiano (2008 forthcoming: chap. 2)

<sup>9</sup> Therefore, transparency has been introduced to European politics as an institutional cure for the deficiencies in multi-level accountability. But this does not imply an obligation that every political act and process must be transparent. There are plausible normative as well as pragmatic exemptions from the transparency rule (see Gutmann/Thompson 1996: cp.3, Naurin 2007).

rights are and how to use them, they can not act as ‘stand-by citizen’ but are simply excluded from political decisions.<sup>10</sup> Second, although for good reasons most of the political processes and decisions operate in a ‘routine’ mode and, irrespective of being transparent, pass by unnoticed, they operate in the shadow of publicity. Not the number or the intensity of public debates indicate the democratic quality of a political system, but the institutionalised mechanisms, such as party competition, which contain the risk that routine operations will go public. The system has to remain permeable for public discussions about occurring problems and conflicts (Habermas 1996: cp. VIII).

Transparency is the necessary though not sufficient prerequisite for a functioning democracy. If it is sufficient in routine politics, it is *inter alia* dependent on well functioning mass media, on convenient administrative culture, and not the least on the norm orientation of the ruling elite and the scrutiny of intermediary associations. The latter ensure a more or less systematic monitoring of normal politics, asking for justification and maintaining the option of a transition to publicity. The respective contributions of civil society organisations are at the core of our research interest.

Accountability. In democratic theory the notions of control, responsiveness, responsibility and accountability all focus on the appropriate relation between the rulers and the ruled, or rather the citizens and their representatives. Neither the term control nor responsiveness can sufficiently grasp the binding

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<sup>10</sup> Empirically, political education or civic literacy is unequally distributed and will be so for the time being. The point here is that there have to be certain kinds of personal political capabilities (Sen) to make it possible that citizens can exert their democratic function. Especially “procedural competences” (Buchstein) (i.e. knowing the rules of the political ‘game’) seem to be on average significantly less cultivated on the European level than they are on the national one. To be clear, we do not talk about the intellectual capacities of the European citizens, but about their ability to assess and to take a position in the political processes on the EU level.

of rulers and the ruled. ‘Control’ bears the connotation of someone who supervises the political processes all the way down. But this would make the whole differentiation between citizens and representatives unnecessary. If every political act was accompanied and reviewed by the people, they would not ‘stand by’, but do the entire work themselves. As already mentioned, there are severe empirical restrictions to such an ideal. And there might also be certain cases, policies and polities, where it is not desired, that the people have such a direct hold on policy formulation (see e.g. Pettit 2004).

Mere responsiveness – the mirroring of empirical preferences in political decisions – is also not an appropriate and sufficient standard for the desirable binding of representatives’ actions. Responsiveness may be an inclination or a fact of politics. In both cases it ought to be a characteristic feature of democratic representation. However, it can also occur under patriarchal or populist autocratic rule. Only when rights are institutionalised and institutional mechanisms are in place obliging political representatives to be responsive, the factual responsiveness of political representatives may be rated as an attribute of a democratic system. Even then, representatives’ responsiveness to citizens’ preferences is only a viable indicator of democratic will formation under the assumption of steady and consistent individual and collective preferences. In addition, the democratic quality depends on the requirements of reciprocity.

Expressions like responsibility and accountability are not flawed in that way. Unlike the term control, they give room for representatives to act themselves, and unlike responsiveness, both allow for “deliberative uptakes” (Bohman) within political processes.

According to Marc Bovens, “accountability is 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 pass judgement, and the actor may face

*consequences*” (Bovens 2007: 450). Thus, accountability is about justification that embraces both ideational and material aspects. Representatives have to justify the appropriateness of their positions with respect to the underlying value judgements and norms. They also have to argue convincingly that they act in the interest of the represented and they have to prove that they have taken into consideration the legitimate claims of everybody affected. They will be held accountable on the grounds of principled belief systems and they will face consequences on the grounds of policy output and policy outcome. Political accountability (as compared to legal or administrative accountability) is a judgement which indicates ‘displeasure’ and not the violation of given standards or deviant behaviour (Bovens 2007: 463).

The three normative principles elaborated above, reciprocity, publicity and accountability, are at the core of a *principle-driven approach* to measure the democratic quality of political institutions. The core assumption is: The more political decision making processes (from setting the political agenda to policy formulation, decision making and implementation) meet these standards, the more democratic is the political system.

## **On Civil Society and Democracy**

The current use of ‘civil society’ (and similar expressions) is as vague and open as the term democracy (Chambers and Kymlicka 2002). Here, civil society is a separate sphere beyond the spheres of private life, the economy and the state and, consequently, operates according to a different logic that is not dominated by emotional attachment, profit seeking, or the subordination to power. Civil society is upheld by associations which are organised to different degrees, and which are active in and take issue with quite diverse fields of cultural, religious, political, social, economic and many other fields of life (Warren 2001).

Parallel to the concepts concerning the virtues of participation (see above), there are at least two major strands of literature expecting democracy related functions of civil society organisations, which we refer to as associative democracy and associational life.<sup>11</sup> Here, *associative democracy* refers to all settings where (1) civil society organisations are ‘incorporated’ into the political system, be it that certain authoritative power is *delegated* to collective non-state actors, or to the joint decision making of representative groups of organizations and they (2) should perform certain democratizing functions. Apart from self-regulation, associative democracy attributes civil society actors the role of intermediaries. They are expected to serve as transmission belts, either from the citizen to the state which makes significant use of the expertise, claims, support channelled by civil society actors, or from the realm of politics to the citizens by providing information and knowledge.<sup>12</sup>

The second strand of literature does not focus on the direct and immediate effect of associations on the democratization of a political system, but is interested in the indirect and medium-term formative consequences of *associational life*. The social capital approach, in particular, has triggered an increasing research interest in the effects of active membership in associations on (other) political activities and interests and on the acquisition of political skills and virtues.<sup>13</sup> This paper is concerned only with the first concept.

Associative democracy differs from the broader concept of democratic participation since not citizens as individuals are participating in the political process, but delegates of civil society organizations. With respect to the democratic question it is most important to be aware of the different

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<sup>11</sup> It goes without saying that these democratizing functions are contested as well (see Fung 2003).

<sup>12</sup> For overviews about different institutional settings and possible democratic functions, see Cohen/Rogers (1995), Hüller (2005: cp. 10), Warren (2001).

<sup>13</sup> See e.g. Putnam (1993) or Skocpol (2004) for influential contemporary approaches. For a critical evaluation of this strand, see Theiss-Morse/Hibbing (2005).

intermediary roles which are connected to civil society organisations (Greven 2007). From a normative perspective, the demos (citizens or affected persons) is the only unit of reference, and not associations. If civil society organizations are supposed to have a central function within democratic decision making, we need to make a two-dimensional analysis. One dimension has to focus on the political interaction between the centre of the political system and the civil society organizations and the other dimension on the interaction between the demos (however defined) and the civil society organizations. Quite evidently, in most empirical works the second dimension is at best under-investigated and also underdeveloped theoretically.<sup>14</sup>

Two kinds of mechanisms can be differentiated, which might have democratizing functions. In a *'top-down' perspective*, civil society organizations might systematically observe more or less transparent but nevertheless 'veiled' political processes and provide their constituencies or the general public with relevant information, explaining or criticizing what happens 'up there'. Such *associative monitoring* would make political processes more public and, as a consequence, more accountable (see e.g. Fung 2003: 522).

Democratization might also work the other way round, if a more egalitarian chain of input or *'bottom-up'* mechanism was strengthened by intermediary associations. If associations have many members or a wide constituency to whom they are responsive, and if these associations work in very different 'local' contexts, then their representatives might represent hidden, but relevant information as well as different perspectives (Williams 1998; Young 2000). So they might bring expertise and claims and a diversity of views into the decision making process. As a consequence, the knowledge base (about

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<sup>14</sup> For an interesting theoretical approach reflecting on this double-step, see Nanz/Steffek (2006) and, of course, Habermas (1990, 1996: cp. VIII). But at least Habermas' model can not simply be applied to the EU, as there is not a properly functioning general public sphere, which serves a prominently role in his view (see below, part 3).

relevant political preferences, claims and possible solutions) for political decisions can be extended and this is a pre-condition for egalitarian deliberations and decisions (see Fung 2003: 523ff.).

The effectiveness of both mechanisms is to a large extent an empirical question. It would be not enough to prove that civil society organizations bring up a variety of issues and claims, but that they are to a certain degree representative for the demos.<sup>15</sup> Furthermore, the input from civil society organizations can only be rated as a democratic added value when it has an impact on the decision making process.<sup>16</sup>

The connotations of ‘bottom-up’ and ‘top-down’ mechanisms might be closer to aggregative conceptions of democracy, but some – however mediated and deliberatively enlightened – connection between the demos and the more representative acts of decision making have to be present in deliberative conceptions of associative democracy, as well (for different variants considering this, see Habermas 1996: cp. VIII, Cohen/Rogers 1995, Nanz/Steffek 2006). Even more important, both the top-down and the bottom-up mechanisms have to be visible and significant in the European political practice.

## **Civil Society, Democracy, and the EU<sup>17</sup>**

The potential contribution of civil society to EU democracy is underspecified in social science research for different reasons. It is not long ago that the general theoretical debate has started and, consequently, theory guided

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<sup>15</sup> There is a long literature on organisational self-interests, the possible democratic malfunctions of group pluralism and neo-corporatism.

<sup>16</sup> To be sure, for deliberative theorists it is very difficult to specify the desired impact. Nanz and Steffek (2005) have argued for ‘responsiveness’. But as the search is for reasonable or generalizable decisions, we either have to assume that all claims from civil society organizations are of such a kind (what is implausible) or we have to qualify the desired responsiveness (see above, part 1).

<sup>17</sup> This part draws on Kohler-Koch (2007).

empirical research is just at its beginnings (Smismans 2006; Finke 2007; Della Sala/Ruzza 2007). We argue that the deficiencies of the present day discourse are not just a question of lacking maturity of research, but have to be attributed to the uncertainties about the nature of the EU. In the literature we are faced with different images of the European polity. We suggest three analytically distinct frames which combine civil society and the EU in specific ways: Three concepts attributing a distinctive role to civil society as carrier of democracy which correspond to three different understandings of the nature of the EU system. We find these frames by digesting the broad literature on civil society, EU governance and democracy and categorize it in view of the theoretical debate of recent decades.<sup>18</sup>

*Three ideal type conceptions:* The nature of the EU is still contested both in its present form and even more so concerning its future development. We distinguish three ideal type images of the EU, which are present in the political and the academic debate. They provide quite distinct frames for the incorporation of civil society and also are usually associated with different understandings of what civil society engagement in the EU is about.

The **first conception** originates from the governance turn in the analysis of the European Union. In this perspective, the EU equals the modern state which has lost its steering capacity and strives to attain problem-solving *effectiveness* by close cooperation with non-state actors. In the EU non-hierarchical forms of decision making are said to be even more pertinent because decision making powers are allocated to different territorial levels and dispersed to functionally segmented arenas. A system of 'network governance' (Kohler-Koch 1999) evolves bringing together the relevant state and societal actors. To induce reluctant actors such as member state administrations,

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<sup>18</sup> For a recent review on the literature on civil society see Finke (2007); for a review on governance see Kohler-Koch/Rittberger (2006); on EU democracy see, for example, the edited volumes by Eriksen/Fossum (2000) and Kohler-Koch/Rittberger (2007).

economic actors and interest groups to agree to EU harmonisation, new modes of governance have been introduced such as the ‘open method of coordination’. The trade mark of these new modes of governance is that all actors that are potential target groups or may support or obstruct the success of a regulation are included in the process of defining policy goals and instruments.

Civil society is an underdeveloped concept in this governance approach. It comes under the heading of ‘participatory governance’ and suggests including ‘stakeholders’ in the arrangement of ‘public-private partnerships’. The concept is based on the normative supposition that all those who are affected by a political regulation should have the right to participate in the decision. It is, in addition, supported by the functional belief that those who are affected can also bring relevant knowledge to improve the policy decision. Since regulatory and not redistributive policies are prevalent in the EU, it is suggested that not interest but the capacity to contribute to ‘best solutions’ should be the relevant criterion for participation.<sup>19</sup>

In the standard accounts of governance approaches, the democratic question is under-developed, but a systematic incorporation as intended by Schmitter immediately raises a trade-off problem: open and inclusive participation might have constraints on effectiveness. But it was precisely because of the effectiveness of the arrangements why participatory governance was supported in the first place. Since the concepts that portray the EU as a system of governance say little about EU democracy, we will not analyse them any further.

The **second conception** sees the EU in a state of constitutionalisation that is both, a process of polity building and of “social constituency building”

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<sup>19</sup> In Philippe C. Schmitter’s concept ‘holders’ are defined more broadly: “they possess some quality or resource that entitles them to participate”, but already rights that are attached to membership is such a quality (Schmitter 2002: 62).

(Fossum/Trenz 2006). The EU is on the verge from a multi-level system of governance that was mainly relying on the legitimacy of its constituent units, i. e. the member states, to a system of authoritative decision making in its own rights. This calls not only for the institutionalisation of procedures of democratic participation and accountability, but also for the emergence of a trans-national European civil society.

Whereas some authors associate a sense of social cohesion and solidarity with civil society (Walzer 1995), the main discourse is inspired by the idea of deliberative democracy in the tradition of Jürgen Habermas. The essential ingredient of democracy is a ‘political public sphere’, “a communication structure rooted in the lifeworld through the associational network of civil society” (Habermas 1996: 359). In this reading, civil society is “composed of those more or less spontaneously emerging associations, organisations, and movements that, attuned to how societal problems resonate in the private life sphere, distil and transmit such reactions in amplified form to the public sphere” (Habermas 1996: 367). Civil society is seen as being distinct from self-interested lobby groups.

This normatively very attractive conception, which was developed by Habermas for national political systems, has at least two kinds of deficiencies: There is empirical evidence and theoretical support that precisely the most autochthonous civil society actors were the least deliberative, other-regarding in public discourses.<sup>20</sup>

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<sup>20</sup> Gerhards/Neidhardt/Rucht (1998) have shown this for the civil society contributions to public discourses accompanying a political decision about the abortion law in Germany. There might be at least two reasons for this: First these associations are highly voluntary and homogenous (compared to churches or political parties). Broad other-regarding behaviour has to be paid with a loss in membership and support. Both, in case of homogenous groups and under the conditions of deliberations about generally accepted values, there is a tendency of the radicalization of preferences in the course of deliberation (see Sunstein2000; Warren 2001).

Much more problematic for an empirical oriented research is that the necessary conditions for the functioning of this normative model, such as the democratic constitutionalization, a European wide public sphere, and the spontaneous emergence of civil society have not yet materialised at EU level. It is quite another thing to talk about national public spheres and public discourses than to presuppose a general European public sphere. There are no *European* quality newspapers, no European TV etc. and the Europeanisation of national media is still underdeveloped (see Brüggemann et al. 2007). If a controversial topic spurs a political debate, it may generate issue specific trans-national communications, but the politisation is mostly limited to one policy area and the ensuing segmented public spheres do not add up to a general political public and, therefore, are not a substitute for an open democratic space (Eriksen 2002). Another deficit concerns the state of European civil society. There is ample empirical evidence that – compared to the nation state – civil society organisations on EU level are significantly less independent or autochthonous (Michel 2008). Thus, two core elements of this democratic model, a trans-national political public sphere and an associational network of civil society, are not functioning adequately on the European level. Consequently, we will not consider this conception any further.

The **third conception** attributes to the EU the quality of a political system closely cooperating with civil society organisations. The EU is exerting government functions without having a government. The ruling institutions are autonomous but highly interdependent and in different ways and to different degrees politically responsible. The policy making process is spurred by the Commission and policy output is dependent on the negotiated compromise between all actors entailed. It is a political system on the move, with expanding membership and a constant, though mainly incremental deepening of its competence and, consequently, in need of public support. It

is said to face a legitimacy crisis because democratic accountability is deficient, because it is too distant from the people, and because it is under-performing.

Civil society is perceived as a remedy to the latent legitimacy crisis of the EU.<sup>21</sup> Though it is a loosely defined concept, consensus has emerged on some core features: Civil society encompasses the wide range of voluntary associations that follow a 'logic of action' that is distinct from that of the state or the market or the private sphere. It encompasses all different kinds of organisations, ranging from solidaristic advocacy groups to member based interest groups. Its function is to present the plurality of interests, values and tastes in the setting of the political agenda and in policy making. By giving citizens a voice and by bringing knowledge to the decision making process, civil society contributes both to the input and output legitimacy of the EU system. Social partners have a privileged position in the system and the European Economic and Social Committee claims to represent organised civil society. This is the conception which will be tested further in our analysis.

### **The 'Civil Society- EU-Democracy' Relation – an Analytical Model**

Above we argued in favour of three normative standards to assess the democratic quality of the civil society involvement in EU affairs, namely reciprocity, transparency/publicity and responsiveness/accountability. Furthermore we suggested taking civil society organisations as intermediaries between citizens and decision-making authorities. Thus, it is not sufficient to assess civil society impact in EU decision making, rather we have to analyse the communication and interaction up from and down to the citizens in

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<sup>21</sup> For a comparative evaluation of civil society as a remedy to perceived crises of legitimacy see Jobert/Kohler-Koch 2008.

order to evaluate the democratic value of civil society involvement. In the following section we will apply the normative standards to the third (above mentioned) conception of the European Union.

**Transparency** and **publicity** are the most important functional preconditions for accountability. When we focus on the Commission, we can conceptualise two accountability relations. First, a relation of horizontal accountability to other EU institutions to whom the Commission is accountable either on political (European Parliament, Council) or legal (European Court of Justice) grounds. The political control by the EP is well established and has grown over the years. The Council does not have a formal right to hold the Commission on account. However, we argue that it is an issue of facing consequences when the Council is rejecting a Commission proposal. The judicial control of the ECJ is the most visible 'horizontal accountability' (O'Donnell 1994). The second relation concerns vertical accountability which extends directly to civil society organisations and through their intermediary functions to the different constituencies. The functional role attributed to civil society organisations is to make this system of accountability relations work. A necessary prerequisite is the transparency of political decision making from agenda setting, political deliberation and negotiation up to the decision-making and implementation: Are documents and political processes visible to the attentive organisations or not? A second one is that nothing impedes civil society organisations to effectively push publicity.

It is undeniable that much progress has been made in the previous decade with respect to the access to documents, the transparency of the decision making process by publication of legislative roadmaps, or opening comitology

and expert groups (Brandsma/Curtin 2007; Gornitzka/Sverdrup 2008).<sup>22</sup> But it is also undeniable that this process is not yet completed, and the success varies from one DG to another.<sup>23</sup>

Despite the improvement in the preconditions of accountability, civil society can hold the Commission to account only in a rather soft way. It may ring the fire-bell to promote horizontal accountability. It may pressure the Commission to give account in terms of feed back to civil society organisations in the consultation process (Commission 2007). The Commission up to now is not legally obliged to explain and justify its behaviour and will only have to face the soft consequences of ‘blaming and shaming’. Accordingly, we call it ‘ideational accountability’. The EU civil society organisations on their part have to give account to their members or constituencies and have to face severe consequences, either through the mechanism of elections or regarding donations. This we call ‘material accountability’. Quite obviously, the Commission does not face material accountability and a direct vertical link of accountability to the citizens does not exist at all.

Nevertheless, it is worthwhile to assess the functioning of the soft modes of accountability. Empirical research should focus, first, on the institutionalisation of different mechanisms of soft accountability and how they operate in daily routines. Second, responsiveness may be used as indicator of the effectiveness of these soft modes of accountability.

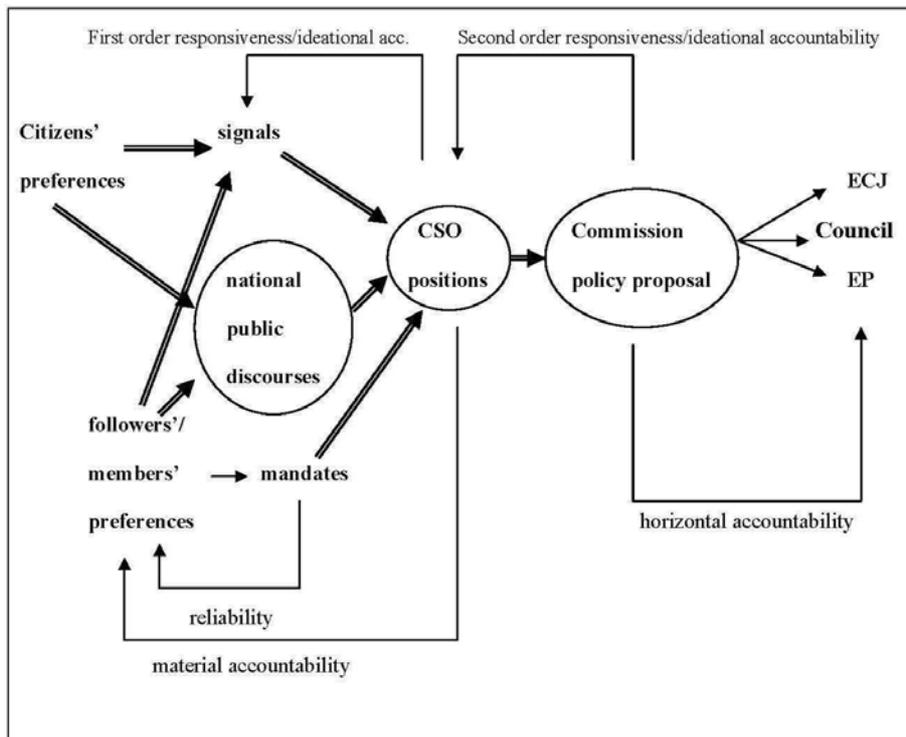
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<sup>22</sup> With respect to public access to documents, see EC regulation 1049/2001 and the Commission’s current review process of the regulation. With respect to routine decision making, see the Commission’s website “Your Voice in Europe” as well as the latest Comitology reform (Bradley, forthcoming).

<sup>23</sup> It is rather astonishing, that in some DG there are still undisclosed contributions to public consultations; contributors can demand confidential treatment for their contributions to online-consultations. This practice is supported by EC regulation 1049/2001, which is granting a right to confidentiality.

The analytical model presented in figure one demonstrates a two-layer relation of accountability/responsiveness and also a two-layer system of representation. On the first level, civil society organisations at the EU level may represent citizens' preferences by responding to 'signals' (such as public opinion polls, media coverage of public debates) and/or to demands directly addressed to them either by ordinary citizens or by their members or supporters. 'Electoral representation' is limited to member based organisations where representatives are elected and given a mandate. On the second level, civil society organisations, in turn, will represent the (aggregated) preferences vis à vis the Commission.

**Figure 1: Democracy in the EU – a regulatory state with civil society involvement**



➡ “double” arrows from left to right indicate the chain of representation

Apart from the horizontal (political and legal) accountability and the indirect and soft mechanisms of vertical accountability, the Commission has a 'functional responsibility' as the 'guardian of the Treaties', as promoter of the 'ever closer Union' and as a strong supporter of the Charter of Fundamental Rights. Without a functioning mechanism of political accountability, this functional responsibility rests with the norm orientation of the Commission.

The model is a heuristic devise for evaluating the contribution of civil society empirically. It draws attention to the distinct layers of representation and accountability relations and the different modes of accountability. Furthermore, responsiveness can be used as a proxy to measure the effectiveness of representation and accountability.

Quite obviously, this model has to be put in perspective. The discourse on EU governance and on the benefits of civil society involvement and the introduction of the 'principle of participatory democracy' in the Draft Constitutional Treaty (art. 47)<sup>24</sup> has drawn attention to the Commission's role in enhancing the democratic legitimacy of the EU. But it is quite evident that functional representation addressed to the Commission is only one part of the EU's system of 'composite representation' (Benz 1998). Consequently, the Commission's claim to legitimately "represent the European interest" has to be assessed against the competing claims of the Council and the Parliament. They are based on different normative grounds which reflect specific political philosophies. Parliamentary representation is founded on the equal rights of citizens to partake in political rule; member state representation is founded on the federal principle to give political rights to (national) political entities; the Commission's representation is mainly functional since it is representing citizens as 'stakeholders'. Whereas representation in parliament is based on the idea that politics is about contested decisions and, consequently,

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<sup>24</sup> The Reform Treaty has retained the contents (art. 8B) but has deleted the heading.

representation has to be organised through competitive elections, the federal principle gives priority to the accommodation of competing interests between established political communities. Functional representation and, above all, the claim to representation based on CSO input has normally a technocratic bias: The argument is that CSOs put across the interest of stakeholders, pass on their expertise, and in a process of deliberation and mutual learning the ‘co-operative state’, represented here by the Commission, will arrive at the best problem-solving strategy. The choice between values and irreconcilable interests is negated or deferred to the ‘political’ decision of the Council and the Parliament.

To put it in a nutshell: When research is addressing the role of civil society organisations in relation to the Commission, we only get part of the picture. In view of the high hopes invested in civil society engagement in EU governance and the political importance of the EU, we consider it worthwhile to concentrate on this segment of the real world.

The ‘aggregative’ path to democracy is not the only theoretically available option. Above we argued that reciprocity is a more appropriate normative standard to achieve democratic equality in the EU. This holds true when we accept the theoretical argument of the ‘virtue of political apathy’ and accept the empirical findings that only a small minority of citizens follow attentively the political process. Then the ‘voice of the people’ is muted and issue-specific preferences relating to day-to-day EU politics are difficult to discern.

The alternative ‘deliberative’ path relies on the inclusion of (all) relevant perspectives and fundamental beliefs, the inclusion of all relevant information irrespective of who is voicing these concerns and a communicative mode of

arguing and public reason giving which supports reciprocity.<sup>25</sup> Responsiveness cannot easily be measured since an empirical match with citizens' preferences is not a valid indicator. Rather we have to look for institutional conditions which encourage receptiveness and reasoning. A further hypothesis is that the character of deliberation will vary with the relative political weight of the actors involved. When civil society organisations have 'ownership' in the sense that they have a dominant influence on the agenda and on the institutional setting of the exchange, the nature of deliberation will be more *political*, whereas if the Commission is in control, deliberation will tend to be more *technocratic*.

## **Assessing the Democratic Value of Civil Society Engagement in the European Union – First Empirical Insights**

The previous parts of this paper made clear, our approach to assessing the democratic quality of civil society engagement in the EU argues for a rather complex picture, analysing three normative principles and a variety of possible institutional localizations. The theoretical point is: There can be a democratization of the EU via civil society involvement, but this is or would be a rather thorny road. And if a significant democratization has taken place remains an empirical question. The answer mostly depends on the actual

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<sup>25</sup> A rather new approach of the Commission is to include citizens directly by promoting certain 'demotic' instruments, as deliberative polls ("Tomorrow's Europe") or "European Citizens' Consultations". These instruments have the status of hypothetical opinion polls: How would the European citizens assess the EU, if they are induced to make an assessment. As these proceedings normally don't get any wider public attention, these instruments can not solve the EU' legitimacy problem: If the European citizens are not aware of it, even strong representative and deliberative efforts can not gain citizens' support and thus legitimacy. But these instruments may have other values which, however, are beyond the scope of this paper.

practice of civil society involvement.<sup>26</sup> To be precise, four elements have to be integrated in such a complex, but feasible analysis:

First, with respect to the normative dimension, we have argued that the EU performance has to be assessed in a more integrative way, where a set of normative principles (as political equality, publicity, and accountability) has to be put in a common perspective.

Second, with respect to the democratic quality of institutions and processes of civil society involvement we made clear that to effectively include representatives and/or political claims of civil society organisations is not sufficient in order to democratize any political system. These representatives and claims have also to be connected in appropriate ways to the society, e.g. to public discourses, to processes of political authorization and accountability.

Third, sometimes scholars assess the democratic quality of single institutions of civil society involvement. But there are many formal and informal instruments and channels connecting civil society organisations to EU institutions and a satisfactory assessment would have to aggregate the results from the different instruments.

And fourth, the institutions of civil society involvement have to be integrated into a wider picture of EU democracy, in which European elections, the EP, and democratic national governments share the democratic burdens.

Except for the last aspect mentioned, we currently work on such a more complex analysis in our DEMOCIV project at the MZES. As we detailed empirical results are not available yet, we finally give some hints about the democratic quality of the EU's civil society involvement by putting - very

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<sup>26</sup> Hopefully next year we can present the findings of the most relevant details of this picture, which we analyse in our DFG- research project. Here we present only some preliminary results.

roughly – the Commission’s instruments in the perspective of our theoretical framework.

Since the White Paper on European Governance, a permanent extension of participatory options has taken place. This has lowered the thresholds for civil society organisations to participate in European affairs. But even this extended involvement is by no means equal – neither with respect to the national origin of the contributors, nor with respect to the representation of political claims (Persson 2007; Quittkat/Finke in this volume).

Though opportunities to participate in EU consultations have increased, a thorough analysis of participation in the different stages of the decision-making process – from agenda setting, deliberation and negotiation, up to the final decision making act – reveals a mixed picture. The Commission holds the agenda setting power; it may use the Treaty based right of initiative in response to member governments or interest groups. Even though in particular instances organisations representing broader civil society interests have an impact on the agenda, it does not amount to open and equal access and, therefore, can hardly be qualified as being ‘democratic’. There is neither a transparency nor an accountability mechanism with respect to the agenda control. When it comes to civil society input in the process of policy formulation and decision-making, the principles of openness and participation apply and instruments have been introduced that have broadened access and voice. But institutionalised accountability is lacking. Though individual General Directorates, such as GD SANCO, have been open to a political commitment to give feed-back in the consultation process and to give reasons for its deviating positions, in practise it is mostly a rather superficial exercise.

When reading the documents, it is difficult to discern any deliberative use of the arguments put forward in the consultation process with civil society.<sup>27</sup>

Nevertheless, it has to be acknowledged that due to the extended consultation process the policy formulation stage is more open than before and more participatory than in many member states. Information is easily accessible and a diversity of positions may be voiced. The exchange of ideas, however, is channelled by a predominantly technocratic approach: The Commission is inviting expert opinion on optimal problem-solving strategies. Whereas parliamentary decision-making relies on competition over political issues, the Commission shies away from 'politisation'. Thus, open public consultations do not make a market place of political concerns and ideas. Many written consultations read more like an effort to mobilise support than to invite different views. Only a limited range of options, if at all, is presented and a competitive evaluation of different policy proposals is not part of the process. It would be unfair to attribute this practise to a manipulative inclination of the Commission. It is rather the expression of the institutional position of the Commission which has to arrive at a consensual position that will meet the assent of the Council.

To conclude: Involving civil society does not live up to the promises of rendering the EU more democratic. The instruments have enlarged participation in terms of providing access, but hardly in terms of providing citizens with influence on outcome. Information and transparency have been improved, but do not enhance a public discourse. 'Participatory engineering' cannot overcome the structural impediments that keep a trans-national public sphere weak and citizens apathetic.

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<sup>27</sup> The same holds true for the impact assessments which are obligatory for important legislative processes. On average, a discussion even of the most relevant civil society contributions (esp. critical claims) does not become visible to the reader. At best the overall support for a Commission's proposal is counted. For an empirical assessment of the Commission's responsiveness in the REACH case, see Friedrich (2008: 155ff.).

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